Decision No. 20130213

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:	APPLICANT A
	- and -
IN THE MATTER OF:	THE LEGAL PROFESSION ACT
PANEL:	Jennifer Cooper Q.C., Chairperson Raymond Hall, Member Neil Cohen, Public Representative
HEARING DATES:	February 13, 2013; and March 22, 2013.
APPEARANCES:	Mr. Clive Ramage for Applicant A Ms Leah Kosokowsky for the Law Society of Manitoba
RECORDED BY:	FOUR SEASONS REPORTING

DECISION

Re: An Appeal by Applicant A of an admission decision of the Director of Admissions and Membership of The Law Society of Manitoba, dated November 1, 2012.

Table of Contents

DECISION

I. INTRODUCTION

1. Applicant A ("the Applicant" or "the Appellant") appeals the decision of the Director, Admissions and Membership, Law Society of Manitoba (the "Law Society") dated November 1, 2012 rejecting his Application For Admission to the Canadian Professional Legal Education Development Program ("CPLED" Program) as an Articling Student for the year 2012-2013 ("the Third Denial Decision").

2. The Application, filed September 24, 2012, was the third Application by the Applicant, the previous two having been denied, each in turn having been unsuccessfully appealed to different Panels of this Committee.

3. The reasons for the denial of each of the two previous decisions and the denial of each of the two respective appeals of those decisions are a matter of record. The reasons provided in those two decisions describe the history of the Applicant's conduct both in the courts and in the public over the course of approximately seven years. The Applicant's previous conduct led to numerous adverse inferences being drawn about his character from a number of quarters, both inside and outside of the legal system. Those adverse inferences were found by the previous Appeal Panels to be directly relevant to the respective CPLED applications then under consideration.

4. Both prior Appeal Panel decisions, Decision #1 issued October 9, 2009 and Decision #2 issued November 25, 2010,cite extensive evidence of the Applicant's previous inappropriate conduct including abuse of the legal system as well as embarrassing and troublesome situations for the public. Although those behaviors are not under review in this Appeal hearing, they form an essential backdrop and frame of reference to the instant Appeal.

5. Law Society Rules and the coincident Guidelines with respect to the assessment of character and the fitness of applicants to be granted entry to the CPLED Program establish that "disclosures by a candidate or other relevant matters otherwise learned of by the Law Society will establish a rebuttable presumption that a candidate is not of good character and a fit and proper person."

6. Both Appeal Panel #1 and Appeal Panel #2 determined, for different reasons, that the Appellant's behavior under consideration in those respective appeals raised a rebuttable presumption that the Appellant was not, as of the respective dates of the decisions, "of good moral character and a fit and proper person to be admitted" to the CPLED program. Both Appeal Panels also found that the Applicant had failed to rebut the presumption. The evidence of the Appellant's prior misconduct raises the same rebuttable presumption in this Appeal.

7. The two prior Appeal Panel decisions provide comprehensive surveys of the criteria applicable to the assessment of the good character and fitness requirements, including thorough reviews of the application of those criteria in the Manitoba jurisdiction. Subsequent to the dates at which each of those respective decisions was rendered, those criteria and their application to identical questions before this Appeal Panel have not changed appreciably, save for the addition of more recent jurisprudence.

8. Accordingly, this Panel adopts with approval the previously specified criteria to be used as the jurisprudential framework from which to assess the facts in the instant Appeal. The relevant Paragraphs of those decisions with respect to those criteria are quoted below.

9. Appendix 1 provides a chronology of events transpiring subsequent to the Applicant's first Application to the CPLED Program, in October, 2008.

II. MATERIALS BEFORE THE DIRECTOR (and the APPEAL PANEL)

10. The following documents were considered by the Director:

- Application for Admission to the 2012-13 Manitoba CPLED Program and as an Articling Student received September 24, 2012;
- Additional Information (pages 1 through 6) received September 24, 2012;
- Application cover letter from Ms BF received September 24, 2012;
- CPLED Professional Integrity Agreement received September 24, 2012
- Certificate of Character received September 24, 2012;
- Pre-Registration Contact Form 2012-13 received September 24, 2012;
- R.C.M.P. Criminal Record check received September 25, 2012;
- Certificate of Qualification from National Committee on Accreditation dated October 31, 2008;
- University of Manitoba transcript, received November 24, 2008;
- Certification of translation for Certificate of Israeli Bar Association received October 28, 2008;
- Certification of translation for Tel Aviv University Faculty of Law, Bachelor of Laws degree received October 28, 2008;
- Certification of translation for the Hebrew University in Jerusalem Social Science Faculty, Bachelor of Social Science degree received October 28, 2008;
- Certification of translation for the Hebrew University in Jerusalem Social Science Faculty, Schooling and Marks Certificate received October 28, 2008;
- Certification of translation for Tel Aviv University Faculty of Law, computerized Marks Chart received October 28, 2008;
- Admissions & Education Appeal Panel decisions dated October 9, 2009 and November 25, 2010;

- Copy of letter from Mr. RR of [Family Counseling] Centre dated September 12, 2012;
- Letter from Mr. CM of [Community Campus] dated June 27, 2012;
- Letter from Mr. RP of [School] dated June 25, 2012;
- Copy of Pages 1 and 20 of Transcript of Judgement of [Judge] delivered [Date], 2011;
- Copy of Certificate of Attendance of Manitoba Government Parent Information Program dated December 16, 2010;
- Letter from Mr. SS of [Law Firm 1] dated September 6, 2012;
- Copy of letter from Mr. CR of [Law Firm 2] dated August 30, 2012; (Not in evidence before Appeal Panel)
- Letter from Mr. SR [Law Firm 3] dated August 7, 2012;
- Copy of letter from Mr. RC dated September 10, 2012;
- Copy of letter from Ms LD dated August 20, 2012;
- Letter from Mr. AG dated July 30, 2012 with clarification attachment dated September 10, 2012;
- Letter from Ms AR of [Employer 1] dated August 27, 2012;
- Letter from Ms TS of [Employer 2] dated January 30, 2012;
- Copy of letter from Ms DB of [Employer 2] dated January 27, 2012;
- Letter from Mr. CS of [Employer 3] received September 24, 2012;
- Letter from Ms JT of Opportunities for Employment dated August 31,2011;
- Copy of letter from Ms TS of [Government Agency] received September 24, 2012;
- Canada Revenue Agency GST/HST Credit Notice dated July 5, 2012;
- Letter from Mr. AT of Manitoba Housing Property Services dated March 2, 2012;
- Loan Statement from National Student Loan Service Centre dated Jan. 13, 2012;
- Copy of letter from Mr. SA of the Office of Superintendent of Bankruptcy Canada dated August 13, 2010;
- Letter from Mr. SA of the Office of Superintendent of Bankruptcy Canada dated June 24, 2010;
- Manitoba Courts Registry Search received September 24, 2012;
- Copy of letter from Manitoba Justice, Aboriginal and Community Law Enforcement dated September 13, 2012; and
- Copy of Certificate of Canadian citizenship received September 24, 2012.

III. MATERIALS BEFORE THE APPEAL PANEL ONLY

11. The following additional materials were presented to the Appeal Panel:

- Letter of Decision, Director, Admissions and Membership Department, Law Society of Manitoba, dated November 1, 2012;
- Court search and documents – [Court File 1] Re: Application for Protection Order;
- Court search and documents - [Court File 2] Re: Small Claim;
- Court search and documents - [Court File 3] Re: Notice of Appeal and Notice of Application relating to Appeal of [QB] decision of [Date], 2011 dismissing Applicant's Motion for interim/interlocutory relief; and Application for Judicial Review of the Attorney General's decision to enter a stay of the private prosecution proceedings brought against Mr. S[wherein Applicant A] allege[d] the Attorney General acted in bad faith; and
- Email correspondence & attachments from Applicant A to [Director] dated November 28, 2012 and November 29, 2012.

12. At the commencement of the hearing on February 13, 2013, the Appellant provided the following additional documents:

- Copy of e-mail received by Applicant A from Mr. RR dated November 27, 2012, providing clarification on points made in his letter of September 12, 2012;
- Letter from Mr. AK, a professional social worker at a Winnipeg clinic, dated April 28, 2010, providing a "Therapeutic Assessment" for Applicant A; and
- A second letter from Mr. AK dated July 19, 2010, describing Applicant A's progress in treatment to "become a person of strong moral character."

13. The Panel received a Brief and Authorities from counsel for the Law Society of Manitoba that included the following:

- Decision of First Appeal Panel dated October 9, 2009;
- Applicant Av.The Law Society of Manitoba [MBCA, cite deleted] (Can LII);
- Decision of Second Appeal Panel dated November 25, 2010;
- Law Society of Manitoba Guidelines for Good Character;
- Dunsmuir v. New Brunswick [2008] 1 S.C.R. 190 (excerpt);
- Excerpt from "Lawyers and Ethics" by Gavin Mackenzie, Part 23.2;
- The Law Society of Upper Canada and Weisman [1997] L.S.U.C;
- Preyra v.Law Society of Upper Canada [2000] L.SD.D. No. 60 (QL);
- Hutton v.Law Society of Newfoundland (1992), 96 D.L.R. (4th) 670, [1992] N.J. No. 276 (QL) (Nfld. S.C.);
- McOuat v.Law Society of British Columbia (1993), B.C.L.R. (2d) 106, [1993] B.C.J. No. 807 (QL) (B .C.C.A.);
- Preyra v.Law Society of Upper Canada,[2003] L.S.D.D. No. 25;
- Law Society of Upper Canada v.Burgess,2006 ONLSHP 66 (Can LII);
- Birman v.Law Society of Upper Canada,2006 ONLSHP 32 (Can LII);

