The Law Society of Saskatchewan

BRENT BURNS
May 3, 2013
***Law Society of Saskatchewan v. Burns*, 2013 SKLSS 3**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF BRENT BURNS,
OF EDMONTON, ALBERTA

DECISION OF THE ADMISSIONS & EDUCATION COMMITTEE
FOR THE LAW SOCIETY OF SASKATCHEWAN

I. INTRODUCTION

1. This matter has come before a hearing panel of the Admissions and Education Committee (the "A & E Committee") of the Law Society of Saskatchewan ("LSS") pursuant to Rules 151 and 230 of The Rules of the Law Society of Saskatchewan ("Rules"). Mr. Brent Burns has applied to be a Student-at-Law. The Executive Director of the LSS referred Mr. Burns' application to the A & E Committee to determine whether Mr. Burns' admission as a Student-at-Law is inimical to the best interests of the public, the members or would harm the standing of the legal profession generally, pursuant to Rule 151(1)(b) of the Rules.

II. FACTS

2. This panel of the A & E Committee heard evidence regarding three main issues which impact whether Mr. Burns' admission as a Student-at-Law is inimical to the best interests of the public or would harm the standing of the legal profession generally. Stated generally, they are:

(a) Mr. Burns' lengthy criminal record;
(b) Mr. Burns' conduct in applying to be a member of the Bar in the Law Society of Upper Canada ("LSUC"); and
(c) Mr. Burns' conduct as a paralegal (used in the colloquial sense, rather than as an accredited professional) in the Northwest Territories.

3. The majority of the documentary evidence was tendered through a joint exhibit book admitted and marked as Exhibit L-1 at this hearing. Included in the 15 tabs of documents in Exhibit L-1 are Mr. Burns' application for admission as a Student-at-Law, many letters addressing Mr. Burns' character, Mr. Burns' criminal record information and the documents related to Mr. Burns' application for admission to LSUC.

A. Mr. Burns' Criminal Record and Personal Circumstances

4. Mr. Burns' past criminal behaviour dates back at least 45 years based on the record before the panel.

5. In his oral testimony, Mr. Burns deposed that he has been involved with the criminal justice system since he was approximately twelve or thirteen years old. As a result of his difficulties with the law, Mr. Burns, as a youth, was sent to Saint John's Training School for Boys ("Saint John's") and became a ward of the church and state. Mr. Burns indicates that he was subject to abuse at Saint John's. He opines that his time at Saint John's influenced his future criminal behaviour.

6. Following Mr. Burns' time at Saint John's, he continued a life with a significant number of criminal issues. Mr. Burns indicated that he lived his life in accordance with the "culture" of the street.

7. Ultimately, Mr. Burns was convicted of the following offences:

Date	Conviction	Sentence and/or Fine
9/05/1968	• Assault causing bodily Harm • Creating a disturbance	2 years suspended sentence and probation
12/16/1968	• Causing a disturbance • Wilful damage	Fined $25.00 and $4.25 costs in default of 15 days with a fine of $15.00 and $5.00 costs in default of 10 days
12/30/1969	• Assault causing bodily harm	2 years suspended sentence
3/14/1969	• Mischief	1 day jail term
01/05/1972	• Car theft	2 years probation
06/09/1972	• Common assault • Wilful Damage • Causing a disturbance	4 month jail term
09/14/1972	• Assault causing bodily harm	5 months jail term
05/27/1980	• Obstruct a police officer	Fined $100.00
01/17/1992	• Failed to comply with recognizance • Mischief over $1,000.00 • Mischief under $1,000.00	30 days jail term

	• Assault • Failed to comply with recognizance	
10/08/1992	• Impaired driving • Failed to comply with probation order	Fined $1,000.00
10/10/1992	• Failed to comply with probation order	2 years suspended sentence and probation

In addition to Mr. Burns' convictions, he was also charged with the following offences, which charges were ultimately withdrawn:

Date	**Withdrawn Charge**
12/17/1969	• Break and Enter – theft under $50.00
12/15/1971	• Robbery
6/9/1972	• Causing a disturbance
9/14/1972	• Attempted robbery
5/27/1980	• Failure to appear
1/19/1994	• Assault
6/26/2004	• Robbery • Civil Confinement • Assault

9. Mr. Burns provides a detailed account of what occurred with respect to each of his criminal convictions in his letter to the LSUC, which was tendered as an exhibit in the within hearing (L-1, Tab 4).

