

IN THE MATTER OF *THE LEGAL PROFESSIONS ACT*, 1990
AND AN APPLICATION FOR REINSTATEMENT
BY MICHAEL NOLIN

BETWEEN:

MICHAEL DEAN NOLIN

(APPLICANT)

AND

THE LAW SOCIETY OF SASKATCHEWAN

(RESPONDENT)

**REASONS FOR THE DECISION OF THE
ADMISSIONS AND EDUCATION COMMITTEE**

A. INTRODUCTION

1. Michel Nolin applies for reinstatement following disbarment. Mr. Nolin previously applied for reinstatement. His previous application resulted in a decision of the Admissions and Education Committee (the Committee) dated April 26, 2010 which dismissed his application (the Previous Decision.) The Previous Decision is quite lengthy and the conclusions, recommendations and review of the law will not be duplicated here except as to provide some context. After a hearing on September 13, 2011 on the new application the Committee has determined that the application should be approved with conditions.

B. THE STATUTORY AND RULES CONTEXT

2. *The Legal Professions Act*, 1990 (the Act) contains the following relevant provisions:

Section 29(1) A person who has been disbarred may apply for reinstatement in accordance with the Rules after any period fixed by the Hearing Committee or Discipline Committee has expired.

Section 55(2) . . . The Discipline Committee may make any one or more of the following orders:

- (a) assessing any penalties or imposing any requirements that it considers appropriate, including but not limited to:
 - (i) directing that the member be disbarred and setting the period, not exceeding five years, during which the person is not eligible to apply for reinstatement
 - . . .

3. The Rules, with respect to applications for reinstatement by a disbarred member, provides now in the amended Rule 211 that after the Executive Director has referred such an application to the Committee and the Committee determines, in its discretion, to conduct a hearing under 230, the Committee will then make a decision as to whether the applicant should be reinstated. Pursuant to Rule 230, at the Committee hearing the onus is on the applicant to satisfy the Committee that he or she has met the requirements of the Act or the Rules.

4. By Rule 211, the Committee, in making its decision, should address certain criteria, such criteria include:

- (i) the applicant is of good character and repute and is otherwise fit to become a member of the Society; . . .
- (ii) the reinstatement is not inimical to the best interests to the public or the members or would harm the standing of the legal profession generally.

5. Where the Committee decides to reinstate a member it may impose terms and conditions that will apply to the member upon reinstatement.

6. Thus the issue for the Committee is to a large part a determination as to whether the Applicant has satisfied the Committee that, among other things, the

Applicant is of good character and reputation and is otherwise fit to become a member of the Society and that his reinstatement is not inimical (harmful) to the best interests of the public or the members or would not harm the standing of the legal profession generally. In that regard, there are certain common law criteria that pertain and were canvassed in the Previous Decision.

C. THE EVIDENCE AT THE RECENT REINSTATEMENT HEARING

7. At the second reinstatement hearing the Applicant acknowledged and accepted the jurisdiction of the Committee and that it was properly constituted.

8. The Applicant called three witnesses including himself. Mr. Nolin updated the Committee on his circumstances and personal and professional growth since the time of the Previous Decision. He has continued his therapeutic relationship with Dennis Coates. He has slowly become more “comfortable with being comfortable”. He has continued working with Saskatoon Mediation Services in a law related field. He has made arrangements with Morris Bodnar Q.C., should his application be successful.

9. Dennis Coates testified and filed a letter dated June 7, 2011. In summary, Mr. Coates noted progress on Mr. Nolin’s issues including the elimination of negative behaviours, in spite of certain life stressors that have occurred recently. Mr. Coates opines the Mr. Nolin runs a “very low risk of repeating.”

10. Morris Bodnar Q.C., a very experienced and well respected member of the Law Society, has agreed to retain Mr. Nolin in either an employee or associate capacity, with Mr. Bodnar acting in a supervising role, in a practice almost exclusively focused on criminal law. He has reviewed and accepts the draft

practice conditions that were submitted to the Committee, and would impose further conditions in the office management environment of his office.

11. The parties agreed that the Committee can accept as read, and as part of the record, the documents, testimony and letters of reference from the previous application.

D. THE APPLICATION OF THE TESTS TO THE APPLICANT

12. The Committee begins with the view that this second application is to be based on the findings of the Previous Decision and that the real exercise for the present purpose is to review the progress of the Applicant from the time of the Previous Decision to date.

13. As indicated in the Previous Decision, the need to establish a long course of conduct and that a sufficient period of time has elapsed were of concern. We had encouraged the Applicant to demonstrate ongoing compliance and growth in his therapy and his employment in a law related field. His present testimony and that of his witnesses have shown this.

14. We briefly will comment on the following criteria.

1. A Demonstrated Long Course of Conduct

15. The Applicant must show by a long course of conduct that he is a person to be trusted and in every way fit to be a lawyer. Only three years have passed since his disbarment, though he has not practiced since September, 2007. Normally, even this period of time would not meet the common law criteria in this area,

however, we are prepared to acknowledge that the Applicant, at the time of the Previous Decision, and now, has shown remarkable rehabilitative efforts. In the unique circumstances of this case, together with the agreed upon conditions which in effect will extend certain protections for at least a further two years, we find that this criteria is met.