- Law Society of Upper Canada v.Hope,2007 ONLSHP 20 (Can LII);
- Honner v.Law Society of Upper Canada,2011 ONLSHP 166 (Can LII);
- Bornmann v.Law Society of Upper Canada,2011 ONLSHP 130 (Can LII);
- Outstanding Costs Orders in favour of The Law Society totalling $6,105.50 described as:
    - a) Judgment of Mr. [Court of Queen's Bench] made on [Date redacted] and costs fixed on [Date redacted] in the amount of $3,069.12;
    - b) Order of [MBCA] made on [Date redacted] in the amount of $200.00;
    - c) Order of [MBCA] made on [Date redacted] and costs fixed on [Date redacted] in the amount of $486.38;
    - d) Order of the [MBCA] made on [Date redacted] dismissing Applicant A's motion to adjourn his appeal and orders and costs, in the amount of $350.00; and,
    - e) Certificate of Decision of the [MBCA] relating to order made on [Date redacted] dismissing Applicant A's appeal of the security for costs order, and ordering costs in the amount of $2,000.00;
- decision Applicant A v. The Law Society of Manitoba, [MBCA] [Date redacted]; and
- The Legal Profession Act, S.M. 2002, c. 44, s. 3(1)

14. The Appellant's List of Authorities consisted of the following:
    - Law Society of Upper Canada v. Sharon Ellen Shore, 2006 ONLSHP 0055;
    - Preyra v.Law Society of Upper Canada,[2003] L.S.D.D. No. 25
    - Bornmann v.Law Society of Upper Canada,2011 ONLSHP 130 (Can LII)
    - Student A – Appeal of Admission Decision, Law Society of Manitoba Decision 20090729;
    - Sherif Ragai Ashamall v. Law Society of Upper Canada, 2009 ONLSHP 0052;
    - Law Society of Upper Canada v. Natalie Michelle Hope, 2007 ONLSHP 0020;
    - Lynda Lillian Levesque v. Law Society of Upper Canada, 2005 ONLSHP 0045
    - Birman v.Law Society of Upper Canada,2006 ONLSHP 32 (Can LII);
    - Mondesir v. Manitoba Association of Optometrists, 2001 MBCA 183;
    - Eric Hutton v. Law Society of Newfoundland, 1992 Nfld. S.C. Decision No. 2110;
    - Guttman v. Law Society of Manitoba, [2010] MBCA 66;
    - Law Society of Manitoba v. Jack Anthony Stewart King, [2011] Discipline Case Digest 10-13
    - Honner v.Law Society of Upper Canada,2011 ONLSHP 166 (Can LII)

IV. RELEVANT EXCERPTS OF LEGISLATION,LAW SOCIETY RULES, GUIDELINES, AND THECODE OF PROFESSIONAL CONDUCT

A. The Legal Profession ActC.C.S.M. c. L107

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.

B. The Fair Registration Practices in Regulated Professions Act, S.M. 2007c.21

Timely decision, responses and reasons

6. A regulated profession must

(a) make registration decisions within a reasonable time;

(b) provide written responses to applicants within a reasonable time; and

(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.

C. LAW SOCIETY RULES

Application for admission as an articling student

5.4(1) 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:

(a) 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

(b) 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

(c) provide <u>proof that he or she is of good moral character and a fit and proper person to be admitted</u>;

(d) 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)

(e) furnish all documentation required by the chief executive officer; and

(f) 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)

[Emphasis added]

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)

Decision of panel final

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.

(ENACTED 05/08; AM. 06/09; 05/12)

D. GUIDELINES FOR GOOD CHARACTER APPLICATIONS UNDER RULES 5-4, 5 24(2), 5-28.1 and 5-28.2

Candidates applying for admission to the Manitoba CPLED Program and as an articling student, or seeking permission to resume active practice or transfer to the Manitoba Bar must disclose the following:

(a) all convictions for crimes or other offences under any statute, regulation or law, except convictions under The Highway Traffic Act, The Liquor Control Act, or municipal by-law, unless there are four or more violations or a term of incarceration;

(b) any conviction or finding of liability as a result of breach of trust, fraud, perjury, immorality, dishonourable conduct, misrepresentation, dishonesty or undue influence in any civil, criminal or administrative proceeding;

(c) any order made against the candidate regarding institution of vexatious proceedings or vexatious conduct of a proceeding, pursuant to s. 73(1) of The Court of Queen's Bench Act, or such similar legislation as may be in effect in any other Canadian jurisdiction;

…

The Law Society may consider other information which, though not strictly fitting within the categories above, might constitute behaviour coming under Rules 5-4, 5-24(2), 5- 28.1 and 5-28.2 such as conduct which demonstrates or indicates an attitude of disrespect or abusiveness of the court and its processes.

Any such disclosures by a candidate or other relevant matters otherwise learned of by the Law Society will establish a rebuttable presumption that a candidate is not of good character and a fit and proper person under Rules 5-4, 5-24(2), 5-28.1 and 5-28.2. In considering whether such a presumption has been rebutted by the candidate, the Law Society may have regard to the following:

1. the applicant's candour, sincerity and full disclosure in the filings and proceedings as to character and fitness;

2. the materiality of any omissions or misrepresentations;
3. the frequency and recency of the conduct or behaviour disclosed that gives rise to the presumption;
4. the nature and extent of the applicant's voluntary treatment or rehabilitation;
5. the applicant's current attitude about the subject of their disclosure;
6. the applicant's subsequent constructive activities and accomplishments;
7. evidence of character and moral fitness including the reasonably informed opinion of others regarding the applicant's present moral character; and
8. 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.

[Emphasis added]

E. Guidelines for Appeals of Admissions Decisions

Oral Hearings

19. Witnesses 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.

F. Code of Professional Conduct

PREFACE

… The essence of professional responsibility is that the lawyer must act at all times uberrimae fidei, with utmost good faith to the court, to the client, to other lawyers, and to members of the public.

1.01 INTEGRITY

1.01 (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

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.

Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice, for example, committing any personally disgraceful or morally reprehensible offence including an act of fraud or dishonesty, will reflect upon the integrity of the lawyer, the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that the knowledge of it would be likely to impair the client's trust in the lawyer, the Society

may be justified in taking disciplinary action.

…

Honesty and Candour

2.02 (2) When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

Commentary

A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the matter, if any, that might influence whether the client selects or continues to retain the lawyer.

A lawyer's duty to a client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the lawyer's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks about the merits and probable results.

…

4.01 THE LAWYER AS ADVOCATE

Advocacy

4.01 (1) When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary

Role in Adversarial Proceedings – In adversarial proceedings, the lawyer has a duty to the client to raise fearlessly every issue, advance every argument, and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. The lawyer must discharge this duty by fair and honourable means, without illegality and <u>in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect</u> and in a way that promotes the parties' right to a fair hearing in which justice can be done. Maintaining dignity, decorum, and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected.

<u>This rule applies to the lawyer as advocate, and therefore extends not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals</u>, arbitrators, mediators, <u>and others who resolve disputes</u>, regardless of their function or the informality of their procedures.

…

In civil proceedings, a lawyer should avoid and discourage the client from resorting to frivolous or vexatious objections, attempts to gain advantage from slips or oversights not going to the merits or tactics that will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.

[Emphasis added]

G. Application

15. The Legal Profession Act entrusts the Benchers of the Law Society with the responsibility and duty to fulfill the purposes of the Act, namely to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence. In order for the Benchers to fulfill those obligations, the Act permits the Benchers to establish standards, rules and guidelines for the admission of members to the profession, and for the continued regulation of those members once admitted.

16. Pursuant to provisions of the Act, the Benchers passed Rule 5.4 setting out the criteria and requirements for applicants seeking to become articling students. One of the core criteria is that the applicant must provide proof that he or she is of good character and a fit and proper person to be admitted to the profession. In order to provide guidance to prospective applicants with respect to that criterion, the Society published a set of "Guidelines For Good Character Applications," establishing a framework upon which the assessment of that requirement could be made, and specifying the presumptions that the Society can and does make in respect of the requirement.

17. The Fair Registration Practices Act imposes a general duty on all regulated professions, such as The Law Society, to "provide registration practices that are transparent, objective, impartial and fair."

18. The Code of Professional Conduct provides the Law Society with a framework from which to assess the behaviour and performance of all of its members. Although by definition an applicant is not yet a member of the Society, specific provisions of the Code are helpful in providing an additional framework from which to assess the prior conduct of prospective members whose character is brought into question.

V. PREVIOUS APPEAL PANEL DECISIONS

A. Criteria For Assessing "Good Character" and "Fitness" Per Rule 5.4(1)(c)

19. Both prior Appeal Panels undertook an extremely thorough review of the appropriate criteria to be used to assess an Applicant in the context of the Law Society's requirements for establishing that the Applicant is "of good character and a fit and proper person to be admitted."

20. In this hearing, counsel for both parties submitted that the criteria arrived at by the previous Panels were the appropriate criteria to be applied by this Panel. This Panel agrees with those submissions. Appeal Panel #1 set out the evaluation as follows:

> WHAT STANDARD OF PROOF IS REQUIRED IN RESPECT OF ALLEGATIONS RELATED TO CHARACTER AND FITNESS?
>
> 122. As with all civil matters, the evidentiary standard is the balance of probabilities. The Rules 'provide that the burden is on the applicant (in this case the Appellant) to establish his or her character and fitness:

"5-4 Subject to rule 5-4.1 [which is not relevant here], an applicant for admission as an articling student must, by May 31 in the calendar year in which articles commence:

(c) provide proof that he or she is of good moral character and a fit and proper person to be admitted;"

123. The Guidelines … confirm that any "disclosures [in respect of a series of questions directed towards this issue] by a candidate or other relevant matters otherwise learned of by the Law Society will establish a rebuttable presumption that a candidate is not of good character and a fit and proper person under Rules 5-4, 5-24(2) and 5-28.1."

124. Thus, where evidence of bad character or unfitness has been disclosed or comes to the Law Society's attention the burden is clearly on the applicant to establish on a balance of probabilities -- that he or she is indeed of good moral character and a fit and proper person to be admitted.

125. That is not to say that any suggestion of bad character or unfitness would be sufficient to create this rebuttable presumption. Mere speculation, for example, would not suffice. As recognized by the Law Society of Upper Canada in respect of an application for admission to the bar assessments of this nature are akin to assessments of misconduct allegations. In LSUC v. Birman, the panel held:

"If the Society is able to make out an allegation of misconduct to the requisite degree of proof, the applicant must prove on a balance of probabilities that he is nonetheless presently of good character. If the Society is unable to make out an allegation of misconduct to the requisite degree of proof, then the evaluation of whether the applicant has proven on a balance of probabilities that he is presently of good character is made without reliance upon the unproven allegations. In the ordinary course -- where the Society's opposition to the application is entirely based upon unproven allegations of misconduct -- the applicant's present good character will otherwise be presumed, and the application will generally succeed."