10. Mr. Burns attributes most of his previous criminal activity to his difficult upbringing, including his time spent at Saint John's.

11. Mr. Burns, until more recently, had only a Grade 6 education. He describes living an anti-social life and contributing very little to society.

12. However, to his considerable credit, Mr. Burns took steps to turn away from a life of criminal activity.

13. Mr. Burns first enrolled in adult education, and appears to have done well.

14. This led to Mr. Burns attending Trent University, first in the Department of Philosophy and later in English.

15. From Trent University, Mr. Burns became involved in a class action related to Saint John's. Mr. Burns indicated that he acted as a liaison between the Ontario Government, the Criminal Injuries Compensation Board, the Roman Catholic Church and Help Line.

16. Following his time at Trent University, Mr. Burns attended law school at the University of Manitoba, Robson Hall. Mr. Burns indicated that his education was paid for largely through his settlement with the class action against Saint John's.

17. Mr. Burns took five years to obtain his law degree. As Mr. Burns notes, along with his studies, he spent considerable time raising his 3 children, whom he solely supported, driving them to and from activities. He ultimately obtained his law degree in the summer of 2001.

18. After Mr. Burns completed law school, he moved back to Ontario. He indicates in his narrative, filed as Exhibit D-1, that he moved to Ontario to be with friends and family and to pursue a graduate degree in law. In 2002, Mr. Burns was accepted to the graduate program of Osgoode Hall Law School, York University, and started working towards a master's degree in law. Mr. Burns testified that he only completed one year of the graduate program. He dropped out of the graduate program as a result of financial and educational difficulties.

B. Mr. Burns' Articles and Involvement with LSUC

19. After Mr. Burns' attendance at Osgoode Hall (which concluded in 2003), Mr. Burns obtained an articling position with Mr. Michael McKee, a sole practitioner in Peterborough, Ontario. Mr. Burns agreed to article for free. Mr. Burns worked with Mr. McKee for seven months until being contacted by LSUC and instructed to leave the office immediately as Mr. McKee was not approved as an articling principal. It should be noted that the evidence tendered at this hearing shows that Mr. Burns did not attempt to obtain advance approval to article under Mr. McKee. Mr. Burns, at some point in time, also reported Mr. McKee to the Law Society.

20. On November 30, 2004, Mr. Burns applied to commence the Bar Admission Course in Ontario.

21. On January 13, 2005, Mr. Burns applied to commence his articles prior to the completion of the bar admission course, which request was granted.

22. Shortly thereafter, on February 16, 2005, LSUC notified Mr. Burns that he had not received any articling credit for time spent working with Mr. McKee as Mr. McKee did not qualify as an approved articling principal.

23. It appears from the documents filed that Mr. Burns attended the Ontario bar admission course during the period of May, 2005 to August, 2005. Mr. Burns notes that he paid approximately $4,700 to enroll in the course. Mr. Burns was apparently not articling at that

point in time because his articling principal, Mr. McKee, was not approved by LSUC, as noted above.

24. In 2006, Mr. Burns commenced articles with Fred Fedorsen, who specializes in criminal law. Mr. Burns indicates that during his articles with Mr. Fedorsen he appeared in front of courts in or around the greater Toronto area and went to traffic court. Mr. Burns worked with Mr. Fedorsen for approximately three months.

25. Mr. Burns then articled to Mr. N.H. for seven months until November 28, 2007, at which time he completed his articles. Mr. Burns remained employed with Mr. Haque in some capacity until in or around 2009.

26. While Mr. Burns was attending the bar admission course in 2005, LSUC commenced an investigation into whether Mr. Burns should be entitled to take the course (which was already in progress), as a result of Mr. Burns' disclosed criminal record. A letter was sent by Mr. Gibson, an investigator with LSUC, to Mr. Burns on July 22, 2005 asking for certain information from Mr. Burns. Following that letter, there appears to have been several delays on the part of Mr. Burns in responding to LSUC, namely:

(a) No response was provided to Mr. Gibson's letter of July 22, 2005;

(b) A follow up letter from Mr. Gibson was sent on August 11, 2005 encouraging Mr. Burns to include any details about how Mr. Burns' experience at Saint John's influenced his criminal behaviour;

(c) On January 4, 2006, Mr. Gibson wrote to Mr. Burns indicating that he had not responded to either of his previous letters and that the file would be closed. Mr. Gibson indicated that Mr. Burns would have to resolve the issue of good character before proceeding to obtain his call to the Bar;