2. Whether a Sufficient Period of Time has Elapsed

16. As indicated in the Previous Decision, we accept that this criteria and the previous one are connected. Together they speak to public confidence and public protection. For the reasons referenced above, we find this criteria is met as well.

3. Likelihood of Future Misconduct

17. This criteria requires the Applicant to show by substantial and satisfactory evidence that it is “extremely” unlikely that he will misconduct himself again if permitted to resume practice. On this element again the first duty of the Law Society, which is to protect the public, becomes the primary focus. This includes maintaining the public confidence in every member of the Law Society. We conclude that this criteria, if possible to be shown, has been established.

4. Rule 211(5)

18. Rule 211 provides two overarching criteria. The first is that the Applicant be of good character and repute. The second is that reinstatement not be inimical (harmful) to the best interests of the public or the members or would harm the standing of the legal profession generally. Referencing the Previous Decision, we

are satisfied that a genuine and complete change in character, for the better, has been shown by the Applicant.

E. THE APPLICATION OF CONDITIONS, IF ANY

19. At the hearing, the Applicant and the Respondent agreed to certain draft conditions if the Committee saw fit to recommend conditions. The draft conditions are:

1. Mr. Nolin shall only engage in the practice of law pursuant to the conditions contained herein. Should Mr. Nolin fail to meet any of the aforesaid conditions, at any time, his license to practice law shall immediately be suspended and such suspension continue until compliance has been achieved or conditions varied to remedy any default by the Chair of the Admissions and Education Committee of the Law Society of Saskatchewan (the Chair).
2. In order to return to practice, Mr. Nolin shall be subject to the following terms and conditions:
 - a) Mr. Nolin shall only practice law as an employee or associate of another practicing member of the Law Society of Saskatchewan approved by the Chair.
 - b) Mr. Nolin must practice under the supervision of another practicing member of the Law Society of Saskatchewan approved by the Chair and under a set plan of supervision and both the supervisor and the plan of supervision must be approved by the Chair.
 - c) In the event Mr. Nolin wishes to change approved practice arrangement or supervising lawyer he must obtain the approval of the Chair for the change. All of the preceding terms and conditions continue to apply to Mr. Nolin at the new location.

d) Mr. Nolin will not accept or receive any money, other negotiable property or consideration connected with the practice of law on behalf of clients.

e) Mr. Nolin will not directly access the books, records or accounts of his employer or firm. Any disclosure of information required by Mr. Nolin in the practice of law from the books, records or accounts of the firm will be made by a partner of the firm or such person as the partners may designate. Books, records or accounts as used herein does not include law firm client material.

f) Mr. Nolin is to continue attending with Mr. Coates or another registered psychologist, psychiatrist or registered counselor as follows:

i) The Law Society is to receive confirmation from Mr. Nolin's care provider that Mr. Nolin is attending regularly scheduled counseling sessions.

ii) Mr. Nolin shall continue to attend regularly scheduled counseling sessions with a registered psychologist, psychiatrist or registered counselor, until such time, as these regular sessions are, in the opinion of his care provider, no longer necessary.

iii) Mr. Nolin shall authorize his care provider to report to the Law Society if Mr. Nolin discontinues attending regularly scheduled counseling sessions, or misses two consecutive appointments.

iv) Mr. Nolin's care provider or his designate shall provide to the Executive Director of the Law Society annual reports and Mr. Nolin shall sign an Authorization and Direction enabling the Executive Director, or his designate, to communicate with Mr. Nolin's care provider or designate, as required.

v) In the event Mr. Nolin changes his care provider to another registered psychologist, psychiatrist or registered counselor, Mr. Nolin shall forthwith advise the Law Society of the change, and provide the necessary authorizations to allow the Law Society to verify compliance with the preceding paragraphs.

g) Mr. Nolin is to continue attending with Dr. Strydom on the following basis:

i) Mr. Nolin shall continue to take any and all prescription medication prescribed by his physician, Dr. H. Strydom for the treatment of depression and/or other mood disorders, and he shall continue to take said medication until his general physician, Dr. H. Strydom opines that the medication is no longer necessary.

ii) Mr. Nolin shall attend any and all scheduled medical appointments.

iii) In the event Mr. Nolin discontinues taking the prescribed medication or fails to attend two consecutive medical appointments, Mr. Nolin authorizes his general physician, Dr. H. Strydom to report his conduct to the Law Society.

iv) In the event Mr. Nolin changes general physicians, from Dr. H. Strydom to another medical doctor, Mr. Nolin shall forthwith advise the Law Society of the change, and provide the necessary authorization to allow the Law Society to verify compliance with the preceding paragraphs.

3. These conditions shall remain in effect for a minimum of two years, after which time, Mr. Nolin may apply to the Chair to vary or remove any or all of these terms and conditions of practice.

F. CONCLUSION

20. As stated in the Previous Decision, the Committee commends the Applicant for his significant improvement in his behaviour and in addressing his mental health issues. He has gone a considerable way in addressing his issues and addressing, either by factual foundation or by logical argument, the elements to be satisfied relevant to his reinstatement application.