THE LAW RELATING TO CHARACTER & FITNESS

General

131. As noted at the outset the Panel is unaware of any Manitoba cases that have considered the character and fitness requirements of the Rules.

132. In Manitoba there are two "gates" through which the Appellant must pass before admission can be granted; (1) "good moral character" and (2) "fit and proper person to be admitted." Valuable albeit incomplete guidance as to the meaning of these terms can be found in the available jurisprudence and commentary.

133. Before examining those sources, however, two preliminary comments need to be addressed.

134. First, while jurisprudence and commentary exists with respect to the assessment of "good character" or "character and repute", in the context of admission to the bar, the Panel was not directed to any that deals directly with applications to article.

135. That said there is no basis to apply different standards in respect of an application to "article than would be applied in respect of an application to be admitted to the bar. The underlying principles are the same and the language used in the Rules (specifically in Rule 5-12(d) regarding eligibility for call to the bar) confirms that there should be no different approach taken; Rule5-12(d) uses the words "continues to" in the phrase, "continues' to be of good moral character and a fit

and proper person to be called to the bar". This would be illogical if the term "good moral character and a fit and proper person" was intended to have some different meaning. The principles established in the case law' and commentary are therefore' equally applicable to both circumstances.

136. Second, although the concept of "good character" is universal within the common law jurisdictions of Canada as a pre-requisite (to admissions as a student or lawyer some jurisdictions including Manitoba - appear to go further than that. Certain jurisdictions refer only to "good 'character" (Ontario, Nunavut, NWT and Yukon). Others refer to both "good character" and either "repute" or "reputation" (B.C., Alberta, Saskatchewan and Newfoundland). In Manitoba the terms are "good moral character" and "a fit and proper person to be admitted". Nova Scotia is almost identical referring to "good character" and a "fit and proper person"; P.E.I. is very similar, referring to "good moral character and fit to practice"; and New Brunswick refers variously to "good character", "character and repute" and to "moral character and sober and temperate habits".

137. The jurisprudence brought to the Panel's attention focuses on the issue of character alone or on both character and reputation. This is obviously a function of the fact that the cases cited come from different jurisdictions. As noted, there is no Manitoba jurisprudence on the question.

138. The benchers in Manitoba have adopted both "good moral character" and "fit and proper person to be admitted" as the guideposts for admission. There is no doubt that the concepts adopted in Manitoba are similar in their overall intent to those adopted elsewhere. However, the Manitoba language was deliberately chosen to include two distinct concepts and while many of the same considerations could factor into an assessment of either issue the concepts of "character" and "fitness" are not and are not intended to be synonymous.

139. With those comments in mind and without for the moment focusing on the specific wording of the Manitoba rules, what is the overall intent behind these various provisions?

140. In Lawyers &Ethics, (Toronto: Thomson Canada Ltd., 2004), the author Gavin MacKenzie, writes at p. 23-2 & 23-3:

> "The purposes of the good character requirement 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 applicants be of good character is preventative not punitive. It recognizes that character is the wellspring of professional conduct by lawyers. By requiring lawyers to be of good character, the law societies protect the public and the reputation of the profession from potential lawyers who lack the fundamental quality of any person who seeks to practise as a member of the legal profession, namely, integrity."

141. Regardless of any differences in the exact language of the provisions Mr. MacKenzie's comments are equally applicable in Manitoba. The purpose of the Manitoba requirements for character and fitness is preventative; it facilitates the achievement of the Law Society's fundamental purpose, namely "to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence." [Act, s. 3(1)].

"Good Moral Character"

143. The meaning of "good character" has been the subject of considerable comment. In LSUC v. Levesque, cited by the Appellant, the panel noted that

"Good character is somewhat elusive and at times an emotive sense of the value of a person's conduct, but it consists of, at least in part: integrity, candour, empathy arid honesty."

144. An article by Mary F. Southin, Q.C. (writing before her appointment to the bench), entitled "What is 'Good Character'?[1]has been cited with approval both in Hutton v. Law Society of Newfoundland (cited by both parties) and in LSUC v Birman. That article considers the meaning of "good character and repute". Hutton summarized the "good character" element as follows:

"20 [The article] concludes that good character', in the context of admission to practice law means 'those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law'. She concluded it comprises at least three qualities:

(1) An appreciation of the difference between right and wrong;

(2) The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequence may be to one's self;

(3) A belief that the law at least so far as it forbids things which are malum in se must be upheld and the courage to see that it is upheld.

145. Does the use of the qualifier "moral" in the Manitoba rules materially modify the word "character" such that it has a different meaning than that described in Levesque and by Southin? We do not believe so.

146. The Oxford English 'Dictionary (OED) defines "character" as, among other things:

"1. The mental and moral qualities distinctive to an individual - strength and originality in a person's nature - a person's good reputation. 2. The distinctive nature of something."

147. The OED's relevant definition of "moral" is:

"1 . Concerned with the principles of right and wrong behaviour and the goodness or badness of human character. 2. Adhering to the code of behaviour that is considered right or acceptable. "

148. It is clear that the terms"moral" and "character:" are closely related and the Panel is of the view that the description of "good character"' offered by Levesque and by Southin is a fair equivalent to the term "good moral character" used in Rule 5-4(c).

<u>"Fit and Proper Person to be Admitted"</u>

149. As noted, the fitness requirement goes beyond the character requirement and must mean something different.

150. The relevant definition of "fit" given by the OED is: "1. Of a suitable standard, quality or type; socially acceptable: 'a fit subject' - (fit to do something). … 2. Be or make able to occupy a particular position, place or period of time."

151. And of "proper" is:

" … 2. Suitable or appropriate; correct - respectable."

---

[1] (1987), 35 The Advocate 129

152. In our view the distinction between the character requirement and the fitness requirement is that "fitness" is a broader concept than, character. "Character" is an internal quality; it focuses on personal virtues such as honesty, integrity and, a sense of right' and wrong. The assessment of character is inherently more subjective. As the panel said in Levesque it is a "somewhat elusive and at times an emotive" concept. "Fitness" on the other hand is an external quality; its focus is on a person's ability to do the job, an assessment that could take any number of factors into account. The assessment of whether someone is a "fit and proper person to be admitted", though clearly not without its subjective elements, is essentially an objective assessment.

153. A candidate could be of "good moral character" but still be unfit for some other reason or vice versa. To give an example, a person may be "fit" in that he or she has an excellent reputation in the community, is highly accomplished in their field and has done much to further the activities of the profession yet, not be of "good moral character" for reasons completely unknown to others; for example, by virtue of having committed "some morally reprehensible crime in their private life. On the other hand, a person may be of unquestioned virtue yet unfit due to their inability to actually do what is required of them to work effectively in the profession. That inability may be entirely beyond their control, for example as a result of a medical condition - dementia perhaps - or, it may derive from something that is within their control, an inability to manage their practice perhaps or to comply with the rules of the profession or simply an inability to conduct themselves in a sufficiently appropriate manner.

Application of the Requirements

154. Guidance is offered in the case law as to how requirements comparable to character and fitness are to be applied. The following general propositions can be drawn from the cases.

155. First, an applicant's character and fitness must be assessed as fairly and as dispassionately as possible but, no applicant should be held to a standard of perfection. (Birman)

156. Second, these qualities are not to be seen as immutable; rather, they evolve over a lifetime of experiences. In Re Preyra, the panel found that

"Character is not stagnant and unchanging, but rather evolves over time."

157. In Levesque the panel noted 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."

158. Many aspects of our legal system are premised on the notion that people can and do change for the better; the character and fitness requirements are such provisions. In short, the law recognizes that people can change;

159. Third, while it is true people can change they do not do so overnight. Again quoting Preyra:

"The transition from being a person not of good character to one of good character is a process, not an event: It may or may not happen to someone who was not of good character."

160. In Birman the panel adopted the reasoning from an earlier decision of the Law Society of Upper Canada (Re Michael John Spicer dated May 1, 1994), which included the following statement:

"Because every person's character is formed over time and in response to a myriad of influences, it seems clear that no isolated act or series of acts necessarily defines or fixes one's essential nature for all time."

161. Fourth, the proper focus is on current character and fitness. Past character and fitness are instructive but not determinative. Future or potential character and fitness are irrelevant; what matters is the present state of affairs. See for example, Re Preyra and MacAdam v.Law Society (Nunavut). …

162. Fifth, in assessing whether a change in character has taken place a number of factors must be considered. According to Birman,

"15 Because the Act contemplates that a person's character may change, it of course follows that misconduct may demonstrate the absence of good character when that misconduct occurred, but not necessarily at a later date when the application for admission is brought or considered. Accordingly, even where misconduct has been admitted or otherwise proven, the Panel needs to consider, inter alia:

(a) the nature and duration of the misconduct;

(b) whether the applicant is remorseful;

(c) what rehabilitative efforts, if any, have been taken, and the success of such efforts;

(d) the applicant's conduct since the proven misconduct."

163. These concepts are all reflected in the 16 factors set out in the Guidelines and reviewed by the Director in the Applications Decision.

164. Sixth, concepts such as forgiveness or "giving someone a second chance" are not appropriate considerations. As stated rather bluntly by the panel in Preyra:

"9 It is important not to confuse the good character requirement for admission with notions about forgiveness or about giving an applicant a second chance. The admissions panel is not in the forgiveness business, the test to be applied is clear, and the admissions panel is to determine if the applicant is of good character today. The Law Society Act does not permit an admissions panel to apply any test other than that relating to the applicant's good character at the time of the hearing."

165. Finally, and specifically with respect to Manitoba's fitness requirement; we would add that an applicant's fitness to be admitted ought to be assessed relative to the jurisdiction in which he or she seeks to be admitted. Whatever else may be an appropriate consideration in assessing an applicant's fitness the applicant must at least be seen to have the capacity to function effectively as a member of Manitoba's legal community.

21. Appeal Panel #2 added the following comments re the criteria to be applied:

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….

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.

47. In light of the Previous Panel Decision, it is particularly noteworthy that the burden upon the Appellant is a heavy one.