(d) A further letter was sent by Mr. Gibson on May 8, 2006 in which Mr. Gibson requested information, including each criminal conviction, any type of counseling or rehabilitation programs taken by Mr. Burns, a criminal record search, professional and personal references, a list of residential addresses, employment history and a copy of Mr. Burns' application for compensation submitted to the Criminal Injuries Compensation Board;

(e) On December 21, 2006, Mr. Gibson sent a follow-up email to Mr. Burns, apparently after having discussed matters with him by telephone, and enclosing a copy of all of his previous correspondence;

(f) On April 13, 2007, Mr. Gibson sent a further email to Mr. Burns indicating that once all of the requested information and materials were submitted by Mr. Burns, a report would be prepared and likely reviewed by the Proceedings Authorization Committee ("PAC") of LSUC. The PAC could then take various actions,

including ordering a hearing to determine whether Mr. Burns meets the requirement of "good character";

(g) On May 7, 2007, Mr. Gibson indicated that the investigation into good character would remain in abeyance until such time as Mr. Burns decided to respond to the matter. Mr. Gibson also stated that his file would be closed if he did not receive any direction from Mr. Burns by July 31, 2007.

27. In a letter dated January 1, 2008, Mr. Burns responded to LSUC's requests for details as to his past criminal behaviour.

28. On April 3, 2009, Mr. Burns was notified that the PAC of LSUC had directed a good character hearing. By the time that the good character hearing would take place, Mr. Burns' credit for his successful completion of the bar course would have expired and he would have to retake the bar admission course.

29. On September 14, 2009, Mr. Burns appeared before a hearing committee of LSUC to deal with the issue of "good character", a requirement to be admitted to LSUC. However, prior to any evidence being called, Mr. Burns executed a Notice of Abandonment, which provided that Mr. Burns was abandoning his application to be admitted as a lawyer. The application was abandoned on a without prejudice basis and with the stated intent to recommence the application when Mr. Burns was able to retain legal representation to assist him at the good character hearing.

30. On September 18, 2009, Mr. Burns wrote a letter to LSUC asking to set aside his Notice of Abandonment. In his letter, Mr. Burns indicates:

(a) His lawyer at the "good character" hearing encouraged him to abandon the appeal mere minutes before the hearing was to begin;

(b) The ramifications of abandoning the application were not adequately explained to him by his counsel;

(c) He was going to incur more financial burden as a result of the abandonment of his application;

(d) He would have to endure a fresh investigation by LSUC investigators upon filing a new application for admission as a lawyer.

31. Counsel for LSUC, Amanda Worley, responded to Mr. Burns' by letter dated September 25, 2009 in which she indicates inter alia that Mr. Burns' request to resile from the Notice of Abandonment was being considered by senior counsel of discipline of LSUC and the registrar.

32. On November 12, 2009, Ms. Worley by letter advised Mr. Burns that there was no provision in the governing legislation or the rules of LSUC to allow for resiling from a Notice of

Abandonment. Ms. Worley advised that Mr. Burns' only alternative was to re-commence the process by filing a fresh licensing application.

33. Thereafter, matters took a strange turn. On December 3, 2009, Mr. Burns commenced an action against LSUC in the Ontario Superior Court of Justice (Judicial District of Brampton) asking the Court to order that LSUC set aside and allow him to resile from his abandonment of his application for admission to the bar.

34. The claim was eventually settled on February 5, 2010. As part of the terms of settlement, Mr. Burns was permitted to bring a motion before a LSUC hearing panel to set aside the Notice of Abandonment and reinstate his licensing application.

35. The hearing as to whether Mr. Burns should be allowed to resile from his Notice of Abandonment was heard on June 28 and October 13, 2010. The decision of the hearing panel of LSUC was rendered February 22, 2011. The panel dismissed Mr. Burns' request that the Notice of Abandonment be set aside. Mr. Burns appealed this decision, but did not file the required documents for the appeal by the prescribed timelines and thus the appeal was deemed abandoned.

36. In the course of the hearing regarding Mr. Burns' Notice of Abandonment, Mr. Burns wrote three emails to Ms. Worley which could be described as abusive. The salient parts of those emails are:

> July 10, 2010
> "I had no idea that you are a fraud I believed in you as most working class people do. I won't [sic] quit I will see you in the appellant court [sic]."
> July 13, 2010
> "My experience at the Law Society was not representative of an Administrative Court; it was post modernity's answer to Star Chamber."
> October 5, 2010
> "Amanda, what's [sic] it like to sell your soul?"