[Emphasis added]

B. Prior Decisions: Factual Findings

1. Appeal Decision #1

22. Appeal Decision #1 described in considerable detail the historical factual circumstances relevant to the Appellant. When the Appellant arrived in Canada in 2002 he was travelling on a tourist visa, and was a practising member of the Israeli bar who in 1995 married a Canadian citizen from Winnipeg. His spouse's family then and now resides in Winnipeg. There are two daughters of the marriage, both born in Israel.

23. Shortly after his arrival in Canada, the marriage broke down and his (now) ex-spouse commenced divorce and custody proceedings in the Court of Queen's Bench, Family Division. As Appeal Panel Decision #1 stated (at Paragraph 27) "The proceedings were protracted and bitter; in her 2009 Judgment [the Court] described the parents as having 'a long and hostile history together.' As is sometimes the case, the dispute spilled out of the court room and into the community in which the family lived."

24. The 2007 judgement of the Court articulates a litany of reprehensible conduct on the part of the Applicant:

- in 2003 the Appellant caused an unpleasant scene in the cafeteria of his children's daycare facility, the Asper Campus, that led him to be banned from the Campus premises the next day;
- the Appellant "picketed" the Asper Campus on a regular basis; his spouse had to have security guards or the police intervene when he refused to let the children leave at the end of his permitted visit; he also picketed the spouse's synagogue during the High Holy Days, and a local shopping mall in front of his in-law's home;

- in September, 2004 the court issued a prevention order under The Domestic Violence and Stalking Act, enjoining the Applicant from contact with his spouse and children and his in-laws' residence;
- he commenced an aggressive e-mail and telephone attack on members of the daycare Board; he sent e-mails to prominent individuals connected with the Asper Campus, embarrassing his spouse and raising concerns of other parents as to the safety of their children;
- he refused to abide by rules related to picking up and dropping off his children with respect to his allotted visits; he created a publicly embarrassing scene at the spouse's synagogue and was consequently arrested and charged;
- those behaviors forced the spouse to return to Court to seek increased protection in the Prevention Order, which was granted;
- in 2005, he became a self-represented litigant, and launched lawsuit after lawsuit; he gave interviews in the community newspaper about his family relations and sent information from a daycare worker's personal domestic file to parents of the daycare where she worked; he sent probate information about the spouse's grandfather's estate to a host of community members; this action was determined by the Court to constitute domestic violence, and resulted in his being prohibited access to any Court files other than his own, and then only under supervision of Court staff;
- in January, 2005, the Applicant was charged with uttering threats to one of the daycare workers; those charges were stayed after the Applicant entered into a Peace Bond; the daycare obtained an injunction against him, forbidding him contact with its employee or violating her privacy;
- notwithstanding, the employee continued receiving harassing telephone calls, resulting in the Applicant's arrest and charges of criminal harassment; he pled guilty to violation of the [injunction] and the charges of criminal harassment were stayed;
- in December, 2006 the Appellant entered into a Consent Order, in effect until 2018, agreeing to not commence any other litigation against those he had sued until his children were adults; the Court referred to this as an admission of being a "vexatious litigant;"
- in April, 2007, the Applicant was charged with causing a disturbance and breach of the November, 2007 Probation Order in respect of a juvenile clerk at a MacDonald's restaurant; the charges were later stayed when the Applicant agreed to be bound by a one-year Peace Bond;
- during the course of his domestic litigation, the Appellant was twice found to be in contempt of court;
- as part of the 2007 judgment in his divorce and custody proceeding the Applicant was ordered to pay $126,000 in costs to his ex-spouse;
- the impact of the comments of the Court in respect of the Applicant's behavior during the 37-day 2007 trial cannot be easily communicated other than by direct quote:

> [46] I found the husband to be the most disrespectful person who has ever appeared before me. … He continually disregarded my instructions/ admonishments, showed no regard for courtroom decorum, and interrupted and erupted whenever he felt like it. His self control was minimal.

[47] In order to manage his behaviour I was required to use measures such as the use of hand signals to signal that he must stop talking, the imposition of "time outs", sending him out into the hallway so counsel could read documents uninterrupted, and instructing witnesses not to answer his questions until he was seated so that the witness would not be bombarded with further questions and argument in the middle of an answer. If an evidentiary ruling went against him, he usually reacted by threatening to call a prominent member of the Jewish community as a witness.

…

[49] For example (but one of many), the husband called both the rabbi and the president of the synagogue which had banned the husband from its premises. On this point, the evidence had been that there was a prevention order preventing the husband from attending the synagogue when the wife was to be there, and that there had been some harassing behavior towards the wife in the presence of others at the synagogue before the general ban was put into place.

[50] Once these two witnesses had given their testimony, I had learned of the husband's disrespectful behavior towards the rabbi and others both inside and outside the place of worship, and even during the ceremony of worship itself. As a result, I conclude that the husband's inability to control himself in court is not simply attributable to the stress of the trial itself but extends into any place where he feels the wife's family's influence stretched, including the synagogue, regardless of the sacred nature of that place of worship.

…

[52] Many times during the trial, I was reminded of a two year old having a tantrum saying, "I'll stop if you give me what I want." Indeed, in evidence, the husband said, "the only solution to my problem is for me to see my kids." He blames his anger and outbursts on all the external forces preventing him from getting his wish. The list is long and includes the wife's family and their perceived influence in the Jewish community, the wife's lawyer, the daycare, most Jewish organizations, the court backlog, the access supervisors' restrictions on his role as a father and the failure of many persons in authority to sit down and talk with him. However, in my view, the husband's version of talking would be for him to harangue and overwhelm the other side until he got what he wanted.

[53] In examining the husband's attitude and demeanour throughout the trial, it became clear he would say whatever he thought most expedient in the heat of the moment. He pleaded guilty to a charge of making a harassing phone call, but tried for some "wiggle room" by saying that his lawyer and not himself, entered the plea. He pointed to the settlement of all his various lawsuits and the agreement that he was in essence a vexatious litigant, as proof that all that was behind him, yet it was very clear in his handling of witnesses who had been part of any of those lawsuits that his anger at the various people and institutions who he felt had wronged him was still clearly present. His witness list included many of the people connected to his other litigation, even though most of these witnesses had only slight or tangential relevance to the issues before the court.

[54] At times, the husband out and out lied to the court. …

> [56] I note that the husband, when confronted with promises he had made and then broken (for example telling the motions judge that he would stop picketing or signing an agreement with the access agency that he would not communicate except in writing), had elaborate rationales for why he was justified in breaking his word. Regarding the promise to the judge, he said he thought he was agreeing to this because she said he could see his kids in a few months and when he could not, he felt the judge had broken her word first. He said he only signed the agreement so he could see the children, and anyway, a phone call to the agency he made was only regarding a fax he had sent and so did not count as a communication.
>
> …
>
> [58] As a result of the many overstatements, misstatements and fabrications of the husband, I find that I am unable to rely on his evidence. Where it conflicts with that of any other witness, I prefer the other evidence than that of the husband.

25. Appeal Decision #1 cites numerous additional transgressions by the Applicant before the courts:

- behavior that resulted in warnings from the Court to not interrupt counsel during their submissions and to not interrupt the judge, under threat of holding him in contempt of court, and orders from the court for him to sit down and be quiet;
- making inappropriate comments, ridiculing the legal system and a number of its practitioners while showing little respect for the court, the presiding justice or for counsel for the Law Society;
- becoming loud and argumentative with the judge, forcing the judge to first issue a warning, then subsequently call a Sherriff to attend in the court;
- behaving so inappropriately as to require him being expelled from the courtroom for several minutes;
- repeated violations of court orders prohibiting him from instituting further court proceedings without permission of the court; and
- breach of an order prohibiting him from e-mail communication with his daughter and then providing the court with an explanation that the court found to be "ludicrous" and "defying common sense."

26. Of particular relevance to the instant proceeding is the finding by Appeal Panel #1 that the Applicant "did not provide full and candid disclosure in the Application." The Panel stated at Paragraphs 170-174:

> 170. The application form demands full and complete disclosure of any matter that might reasonably shed light upon an applicant's character and fitness to become a member of the legal community in Manitoba. This is clear from the statement on the first page of the form:
>
> "The answers are to be declared before a Notary Public or Commission for Oaths. The utmost good faith and fullest disclosure are required. Omission or inaccuracies will be grounds for rejection of the application, or expulsion from the Manitoba CPLED Program. Please review the Guidelines for Good Character."

171. By virtue of the declaration before a notary or commissioner for oaths the document is in effect given under oath.

172. "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 Law 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 Law 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 Law 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 Law Society's to determine what if anything to make of such disclosure.

173. The type and level of disclosure required is also made plain by the nature of the questions posed in the form. Twelve [sic] of the twenty questions (numbers 8 through 20) that the applicant is asked to answer relate directly to matters of character and fitness and the last of these (Question 20) is an entirely open-ended, "catch-all" question:

"20. Is there to your knowledge or belief any event, circumstance, condition or matter not disclose in our 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 investigation by the Society?"

174. In the Panel's view, the seriousness of the process and the frankness and candour required of an applicant are plain and obvious.

27. Appeal Decision #1 then goes on to cite several significant omissions in that Application.

28. Appeal Decision #1 is not entirely negative, however. The Decision also cites positive comments by the Court noting significant improvements in the Applicant's behavior over the course of the preceding one to two years. For example, Paragraph 192 of the decision quotes Paragraph [51] of a 2009 judgment:

> “Based on the affidavit material, I find that the father has improved his behavior significantly since the trial. I further find that the father has improved his behaviour in the courtroom. … I find that the father has acted no worse than many self-represented parties and often behaved much better. Clearly, his ability to control himself has improved.”

Notwithstanding those noted comments, however, the First Appeal Panel concluded by stating, "Our task is to assess his current character and fitness. By that standard and for the reasons set out above, the Panel finds that the Appellant does not meet the requirements of …the Law Society's Rules.”

2. Appeal Decision #2

29. The Applicant's second application for admission was denied in a decision of the Director rendered June 10, 2010. The Applicant appealed that decision in a hearing held August 11 and August 25, 2010. The Second Appeal Panel advised the Applicant on

September 21, 2010 that it was dismissing his appeal, with reasons to follow. Those reasons were rendered on November 25, 2010.

30. In its reasons, the Second Appeal Panel noted the following:

- prior to the hearing, the Applicant filed six motions including a motion to have the Chair of the Panel recuse himself because of an alleged conflict of interest. The latter motion was withdrawn on the first day of the hearing and was replaced with a seventh motion seeking immediate enrollment in the CPLED Program; all of the motions, save for the newest motion, were dismissed during the hearing; the latter motion was dismissed on September 21, 2010;
- the Panel undertook an extensive review of the Applicant's prior reprehensible behavior, his litigious history and events occurring since the rendering of the first Appeal decision, including his unsuccessful application for judicial review of the first Appeal decision, a motion seeking an Order or immediate enrollment in the CPLED Program (that was dismissed) and appeals therefrom;
- the Director, in denying the second Application, expressed concerns regarding the Applicant's arrest at the Law Courts building on December 8, 2009, an inaccurate comment made by the Applicant in a factum dated March 22, 2010 and misstatements in an affidavit deposed by the Applicant on February 19, 2010;
- in particular, the Panel noted that "the failure of the Applicant to disclose [the arrest] incident on his application for admission…" demonstrated to the Director that he "does not yet grasp the obligation to fully disclose all relevant incidents, material, and the like to the Law Society.." and that "the conduct in question raised concerns about [his] integrity."
- the Panel determined that Appeal Decision #1 created "a rebuttable presumption that the Appellant is not of good character and a fit and proper person to be admitted," and that the burden rests with the Applicant to satisfy 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. Although the Panel took notice of the Applicant's prior behavior, it stated that its focus was the extent to which his character has changed since the date of the previous Appeal Panel decision;
- it stated that notwithstanding "the subjective assertions [provided in writing by the Applicant's character references], that the Appellant's character has changed are overridden by inappropriate objective actions that speak louder than words;
- the Panel stated that the Applicant "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." The Panel thus stated that it "is not persuaded that his character has fundamentally changed from what it was at the time of the Previous Panel Decision."
- the Panel also noted that the Applicant's unsuccessful proceedings before both the Queen's Bench and the Court of Appeal resulted in costs being awarded against the Applicant in favour of the Law Society in excess of $6,000, and that as of the date of the hearing, all of those costs awards remained outstanding; the Panel concluded that it "has no difficulty concluding that this [refusal to pay the costs outstanding] is another indication of [his] refusal to face reality and accept

responsibility for his actions," leaving the Panel with "the nagging suspicion that [he] will say what he feels is expedient in these circumstances…"; and

- finally, the Panel noted that when confronted with examples of his inappropriate behavior, the Applicant has explanations "crafted by him only after the inappropriate behavior was brought to his attention on each occasion by the Law Society," and the explanations and excuses offered "don not have the quality of being genuine."

3. Director's Decision of November 1, 2012

31. By letter dated November 1, 2012 the Director of Admissions and Membership wrote to Applicant A denying his third application for admission (the "Third Decision"). This Decision started by noting the following:

    - the establishment of a rebuttable presumption, based on previous findings of the Appeal Panels in respect of the Applicant, and the heavy onus on the Applicant to provide substantial evidence to demonstrate a rebuttal of that presumption;
    - the requirement for full and candid disclosure of all relevant information in respect of the Application;
    - findings of both prior Appeal Panels of prior misconduct of the Applicant, including lying to the court, overstatements, misstatements and fabrications, harassment of individuals, breaches of court orders and initiation of vexatious legal proceedings;
    - a review of the reports and letters of recommendations in support of the Application; and
    - litigation proceedings initiated subsequent to the Second Appeal Panel decision;

32. The Decision then went on to review the case law considered in arriving at the decision.

33. Finally, the Decision stated:

    - the evidence submitted is "insufficient to demonstrate a change in your character such that you now meet the good character requirement…it falls far short of being characterized as substantial evidence of change." [Emphasis added].
    - the evidence submitted "does not include any psychological or psychiatric reports regarding any such counselling, testing or assessment. Most of the supporting letters are brief and often lack any indication that the writers were aware of your past misconduct and, in particular, prior decisions of the Law Society regarding your character. There is little evidence of remorse or your acceptance of your past misconduct and how it has affected others, aside from your family."
    - there were misstatements [by the Applicant] in an affidavit dated February 19, 2010 and in a letter to the Director dated May 21, 2010; and
    - there has not been any payment towards the outstanding Orders for costs. The Director stated, "I agree with the Panel's comments" that it "had no difficulty concluding that this failure was another indication of your 'refusal to face reality and accept responsibility for your actions.' "

34. The Director then made the assumption that the misconduct ended at the time of the Second Appeal Panel hearing in August, 2010, and noted that that would mean that only two years had passed from the date of the last misconduct until the filing of this Application. [See Appendix 1 —Timeline].

VI. ISSUE

35. The issue before this Panel is whether the Applicant has provided sufficient evidence to rebut the established presumption that he is not "of good character and a fit and proper person to be admitted" as a member of the CPLED Program, pursuant to Rules 5-4, 5 24(2), 5-28.1 and 5-28.2, as of the date of this hearing.

36. We concur with the conclusion of Appeal Panel #1 (at Paragraph 135) that there is only one standard of good character and fitness and that the one standard applies equally to Applicants for admission to the CPLED Program as it does to Applicants for admission to the profession.

VII. THE HEARING

A. Standard of Review

37. Counsel for the Applicant and counsel for the Law Society both submitted that the standard of review to be used by the Panel in its decision is the standard of correctness, given the hybrid nature of the hearing. The hearing was not a strict "appeal" or "quasi-judicial review," but neither was it a "hearing de novo." The Panel agreed with that submission.

B. Preliminary Motion: Viva Voce Evidence

38. At the outset of the hearing, counsel for the Applicant moved to have the Applicant provide viva voce evidence to the Panel. Two grounds were cited for this motion. First, although Paragraph 19 of the Guidelines for Appeals of Admissions Decisions restricts the calling of witnesses only with leave of the Panel, counsel for the Applicant asserted that the provision distinguishes between an "appellant" and a "witness" in respect of the taking of evidence under oath. Hence, he argued, there is no restriction preventing the Applicant from being able to testify. Second, counsel for the Applicant submitted that given that this is the last opportunity that the Applicant has to meet the admission requirements within the six year limitation period specified in Rule 5.4(1)(a) for equivalency qualification, the Panel should consider this situation an exceptional circumstance.

39. Counsel for the Law Society submitted that the Applicant had had an adequate opportunity to provide additional evidence to the Director, and that not being previously advised of the nature of the evidence intended to be called in this hearing, the Society was uncertain as to whether it would be necessary to call rebuttal evidence, unnecessarily delaying the hearing.

40. After deliberating, the Panel decided to allow the evidence to be presented with two provisos: first, the evidence should be supplemental to the written evidence only; second, counsel for the Law Society should be afforded the opportunity to call evidence in Reply, should she deem it appropriate to do so. With that, counsel for the Applicant was allowed to proceed with the direct examination of the Applicant.

C. The Oral Evidence

1. Direct Examination

41. The Applicant's testimony, in part, provided the following:

- an extensive historical background to the causes of his previously egregious behavior, including a sense of alienation and betrayal immediately subsequent to his marital breakdown as a result of being provided only restricted access to his children; and being unable to obtain suitable employment to support himself in what was then a foreign country to him;
- a description of several examples of completely inappropriate behaviour within the community and within the legal system, including, in his words, "waging a war" with his ex-spouse, her family, and with anyone whom he perceived as supporting their position in the courts or in the school system; expulsion from his children's daycare / school for having engaged in a loud argument with staff of the premises;
- a frank acknowledgement that the previous behaviour was, in his word, "despicable," and an expression of shame and remorse for the behavior;
- a thorough description of the psychiatric and family counselling that he received in the years 2008 through 2011 leading him to eventually recognize how inappropriate his previous behavior was and eventually leading him to stop initiating legal proceedings against his ex-spouse's family members;
- a description of various career counselling and employment training programs that he has completed; and
- descriptions of the various jobs that he has held in the past four years, including employment working in care homes assisting physically and/or mentally handicapped adults;

42. With respect to the existence of five outstanding costs awards made against him by the Court of Queen's Bench and by the Court of Appeal in favour of the Law Society in the months January, 2010 to June, 2010, the Applicant was questioned by his counsel as follows.

Page 77

22 Q You are aware that there are outstanding
23 cost orders as a result of those motions?
24 A Correct.
25 Q And those cost orders have not been paid?

Page 78

1 A Correct.
2 Q Why?
3 A To begin with, I am not sure if I am
4 under the duty to pay them. I have contacted the Office
5 of the Superintendent of Bankruptcies and Mr. Scott
6 Armstrong
7 Q Yes, we --
8 A -- provided me with his legal opinion.
9 Q We've got that evidence.
10 A And it is my understanding that these
11 costs might have been covered by my bankruptcy. I am a
12 discharged bankrupt.

43. The question of the Applicant's attitude towards the outstanding costs payable to the Law Society is central to the credibility of the Applicant's testimony. We shall return to discuss this issue in detail below.

44. The Applicant concluded his testimony by asserting that as a result of his counselling, he had changed both his attitude and his behavior, that he has recently built strong relationships with the management and staff of his children's school, with other parents and with his daughters' friends. He stated that he now considered himself to be a different person—a person of good character fit to be admitted as a member of the CPLED Program.

2. Cross-Examination

45. The primary focus of Law Society counsel's cross-examination of the Applicant was the timing and the effectiveness of the Applicant's purported change of character that is necessary to rebut the presumption.

46. The Applicant conceded:

- in November, 2010, he filed proceedings in the Provincial Court seeking a Protection Order against his ex-father-in-law;
- in late December, 2010, he filed a Small Claim against his ex-father-in-law for the tort of battery;

- on February 14, 2011 he filed an affidavit in support of his motion for a Peace Bond, stating, "The Respondent is a Canadian born wealthy Jewish man. He is also a major fundraiser for the Campus and has various ties, social and other, to a few of this Honourable Court's Judges."
- the motion for the Peace Bond was dismissed by the Provincial Court in February, 2011;
- the Applicant, in March, 2011 filed in Queen's Bench an application for judicial review of the Provincial Court decision; and
- the application for judicial review was supported by an affidavit affirmed by the Applicant that stated in part, "I personally know that [the Respondent] has ties to a few Winnipeg Judges…"

47. The final portion of the cross-examination dealt with the issue of the outstanding costs owed to the Law Society. Counsel quoted from the letter that forms the basis of the Applicant's alleged uncertainty as to whether the costs were encompassed within his assignment in bankruptcy.