37. Mr. Burns' application to resile from his Notice of Abandonment and the attendant delays and stress caused by such application are difficult to rationalize as:

(a) Mr. Burns had to retake the bar admissions course whether or not he abandoned his application, as his credits for the bar course had expired before the initial hearing had begun. Thus, what greater cost or difficulties would have been incurred by Mr. Burns by reason of his abandonment are unclear; and

(b) Mr. Burns would have had to go through a good character hearing whether he filed a new application or was allowed to continue his previous application.

38. Mr. Burns' application to resile from his Notice of Abandonment and his approach throughout the process is difficult to rationalize as there did not appear to be any prejudice to Mr. Burns in simply filing a new application for admission as a member of LSUC versus continuing

his previous application. He commenced an unnecessary process including bringing an action against LSUC and a lengthy administrative proceeding which took approximately 18 months to complete for no potential discernible benefit. In the course of this process, Mr. Burns also reported the lawyer assisting him at the initial good character hearing to the law society.

39. Mr. Burns acknowledged at this hearing that there may not have been a great deal of wisdom in seeking to set aside the Notice of Abandonment, but he felt he was attempting to right a wrong. He also indicated that he has apologized to Ms. Worley for the emails that he has sent her and states he understands that the emails were not justified.

C. Mr. Burns' Experiences in the Northwest Territories

40. In May, 2011, Mr. Burns moved to the Northwest Territories to commence work with Betty-Lou McIlmoyle, a sole practitioner with a focus on family law in the City of Yellowknife. She was called to the Bar in October, 2000. The majority of the oral testimony at the hearing of this matter related to Mr. Burns' work in the Northwest Territories. The panel heard from three viva voce witnesses in relation to Mr. Burns' time in the Northwest Territories: Ms. McIlmoyle, Ms. Sally Hammer and Mr. Burns.

i. Ms. McIlmoyle's Testimony

41. Ms. McIlmoyle appeared as a witness at this hearing by videoconferencing. She described meeting Mr. Burns in 1994 while attending Trent University. They took certain classes and studied together. Both were sole support parents and their children spent time with each other.

42. After Trent University, both Ms. McIlmoyle and Mr. Burns attended law school at the University of Manitoba. Ms. McIlmoyle was a full-time student, whereas Mr. Burns attended part-time. They remained friends after law school speaking on a nearly yearly basis.

43. In Spring, 2011, Ms. McIlmoyle indicated that Mr. Burns called her from Winnipeg. He was emotional about his situation. Ms. McIlmoyle mentioned to Mr. Burns that an associate had left her firm and that she might have some work for him. She indicated that she gave him money to come to the Northwest Territories to have him assist in a family law paralegal role.

44. Mr. Burns arrived in Yellowknife on approximately May 13, 2011, initially staying at Ms. McIlmoyle's home for approximately 6 or 7 weeks. Mr. Burns almost immediately commenced work at her law firm. His duties included intake interviews with clients, drafting affidavits, doing court runs and other assorted tasks. At the outset, Ms. McIlmoyle indicated that Mr. Burns was excited about his work. Ms. McIlmoyle was also relieved to have someone assisting her, as she had a busy practice and had recently lost an associate.

45. Over a short period of time, difficulties arose among Mr. Burns, Ms. McIlmoyle and Ms. Hammer. Ms. Hammer is Ms. McIlmoyle's office manager, and the two have worked together for a number of years. At one point, Ms. McIlmoyle reported that Mr. Burns attended at her home, where she was working that day, and proceeded to describe Ms. Hammer as a "slut", "whore" and "cunt". He demanded that Ms. McIlmoyle fire Ms. Hammer.

46. Although Ms. McIlmoyle describes a tense working atmosphere at her office, she acknowledged that while Mr. Burns worked with her, he did not yell or become abusive in the office. She indicated that his tone or body language would show that he was angry, but that he would generally leave the office when that occurred.

47. On September 20, 2011, after approximately 5 months at Ms. McIlmoyle's office, a conflict developed between Ms. McIlmoyle and Mr. Burns over whether Mr. Burns should be allowed to sign a document on firm letterhead using the initials LL.B. Ms. McIlmoyle indicated that she did not want correspondence sent with those initials behind Mr. Burns' name because it might give the impression to readers that Mr. Burns was acting as a lawyer at her office. Ms. McIlmoyle described this discussion as being heated with Mr. Burns shaking papers in her face, indicating that she could never take his law degree away and telling her that she was jealous because he got into a graduate program.

48. Immediately after this conflict, Mr. Burns quit his employment with Ms. McIlmoyle, although he attempted to rescind his resignation the next day, which Ms. McIlmoyle did not permit.

49. Following Mr. Burns' resignation, Ms. McIlmoyle reported that Mr. Burns became impatient about obtaining his Record of Employment ("ROE"). She indicated that she had to order an ROE from Ottawa, but that it took 3 to 4 weeks to arrive. During this period of time, Mr. Burns would come by the office daily asking for the ROE as he wanted to apply for Employment Insurance. Ms. McIlmoyle said that Mr. Burns would act in an intimidating manner and told her that she better complete the ROE as a "lay off", rather than a resignation, or she would "be sorry".

50. Ms. McIlmoyle reported becoming extremely fearful at her office and home. Mr. Burns would continually come into the office acting aggressively and phoning her home and leaving messages. Further, Ms. McIlmoyle testified that Mr. Burns would repeatedly drive by her home. On one occasion, Mr. Burns came to her door and asked for money for cigarettes and food. Ms. McIlmoyle reports feeling stalked. She indicates that she thought about police involvement, but did not file a report.

51. In order to assuage the situation, Ms. McIlmoyle attempted to assist Mr. Burns in finding work. As a result of her efforts, Mr. Burns did work for another practitioner in the Northwest Territories, although that work was only for a few days.

52. Ms. McIlmoyle further wrote a letter of reference for Mr. Burns, dated October 7, 2011. The letter of reference is positive in tone. She reports that she wrote the letter because of the constant hounding and harassment.

53. The ROE papers eventually arrived and Ms. McIlmoyle indicated in them that Mr. Burns had been laid off, despite the fact that he had resigned. Ms. McIlmoyle knowingly completed the forms incorrectly because of Mr. Burns' threat that she would "be sorry" if she did not complete the forms in that manner.

54. On January 13, 2012, Mr. Burns reported Ms. McIlmoyle to the Law Society of the Northwest Territories. Several allegations were made, including that Ms. McIlmoyle was a drug addict, worked under the influence, slandered other members of the profession, and fraudulently completed an ROE for Mr. Burns. Ms. McIlmoyle testified that, after a lengthy investigation, all of the complaints were determined to be without foundation save and except the allegation about the ROE. She also testified that she had promptly admitted the wrongful completion of the ROE, explaining why she had completed it in the manner she had.

55. Mr. Burns elected not to cross-examine Ms. McIlmoyle.

56. The hearing panel notes that it was no doubt difficult and emotional for Ms. McIlmoyle to testify at this hearing, especially in light of the ongoing discipline matter involving the ROE.

ii. Ms. Sally Hammer's Testimony

57. Ms. Hammer, the office manager and the only other employee of Ms. McIlmoyle, largely corroborated the testimony of Ms. McIlmoyle in relation to Mr. Burns' time spent in the Northwest Territories. Ms. Hammer's testimony was also provided through videoconferencing.

58. Ms. Hammer reported that, at the outset of Mr. Burns' time at Ms. McIlmoyle's office, he was quite friendly and had a good sense of humour. He was passionate about the law.

59. As time passed, Mr. Burns voiced opinions about how Ms. McIlmoyle's law office should be run. During the summer of 2011, Ms. Hammer reports that matters deteriorated in the office. On one occasion, she indicated that a client's family member called the office asking to speak to Mr. Burns, who the client's family member referred to as the "lawyer" for this individual. Ms. Hammer reported to the individual that Mr. Burns was not, in fact, a lawyer. Mr. Burns, who had apparently heard the conversation, became visibly angry and told Ms. Hammer that she was disrespecting his education.

60. At one stage, Mr. Burns refused to speak to Ms. Hammer for approximately a week. He would look at the wall as he passed by her. The situation became uncomfortable in the office.

61. After Mr. Burns quit, Ms. Hammer testified that he continually came to the office. She heard him demanding that Ms. McIlmoyle find him a job and provide a reference for him. Further, he wanted his ROE, which Ms. Hammer confirmed was not available. Ms. Hammer further overheard a conversation between Ms. McIlmoyle and Mr. Burns in which Mr. Burns advised that he had applied for Employment Insurance and said that he had been laid off. Mr. Burns told Ms. McIlmoyle that she "better say the same thing".