23 Q Well, in fact, Mr. [Applicant], at tab 22,
24 Mr. Armstrong in a letter to you said,
25 " You have described an interwoven
Page 110
1 set of motions within the court
2 system that appear to have commenced
3 prior to the date of your
4 bankruptcy. . .
5 . . .
6 " wherein a matter was heard with
7 a reserved decision in place when
8 you filed".
9 That's not correct, is it?
10 A I don't recall exactly what came first.
11 That's the problem with -- that's how complicated things
12 became for me. The things got out of control.
. . .
21 Q Pardon me. He does say to you
22 A Mr. Armstrong the story
23 Q " I did not read your entire history
24 in any detail but you were candid
25 with me",
Page 111
1 but we don't know what you said.
2 A But he's saying, I read enough.

3 Q The reality is, sir, is that there was no
4 reserved decision in place . . .
[Emphasis added]

48. The essence of this evidence was that the Applicant made statements in an e-mail to, and in a telephone conversation with, a representative of the Office of Superintendent of Bankruptcy in June, 2010, the content of which was never placed in evidence, either before Appeal Panel #2 or this Appeal Panel. The OSB representative then replied with the letter containing the above-quoted statement. The Applicant relies upon that statement to assert that there exists an uncertainty as to whether the Orders of costs awarded in favour of the Law Society from January, 2010 to June, 2010 fell within the liabilities encompassed by the assignment in bankruptcy.

3. Questions From The Panel, re Outstanding Costs

49. Following the completion of the cross-examination, a member of the Panel engaged the Applicant in the following exchange:

11 Q Mr.[Applicant], what is your position now with
12 respect to the costs? To the Law Society, not the court
13 costs, the costs of the various hearings that have taken
14 place, the $6,000.
15 A I am sorry for the expenses that I
16 inflicted on members of the profession. I understand
17 that this money came out of the pocket of members of the
18 profession, individuals who work very hard and who pay
19 their membership fee, and with this membership fee, I
20 know where that money comes from. And I feel very
21 ashamed and guilty about it.
22 I would be happy one day to become
23 productive to be at the point of being capable of paying
24 back these costs
25 Q So two

Page 118

1 A -- but right now that's, without
2 practising, it's very hard to do that.
3 Q So let me divide my question then into
4 two. Are you -- what is your position, are you
5 responsible for the costs that were assessed against
6 you? Do you feel that you are responsible for those

7 costs that were --
8 A I brought it upon myself. I have earned
9 these costs. These costs --
10 Q So you do agree that you are responsible
11 for the costs that were assessed against you?
12 A Yes.
13 Q And your position on paying them, you
14 would pay if you had the money to pay them?
15 A If I could have, yes.
16 Q But you don't have the money, so you
17 haven't paid them. And that's the only reason that they
18 are not paid, is you don't have the money to pay for
19 them?
20 A Yes. And at the same time, it is
21 relevant to make mention of the Office of the
22 Superintendent of Bankruptcy's position. It got me all
23 confused now. Is it part of my bankruptcy or is it not?
24 No one knows the answer. No one seem to know the
25 answer.

Page 119

1 Q But counsel for the Society has told us
2 that your application for bankruptcy occurred on
3 October 28, 2009.
4 A Yes I but I think that what Mr. Armstrong
5 is trying to tell us is that if it is a continuation of
6 some things that commenced before the bankruptcy, then
7 anything that would result with is covered by the
8 bankruptcy.

50. A follow-up question as to whether the Applicant had ever approached the Law Society with respect to making arrangements for the payment of the costs was answered by the Applicant stating that the Law Society had never contacted him about making payment arrangements, but that he had made inquiries with the Law Society about possible alternate means of dealing with the payment of costs.

51. A subsequent short re-cross-examination of the Applicant clarified that the inquiries that he had made with respect to alternatives for dealing with costs related not to the outstanding Orders for payment of costs, but rather for the Order for Security For Costs in

the amount of $1,000 granted by the Court of Appeal in 2010, failing payment of which the judicial review application in respect of the Appeal Panel #1 decisions would be struck. The Applicant sent two e-mails to counsel for the Law Society, one in March 31, 2010 and another on June 8, 2010 proposing that the Law Society allow him to work without pay in exchange for requiring payment regarding the costs. However, it is not clear from the record (Transcript, pp. 133-134) whether those e-mails related strictly to the Order for Security of Costs, for the outstanding costs, or for both.

52. Day 1 of the hearing thus completed, and the hearing was adjourned, with oral argument of counsel to be submitted on reconvening.

4. Applicant's Failure To Disclose Additional Court Proceedings

53. At the commencement of the second day of the hearing, prior to receiving argument from either Counsel, the Chairperson raised an issue with the parties:

> We do as a panel have a preliminary question. It has come to the attention of the panel that eight days prior to the hearing on February 13th, that is on February 5th, [Applicant] had filed materials in the bankruptcy court. And I'm wondering, [Counsel for Applicant], if you were aware of that filing and aware of what the nature of his application was and whether you feel that it has any bearing on the hearing today?
>
> [Counsel for Applicant]: Actually I'm not aware of that.
>
> [Applicant]: I'd be happy to explain.

54. The Applicant then provided a thorough explanation of the legitimate purpose of the proceeding as well as his expectation of its outcome, without providing any reason, explanation or apology for this, his third failure to comply with the disclosure requirements mandated in the CPLED Application process, and his failure to disclose that information not only to the Panel or to counsel for the Law Society, but even to his own counsel.

D. Submissions of Counsel

1. Applicant Counsel

55. Counsel for the Applicant highlighted the large number of significant positive changes in the Applicant's behavior over the course of almost two years since the last Appeal Panel decision was rendered, including the following:

- a frank admission by the Applicant of the reprehensible nature of his previous conduct, and a genuine expression of remorse and shame for having caused so many individuals, especially his ex-spouse's family, so much difficulty and embarrassment;
- the completion of extensive counselling that has led to diminished aggressive, conflict-oriented behavior as well as a partial reconciliation with his ex-spouse in respect of meeting the mutual parenting requirements of their children;
- a rebuilding of relationships with individuals in the community whom he had previously offended, including the administrators and staff of his children's school, and an acknowledgement by those individuals of the change in behavior;
- positive contribution to the community by volunteering at events related to his children's school activities;
- a cessation of vexatious litigation;
- confirmation letters from counsellors, community members and employers verifying satisfactory personal and professional relationships, as well as fully satisfactory work performance; and
- a recognition of the moral obligation to pay the Law Society costs awards, notwithstanding a continuing uncertainty as to whether there exists any legal liability to make the payments, combined with a legitimate reason for not making the payments, being the fact that the Applicant simply does not possess the resources to make the payments.

56. Counsel emphasized that as a result of over 57 therapy sessions since March, 2011, the Applicant's change in character is foundational and permanent, and that the problematic behavioral characteristics are behind the Applicant—in short, he is a different person now, a person of good character and fit to be admitted to the CPLED Program.

2. Law Society Counsel

57. Counsel for the Law Society began by discussing the Law Society's requirement for "good character" and "fitness to be admitted" in the context of the Law Society's role in the governance of the provision of legal services to the public and its duty to protect the public, emphasizing that lawyers are entrusted to act with honour, candour and integrity, maintaining a respect for the legal system, its institutions and for other practitioners. A critical element of that integrity, she emphasized, is the public's perception of lawyers—it is essential that they be seen as being honest, trustworthy and respectful and that they abide by the spirit as well as the letter of the law.

58. The proper test for this Panel, she asserted, was to determine if the Applicant is of good character today, given the rebuttable presumption to the contrary. The onus, she asserted, is on the Applicant to rebut the presumption, and given the extensive breadth and length of inappropriate prior conduct, the burden, she suggested is indeed a heavy one: the Panel must, in its analysis, consider the nature and extent of the prior misconduct, its duration, whether the Applicant has unreservedly taken responsibility for past inappropriate behavior, and the results of rehabilitative efforts undertaken.

59. Counsel acknowledged that the Applicant has made a considerable number of changes to his behavior that are very positive, especially in dealings with his ex-spouse and her family. However, she stated that the entire focus of counsel for the Applicant in his direct examination and in his argument was limited to the Applicant's improved behaviour in his domestic relations. Concerns of the Law Society with respect to good character and fitness go much farther, she stated. In particular the Applicant provided no evidence of a change in his unacceptable attitude and behavior toward the courts, the legal profession and the judiciary.

60. She provided an extensive review of the findings of misconduct made by the prior Appeal Panels that included court submissions that contained misrepresentations and outright lies, breaches of integrity, behavior garnering threats of contempt by the judiciary, and inappropriate use of court documents and court procedures.

61. A major recurring problem, she suggested, was the Applicant's failure to disclose relevant information in his Applications to the Law Society and in his representations to the Appeal Panels.

62. Counsel noted that although there were some indications of improvement in his behavior and attitude towards the Law Society and to the legal system, his oral testimony at this hearing was the very first instance of him acknowledging responsibility for his previous inappropriate behaviors. Nevertheless, notwithstanding his decision to not judicially review the decision of the Second Appeal Panel, in cross-examination he steadfastly refused to agree with the Second Panel's findings that his conduct in dealing with the Law Society investigator was "appalling."

63. A major thrust of Counsel's argument was that the Applicant continues to display wholly disrespectful behavior to the members of the profession, including the judiciary. Two affidavits that he affirmed in 2011 make suggestions that his ex-father-in-law has ties to several judges of the Court of Queen's Bench. This cannot help but call into question the integrity of the judiciary, no matter how much the Applicant states that that was not his intention, she asserted.

64. Counsel pointed out that while the Applicant provided evidence of counselling with regard to his domestic matters, there was no evidence that he had received any counselling with regard to his inappropriate attitudes and behaviours in respect of the legal system, nor did he seem to accept that the findings of the Director, the prior Appeal Panels and/or the courts confirmed a pattern of behavior that is inconsistent with good character and that those underlying attitudes similarly require modification.