62. Ms. Hammer recollects Mr. Burns coming to the office every day, and calling several times a day, in the weeks following his resignation. As a result, she states she was uncomfortable being alone in the office. Further, Ms. Hammer indicated on one occasion Mr. Burns asked where Ms. McIlmoyle's vehicle was, which suggested to Ms. Hammer that Mr. Burns was tracking Ms. McIlmoyle.

iii. Brent Burns' Testimony Regarding his Time in the Northwest Territories

63. Although Mr. Burns conducted only a very limited cross-examination of Ms. Hammer, leaving much of her testimony unchallenged, he sought to contradict some of the testimony of Ms. Hammer and Ms. McIlmoyle during his own testimony. In particular, he indicated that he was not unpleasant and did not yell at anyone during his time working at Ms. McIlmoyle's office.

64. According to Mr. Burns, upon starting at Ms. McIlmoyle's firm, he found an office in disarray with files being neglected. Ms. McIlmoyle appeared in over her head.

65. Mr. Burns further denied that he stalked Ms. McIlmoyle. He indicates that a worker at Service Canada told him to keep going back to the office asking for the ROE, which is why he was continually going to the office. He further indicated that he went to Ms. McIlmoyle's home because he was in a desperate situation with no income and no means of obtaining Employment Insurance without an ROE.

66. Mr. Burns does not agree that he resigned, stating that he was fired from Ms. McIlmoyle's office for unjust reasons.

67. He indicated that he wrestled for some time with whether or not to file a complaint against Ms. McIlmoyle with the law society. But, he felt that a complaint was necessary. Mr. Burns opined that, if he had not complained, it is likely that Ms. Hammer and Ms. McIlmoyle would not be providing evidence before this hearing panel.

D. Other Relevant Factual Matters

68. Throughout Mr. Burns' testimony, it was apparent that he has a keen interest in becoming a lawyer. Indeed, he indicates that he can help reform those involved in the criminal justice system.

69. Mr. Burns supplied several letters or emails of reference. In the correspondence from inter alia K.W. (probation officer), N.H. (previous employer), K.B. (former classmate), D.O. (former client), T.W. (current employer), B.N. (former co-worker) and S.B. (former girlfriend), all of the individuals have positive things to say about Mr. Burns and his character.

III. GOVERNING LEGISLATION

70. Rules 150, 151 and 230 of the Rules are relevant in this proceeding. The pertinent portions of those rules state:

> Application for Admission as a Student-at-Law
>
> 150. A person applying for admission as a student-at-law must:
>
> (a) be of good character;
>
> …
>
> (e) Provide a police record check or such other information from law enforcement as may be required by the Executive Director;

(f) provide two testimonials in a form approved by the Committee, from two persons who have each known the applicant for at least 3 years, that the applicant is of good character and repute;

…

(h) in the case of an applicant who was previously a student-at-law in another Canadian Province or Territory, provide a document stating the particulars of that experience;

…

(j) provide any other information or documents which the Executive Director may reasonably require; …

Consideration of Application for Admission as a Student-at-Law

151. (1) In considering an application under Rule 150, the Executive Director:

(a) may make whatever enquiries and investigations considered necessary;

(b) shall consider whether granting the application for admission as a student-at-law would be inimical to the best interests of the public or the members or would harm the standing of the legal profession generally;

(c) may admit to membership as a student-at-law, an applicant who has complied with
Rule 150;

(d) refuse the application; or

(e) refer the application to the Committee.

(2) The Executive Director shall promptly notify in writing a person whose application has been refused, stating the reasons for the refusal and the applicant's right to apply to the Benchers under section 23(4) of the Act for a review.

(3) The Benchers may:

(a) admit an applicant to membership as a student-at-law subject to any conditions or limitations the Benchers may direct; or

(b) refuse the application.

Onus and Burden of Proof
230. (13) At a hearing the onus is on the applicant to satisfy the Committee that he or she has met the requirements of the Act or these Rules, as the case may be.

71. Section 23 of The Legal Profession Act, 1990 (the "Act") sets out the jurisdiction of the LSS to regulate the entrance of applicants as students-at-law:

Eligibility as student-at-law

23(1) The society may admit as a student-at-law a person who produces the prescribed evidence and information and otherwise complies with the rules.

…

(3) Where a person is refused admission as a student-at-law, the society shall inform the person in writing of the reasons for the refusal.

(4) A person whose application to be admitted as a student-at-law is refused:

(a) may request the benchers to review the application; and

(b) has the right to appear before the benchers in support of the application.

(5) The benchers shall make rules with respect to the review pursuant to subsection (4) of applications.

72. The Act also outlines the overriding role and concern of the LSS in all matters. This is set out at Section 3.1 of the Act:

> 3.1 In the exercise of its powers and the discharge of its responsibilities, it is the duty of the society, at all times:
>
> (a) to act in the public interest;
>
> (b) to regulate the profession and to govern the members in accordance with this Act and the rules; and
>
> (c) to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members.

73. With this governance framework and statutory mandate in mind, we turn to Mr. Burns' application for admission as a student-at-law.

IV. ANALYSIS

A. Determining the Issue to be Decided

74. Mr. Burns in his submissions before this Committee has characterized this hearing as a "good character" hearing. Indeed, Rule 150(a) indicates that Mr. Burns must "be of good character" to be admitted as a student-at-law.

75. Mr. Huber, on behalf of the LSS, indicates that, while good character is a component of this hearing, the issue is wider in scope as, pursuant to Rule 151(b), the Committee is to consider whether Mr. Burns' admission is "inimical to the best interests of the public or the members or would harm the standing of the legal profession generally". Mr. Huber asserts that this test is wider in scope than merely considering "good character".

76. The "inimical to the best interests" test was recently considered by the Honourable Madam Justice Schwann in *Demaria v. Law Society of Saskatchewan, 2013 SKQB 178*. At paragraph 63 of that decision, Justice Schwann confirmed that an applicant's good character is a consideration in the broader scope of inquiry of the "inimical to the best interests" test. In particular, she states as follows:

> [63] While Rule 180(1)(b) does not specifically invoke the words "good character", I agree with the Law Society's submission that consideration of good character inherently lies within this broad spectrum of inquiry. The breadth of this Rule directs the Law Society to consider and assess whether prospective applicants could be harmful to the interests of the public or the standing of the profession. Furthermore, neither this Rule nor the s. 24(1) amendment should be viewed in isolation, but instead the intent of Rule 180(1) must be construed from the context of the Act and Rules as a whole.

77. As a result, the Committee's task in this case is to determine whether Mr. Burns satisfies the "good character" requirement of Rule 150(a) and the wider "inimical to the best interests" test of Rule 151(b).

78. Pursuant to Rule 230(13), Mr. Burns bears the onus and the burden of proof of establishing that he meets the criteria of Rules 150(a) and 151(b).

B. Has Mr. Burns Met the Onus and Burden of Proof?

i. The Legal Framework

79. In assessing good character or the "inimical to the best interests" test, there are a number of factors that the Committee can consider. However, at its heart, the Committee must conduct the "assessment of good character … with the primary object of public interest and protection in mind viewed through the touchstones of integrity, knowledge, skill, proficiency and competence": *Demaria*, supra, paragraph 61.

80. In *Birman v. Law Society of Upper Canada, 2006 ONLSCHP 0032*, a panel of the Law Society of Upper Canada made the following comments about assessing good character:

> [12] 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; and
> (d) the applicant's conduct since the proven misconduct.

81. The Birman, supra factors have been adopted in Saskatchewan in the *Demaria*, supra and *Mercier v. Law Society of Saskatchewan*, dated July 8, 2010, decisions.

82. No case law has been provided to this Committee that helps define the factors to be considered in assessing whether an applicant's admission to the legal profession or as a student-at-law is "inimical to the best interests of the public or the members or would harm the standing

of the legal profession generally". However, the purpose of the admissions process, like discipline, is to ensure public protection, the maintenance of professional standards and generating public respect for and confidence in the legal system and lawyers who are integral to that system. Therefore, without limiting the various factors that a panel may take into account, it is open for this Committee to consider Mr. Burns' competence, his integrity and his demonstrated judgment or lack thereof in his interactions with members of the public and the legal profession.

ii. Analysis of Good Character and the "Inimical to the Best Interests" Test

83. The first factor outlined in Birman in considering good character is the nature and duration of the "misconduct". Misconduct is also a relevant consideration in relation to the "inimical to the best interests" test. Thus, the first inquiry must be: what is the misconduct in this particular case?

84. Mr. Burns has characterized the misconduct as being only his previous criminal record. Certainly, Mr. Burns' lengthy criminal behaviour is a relevant consideration. The criminal record and Mr. Burns' testimony reveals past anti-social tendencies with a propensity for some level of violence. The misconduct in question continued for a lengthy period of time (1968 to 1992), which suggests that the criminal behaviour was not simply the product of a single bad life decision, but rather a consistent pattern of behaviour.