65. Counsel spent a considerable amount of time dealing with the Applicant's premise that there is uncertainty as to whether the costs awards in favour of the Law Society fall within the scope of his discharged bankruptcy, and consequently, whether he has a legal liability

to pay those costs.In particular, she challenged the underlying premise of the e mail sent by the Applicant to the representative of the Office of the Superintendent of Bankruptcy ("OSB") stating that a motion had been heard prior to the date of assignment into bankruptcy, and that a decision on that motion was reserved as of the date of assignment. She noted that in spite of Appeal Panel #2's expressed disappointment that the Applicant had not by the date of that hearing provided clarification on the issue, he still has not resolved the confusion and he still asserts uncertainty as to his legal liability to pay the awarded costs.

66. Finally, Counsel submitted that the Applicant's prior submissions to the Appeal Panels to the effect that his character was then changed and that he was then of good character and fitness were followed shortly afterwards in each case by additional inappropriate behavior, including vexatious litigation, failure to fully disclose relevant information, and misrepresentations to the Law Society and to the courts.

VIII. DECISION

A. General Observations

67. During the hearing the Panel had ample opportunity to observe the Applicant's demeanour and attitude. For the most part, he presented with an obviously much-improved character profile to the profile apparently observed by previous Appeal Panels. His candid admissions of prior inappropriate behavior were almost completely unreserved, save for some of the findings of Panel #2.His general demeanour during the first day of the hearing was respectful and contrite, although he did exhibit tendencies to be somewhat argumentative and to run away with explanations during cross-examination.

68. The evidence of his recent work history was generally positive, though limited. The recommendations from representatives of the community were similarly positive, though made with some qualification. The Panel notes the complete ending of vexatious litigation on the Applicant's part, as of May, 2011.

69. These are very positive signs. It is our hope and expectation that these positive developments and behavioural characteristics will continue to be enhanced and reinforced.

70. We concur with the previous Panels, with the jurisprudence and even with the Applicant himself when he says that behavioural change is more a process than an event. The process requires time to evolve; the more extensive the abhorrent behaviour, the more time will likely be required to make a sufficient transition to engender confidence in others that an apparent change in character is indeed foundational and permanent.

71. In our view, the evidence to conclude that the process has moved far enough forward to rebut the presumption and to meet the expectation that the Applicant is now of good character and fitness is not yet sufficiently demonstrated.

72. We derive that conclusion on the basis of three particular deficiencies: first, his failure to meet the necessary disclosure requirements; second, his continued refusal to accept full legal responsibility for the cost awards levied against him; and third, recent examples of his pejorative attitude toward the legal system. We shall expand our observations in respect of each these three characteristics in turn, under separate headings below.

B. Appellant's Failure to Disclose Recent Court Proceedings

73. We made reference above (Paragraph 26) to the first Appeal Panel's statements in Paragraphs 170 to 174 of its decision with respect to the importance of candour and complete disclosure. That Panel expressed serious concern at the Applicant's failure to provide the required level of disclosure not only given the clarity of the disclosure requirements on the Application form itself, but also given the fact that the Applicant was already a member of the Israeli Bar. A clear statement regarding the level of disclosure required was provided by Appeal Panel #1 in the following words:

> Accordingly, it is not for the applicant to determine what may or may not be of interest to the Law 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 Law Society's to determine what if anything to make of such disclosure.

74. In Paragraph 177 of that decision, the Panel states:

> 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 a proper person to be admitted.

75. His failure to disclose relevant information in his first Application was followed one year later by his failure to disclose relevant information in his second Application. In that application, he failed to disclose that he was arrested at the Law Courts Building on December 8, 2009 after making a statement that an object in his possession "is not a bomb." In its decision, the Panel stated at Paragraph 71:

> Applicant A's explanation in an affidavit affirmed on July 23, 2010, filed before the hearing, is that it was "an inappropriate joke." 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 [the Director] that Applicant A does not yet grasp the obligation to fully disclose all relevant incidents, material and the like to the Law Society. [The Director] 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 [the Director'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.

76. In Paragraph 53 above we described the circumstances of the Applicant's failure to disclose his additional bankruptcy proceedings to this Panel, to the Law Society, and even to his own counsel. In the Applicant's response to the Panel's inquiry regarding those undisclosed proceedings, the Applicant stated, "I'd be happy to explain…" following which he provided a thorough description of the nature and purpose of those proceedings.

78. Notwithstanding the unequivocal statements by both Appeal Panel #1 and Appeal Panel #2 that failing to disclose relevant information raises a serious question about character, the Applicant has not only breached the strict requirements for a third time, but after the issue was brought to his attention in this hearing he appeared to be largely oblivious to the seriousness of the transgression.

78. We are forced to conclude, therefore, that strict compliance with mandated procedural requirements is not yet something that the Applicant adequately understands or appreciates. We believe that this is a relevant factor in determining his present character in the context of an application for admission to the CPLED Program.

C. Unpaid Costs Awards in Favour of the Law Society

1. Uncertainty re Legal Liability

79. The Applicant testified that based upon correspondence from a representative of the Office of the Superintendent of Bankruptcy (the "OSB") there remains an uncertainty as to his liability to pay the costs awarded against him in favour of the Law Society between January and June, 2010.

80. Appeal Panel #2 expressed reluctance to make a determination of whether the statements made by the Applicant to the representative of the OSB constituted a misrepresentation and therefore brought into question the Applicant's character. We are of a view that a different approach to the issue is more appropriate in the context of this hearing. We prefer not to look at that correspondence so much as at the factual situation itself and the Applicant's disposition towards the facts.

81. We note that the assignment in bankruptcy was made on October 28, 2009. In making that assignment, the Applicant would have been required to enumerate each of his assets and liabilities that were being assigned to the trustee in bankruptcy as of that date.

82. The Applicant then acquired additional liabilities during the period January to June, 2010 in the form of costs awards payable to the Law Society. Obviously these liabilities were not included in the assignment made on October 28, 2009 as they did not exist on that date. There was no evidence presented by the Applicant in this hearing that he made any

assignment of his subsequent liabilities to the trustee, if indeed it was even possible to do so without declaring bankruptcy for a second time.

83. On July 21, 2010, the Applicant was granted an absolute discharge from his bankruptcy That absolute discharge would have permanently relieved him of all of the liabilities assigned to the trustee on October 28, 2009, save for those liabilities exempt under the provisions of the Bankruptcy and Insolvency Act, such as his student loan.

84. What inferences should this Panel thus be able to draw from these facts? First, absent any evidence of an assignment of the later-acquired liabilities to the trustee in bankruptcy, of which none was presented, the liabilities acquired by the Applicant subsequent to his assignment of October 28, 2009 should be presumed to have remained liabilities of the Applicant, not liabilities of the trustee.

85. Second, any confusion in the mind of the Applicant as to his legal liability for the costs Orders that issued subsequent to his assignment of liabilities to the trustee is not only a confusion of the Applicant's own making, it is a confusion that he could have easily resolved had he wished to do so at any point in the past three years. Appeal Panel #2 expressed frustration at his unwillingness to resolve this uncertainty prior to convening its hearing. He appeared before this Panel having taken no further action to resolve that "uncertainty" in the intervening two years.

86. Third, we believe that given the facts, the Applicant knows or ought to know that the costs liabilities acquired in 2010 were not encompassed within the scope of his bankruptcy assignment in 2009. His testimony to the contrary is simply not credible, given the facts.

87. Looked at in a broader context, avoiding taking responsibility for payment of the 2010 costs awards by creating the fiction of a "legal uncertainty" where no uncertainty otherwise exists has allowed him to perpetuate his record of not paying a single dollar of the over $132,000 in costs assessed against him in his legal proceedings over the course of the last several years.

88. More important for the purposes of this hearing, the final step in redressing prior inappropriate behaviour is to unreservedly accept responsibility for that inappropriate behaviour and to take whatever steps are necessary to remedy the defect. The fact that the Applicant has not unequivocally accepted responsibility for the legal liability to pay those costs awards leaves a genuine doubt as to the current existence of "good" character.

2. The Ability to Pay

89. The Applicant repeatedly stated to this Panel that he would pay the outstanding costs if he had the financial means to do so, but that given his lack of resources, that option is

simply not available. We find that that assertion lacks credibility, even in the context of his extremely limited financial means. After the completion of his testimony where he asserted that he could not afford to pay the costs awards, the Applicant was asked by a member of the Panel how, if he had no ability to make any payment towards these costs, he was able to find the funds necessary to pay the filing fees in respect of the 2010 and 2011 legal proceedings that he had initiated. His answer was that he borrowed the necessary funds from a friend.

90. It has now been over three years since the first of the five costs awards were made in favour of the Law Society. Since that time, the Applicant has not paid a single dollar of the debt. We believe that if the Applicant truly accepted responsibility for his liability he would have made an attempt to pay at least a small portion of that debt, even given his limited resources. Even a minimal payment would have gone a long way to demonstrate acceptance of the consequences of his prior actions. The evidence that he was able to find the funds to initiate legal proceedings as late as March 21, 2011but that he could not find the funds to make even a token payment towards the costs consequences of his litigation during the same time period speaks to his character. [See Appendix 1, Timeline].

D. Applicant's Demonstrated Attitude Toward the Legal System

91. While recognizing that the Applicant has made considerable improvement in his behavior in the areas related to his domestic issues including ending his vexatious litigation and reconciling with some members of his ex-family and with members of the community, the Panel nevertheless remains concerned with what appears to be an attitude of disrespect for the legal system, its institutions and its practitioners.

92. Counsel for the Law Society cited several examples of pleadings and statements affirmed under oath filed by the Applicant in the period subsequent to the Second Appeal Panel decision, that, had they been sworn and/or pleaded by members of the profession, could have attracted disciplinary action by the Law Society against the member. Documents included in the submissions of the Law Society contained additional examples of unprofessional pleadings and remarks.

93. As counsel for the Law Society pointed out, the inappropriate submissions follow a general theme that members of the Applicants ex-spouse's family are allegedly "wealthy, well-connected members of the local Jewish community" who may believe that they are able to derive benefit with the judiciary and the legal system as a result of that influence and/or that they are above the law.

94. In cross-examination the Applicant denied suggesting that members of the judiciary might be susceptible to improper influence, however the Applicant maintained his suggestion that members of his ex-family do have connections with members of the judiciary:

Q …is it your position today that swearing to a comment like that in our court is appropriate or that that comment was inappropriate and was made prior to the realization of the positions you're taking in the domestic proceedings?

A Being politically correct, doing what's appropriate, what's right, drafting an affidavit the way a professional would have drafted, I would have not gone as far as -- I would have say he is an influencing person in town and he might, due to his influence, feel as if he stands above the law.
I would have not make specific reference -- as much as this is a specific reference, I mean I'm not naming anyone, but I live among my community and I see things and I hear things that put me to think that, yes, he might have ties to some senior members of the legal profession, among them a few judges, yes.

Q And that's your position today?

A Again everyone has a right to socialize with each other and to –

Page 101

Q That's correct.

A I don't know that the judge live in a bubble or --

95. In addition to the sworn statements suggesting that the Respondent had ties to judges of the Court, one of the documents that the Applicant placed in evidence was a Notice of Application for judicial review of the Attorney General of Manitoba's decision to enter a stay on the record of his Private Prosecution. The Applicant listed the following as grounds for the judicial review:

> "the Attorney General of Manitoba acted in bad faith," …
> "acted with bias against the Applicant," …
> "acted with bias in favour of the Respondent …" and
> "demonstrated an absolute disrespect to the judicial process and an absolute disregard to the facts of the given case when deciding to enter a 'stay' …" .

96. The affidavit in support of this application provides no evidentiary support for the propositions—the propositions appear to be nothing more than mere conjecture.

97. We find that these submissions, deposed in the form of pleadings and sworn statements, raise concerns regarding the Applicant's ability to discern appropriate boundaries of professional conduct.

98. Further, the Applicant's apparent inability to distinguish the proper boundaries between acceptable and unacceptable professional conduct extended to his behavior within this hearing, as well. More than once, both on the record and off, the Applicant inappropriately made references to personal aspects of the lives of two of the three members of this Panel.

99. The Applicant's deportment during the second day of the hearing stood in marked contrast to his deportment during the first day of the hearing. In particular, during the second day we found his demeanour to be one of casualness and disinterest to the point of disrespect. We could not help but conclude that this apparent attitude of indifference is at least partially reflective of the Applicant's present character.

IX. DISPOSITION

100. As we stated above, our main task in this hearing is to determine whether the Applicant provided sufficient evidence to rebut the established presumption that he is not "of good character and a fit and proper person to be admitted" as a member of the CPLED Program, pursuant to Rules 5-4, 5-24(2), 5-28.1 and 5-28.2, as of the date of this hearing.

101. Based upon the case law and the submissions of the parties, we accept that the prior conduct was sufficiently reprehensible to require a heavy onus upon the Applicant to provide evidence of a substantial change in character. In addition, we agree that a change in character is a process, not an event, and that the more egregious the prior behaviour, the more time that is necessarily required to demonstrate that an apparent change in behaviour is both foundational and permanent.

102. Although we have been encouraged by many positive indications of character change by the Applicant, especially in the recent reduction or elimination of recourse to apparently vexatious litigation to resolve his personal grievances, there are still remarkable events that give pause to a conclusion that the change in his character is sufficient to rebut the presumption.

103. Above all, we are simply of the view that given the degree and relative recency of the Applicant's demonstrated unacceptable behaviour there has not as yet been a sufficient passage of time to enable us to conclude that the Applicant has undergone a sufficient and sustained improvement in character to rebut the previously established presumption

to the contrary.

104. For all of the above reasons, we therefore find that the Applicant has failed to rebut the presumption that he is not of good character and a fit and proper person to be admitted to the CPLED Program. The appeal is therefore dismissed.

_____
Jennifer Cooper Q.C., Chairperson

April 25, 2013.

_____
Raymond Hall, Member

_____
Neil Cohen, Public Representative

APPENDIX 1 Timeline of Events Subsequent to First Application For Entry to CPLED Program			
Yr.	Mo.	Day	Event
2008	10	28	Application #1 to CPLED filed;
2009	07	27	LSM Investigation Report filed;
2009	08	10	Director issues Decision #1: Application for entry to CPLED Program denied;
2009	08	11	Notice of Appeal to Decision #1 filed;
2009	08	18	Director denies "Without Prejudice" request to Joint CLPED program;
2009	08	21	Applicant files three motions with Appeal Panel;
2009	08	26	Appeal #1 Hearing, Day 1;
2009	08	26	Appeal #1 Hearing, Day 1; Applicant files three additional motions;
2009	08	27	Appeal #1 Hearing, Day 2; hearing concludes
2009	08	27	Appeal #1 Hearing, Day 2; Panel dismisses 5 of 6 filed motions;
2009	09	02	Appeal Panel #1 dismisses appeal, written reasons to follow;
2009	09	08	Applicant files Motion with MB CA seeking order for enrollment in CPLED;
2009	09	08	Applicant files QB application for judicial review of Panel #1 decision;
2009	09	29	MB CA dismisses motion for immediate enrollment in CPLED Program, with costs payable to LSM in the amount of $350.00;
2009	10	09	Appeal Panel #1 delivers written reasons for denial of appeal
2009	10	16	Applicant files Notice of Application for judicial review of Appeal Panel #1 decision, seeking Order to quash decision, Order to disclose information and Order requiring immediate enrollment in CPLED Program;
2009	10	28	Applicant makes assignment into bankruptcy;
2010	01	07	QB upholds decision of Panel #1, dismissing application for JR, with costs awarded to the LSM in the amount of $3,069.12;
2010	01	11	Applicant files appeal of QB decision with MB CA and files motion seeking early hearing date of judicial review appeal decision;
2010	01	28	MB CA dismisses motion seeking early hearing date of appeal of judicial

			review; awards LSM costs in the amount of $200.00 in respect of the motion;
Yr.	Mo.	Day	Event
2010	03	04	MB CA hears LSM motion for short leave and for Order For Security of Costs in the amount of $2,500.00;
2010	03	08	MB CA Justice Chartier, in Chambers, grants LSM Order For Security of Costs in the amount of $1,000.00 payable within 120 days (July 7, 2010), "failing which the appeal will be struck."
2010	03	16	Applicant appeals decision of Justice Chartier to a full panel of the MB CA; Court dismisses appeal, awarding LSM costs in the amount of $486.38 in respect of the appeal;
2010	03	22	Applicant arrested at Law Courts Building;
2010	04	05	Applicant files Application #2 for entry to CPLED program;
2010	04	20	Benchers enact Law Society Rule 5-28.1 requiring applicants to CPLED program who have been denied entry to wait two years before re-applying; exception provided per Rule 5-28(3)—written request for abridgement;
2010	05	17	Applicant files motion to adjourn appeal of QB judicial review decision;
2010	05	30	MB CA hears Applicant's motion to adjourn appeal of QB judicial review decision;
2010	05	31	MB CA hears Applicant's appeal of decision of MB CA Justice Chartier granting Order For Security of Costs;
2010	06	01	MB CA dismisses Applicant's motion to adjourn appeal of QB judicial review decision; awards costs to LSM in the amount of $350.00 in respect of motion;
2010	06	01	MB CA dismisses Applicant's appeal of decision awarding security for costs; awards costs to LSM in the amount of $2,000.00 in respect of appeal; Total of costs awarded January, 2010 to June, 2010: $6,105.50
2010	06	10	Director issues Decision #2: Application #2 to CPLED Program denied;
2010	06	11	Applicant files Notice of Appeal of Decision #2;
2010	07	07	MB CA dismisses appeal of QB judicial review decision by reason of Applicant's failure to provide security for costs;
2010	07	21	Applicant granted absolute discharge from bankruptcy
2010	08	11	Appeal #2 Hearing, Day 1; Applicant filed 7 preliminary motions; 6 of 7 dismissed during the hearing; decision on 7th motion (immediate entry to CPLED Program) reserved;

2010	08	25	Appeal #2 Hearing, Day 2; hearing concludes;
Yr.	Mo.	Day	Event
2010	09	21	Preliminary decision, Appeal #2, Appeal Panel advises Applicant that it is dismissing his motion for immediate entry to CPLED program and dismissing his appeal entirely, with reasons to follow;
2010	10	12	Appeal Decision #2, written reasons with respect to motion rendered;
2010	11	02	Applicant assaulted at children's school;
2010	11	03	Applicant files Private Prosecution
2010	11	15	First hearing date, Private Prosecution
2010	11	16	Applicant files motion in Provincial Court for Peace Bond, Order avoiding contact;
2010	11	25	Appeal Decision #2, written reasons with respect to Appeal rendered, upholding decision of Director;
2010	12	29	Applicant files Small Claim for tort of battery
2011	02	14	Applicant files affidavit in support of motion for Peace Bond;
2011	02	16	Provincial Court judge denies motion for Peace Bond, citing jurisdiction;
2011	03	17	Applicant begins therapy sessions with Therapist Mr. RR
2011	03	17	Attorney General of Manitoba enters Stay of Proceedings in Private Prosecution;
2011	03	21	Applicant files Notice of Application for Judicial Review of Stay decision, citing as grounds "bad faith" and "bias" on the part of the Attorney General, Manitoba; files affidavit in support stating that "[Respondent] has ties to a few Winnipeg Judges;"
2011	04	08	Applicant files Notice of Abandonment of Judicial Review Application;
2011	04	14	Applicant writes LSM requesting abridgment of Rule 5-28.1 waiting period;
2011	05	12	Small Claim hearing re tort of battery; Application dismissed without costs;
2011	05	17	Director denies Applicant's request for abridgment of waiting period;
2011	05	30	Applicant appeals Director's denial of abridgment request;
2011	07	06	Chairperson of Admissions and Education Committee dismisses appeal;
2012	09	24	Applicant files Application #3 for entry to CPLED Program

2012	11	01	Director denies Application #3 to CPLED Program
Yr.	Mo.	Day	Event
2012	11	28, 29	Applicant submits additional materials, requests reconsideration of decision denying entry; reconsideration declined;
2012	12	03	Applicant files Notice of Appeal of Director's Decision #3;
2013	02	05	Applicant files motion re Bankruptcy in MB QB, seeking to expunge student loan;
2013	02	13	Third Appeal Panel hearing, Day 1; hearing adjourned to continue March 22.
2013	03	22	Third Appeal Panel hearing, Day 2; hearing concludes.