85. However, the issue is not simply Mr. Burns' criminal record. The evidence indicates Mr. Burns engaged in inappropriate behaviour in relation to both the process of applying to be admitted to LSUC and during his time spent in the Northwest Territories. In the view of this Committee, Mr. Burns' conduct in the Northwest Territories and in the course of his application for admission to LSUC are certainly germane to assessing his character, as well as the issue of whether his admission as a student is inimical to the best interests of the public or the profession.

86. In relation to his application to LSUC, the evidence demonstrates that:

(a) Mr. Burns regularly failed to respond to inquiries from the Law Society of Upper Canada in a timely fashion. This is troubling for this Committee for two reasons:

(i) In his written narrative (D-1) at page 9, Mr. Burns stated that "[m]y effort to obtain a call to the bar in Ontario was fraught with delays that seemed to have no end. The LSUC has about 48,000 lawyers and something like 3,000 paralegals to govern, plus staff and with this all demanding a huge bureaucratic machine and on occasion files or cases do fall between the cracks." The tenor of the evidence before this Committee was that he was treated unfairly by LSUC and that LSUC was delaying the process. However, it is clear from the documentary evidence and the evidence given under cross-examination by Mr. Burns that it was he that delayed the process for months by failing to reply to LSUC. It is troubling that he is blaming LSUC for his own delays and inaction;

(ii) The administration of the profession can be compromised if practitioners do not promptly respond to the Law Society. As indicated in *Law Society of Saskatchewan v. Werry*, "[f]ailure to respond to a committee of the Law Society or a representative appointed by that committee jeopardizes the Society's ability to carry out its legislated mandate and in turn affects the reputation of all members…". In the view of this Committee, this is a relevant consideration both in regards to good character and the "inimical to the best interests" test;

(b) According to the decision of the Law Society of Upper Canada, filed as part of the joint exhibit book (L-1, Tab 12), Mr. Burns, in his application to resile from the abandonment of his application to be admitted to the bar, argued that he had received inadequate advice and been misled by his lawyer at the good character hearing. However, Mr. Burns further refused to waive solicitor-client privilege to allow his previous counsel to give evidence as to what advice she had provided to Mr. Burns and to defend herself from the allegations of ineffective assistance. This again calls into question the character and judgment of Mr. Burns, as he is making allegations against a member of the profession, but not allowing her to respond to that allegation. Further, it calls into question whether it is in the best interests of the profession to have such a possible future practitioner in our midst;

(c) Mr. Burns sent insulting and abusive emails to Ms. Worley, counsel for LSUC, when he was not achieving success in setting aside his Notice of Abandonment. This calls into question the applicant's character, as character is often most clearly demonstrated when one is facing opposition. Regrettably, Mr. Burns did not demonstrate good character during his dealings with LSUC and his conduct served only to escalate the conflict. Respectful and civil dialogue amongst practitioners is an essential and key component of the Code of Professional Conduct;

(d) As indicated earlier, Mr. Burns engaged in lengthy administrative hearings and the commencement of a civil action against LSUC for no discernable reason or benefit. He would have been able to file a new application for admission to LSUC with no apparent prejudice to himself. Yet, he persisted in an unnecessary conflict with LSUC. In addition to raising issues regarding character, as noted above, this conduct is certainly relevant in assessing whether Mr. Burns' admission as a student is inimical to the best interests of the public or the profession. Such a demonstrated lack of good judgment is the antithesis of what is expected of legal practitioners.

87. With respect to the issues in the Northwest Territories, this Committee makes the following observations and findings:

(a) There are some discrepancies in the evidence as to what occurred in the Northwest Territories. However, where there are inconsistencies between the evidence of Mr. Burns and that of Ms. McIlmoyle and Ms. Hammer, the Committee accepts the evidence of Ms. McIlmoyle and Ms. Hammer. The Committee notes that Mr. Burns declined to cross-examine Ms. McIlmoyle, nor did he cross-examine on much of the evidence presented by Ms. Hammer. Pursuant to the rule of Browne v. Dunn, (1893), 6

R. 67 (HL), it is generally not permitted to attempt to contradict the evidence of a previous witness through testimony where there has been a failure to cross-examine that witness. Thus, where such is attempted, it is certainly a factor for the trier of fact to consider. As well, the evidence of Ms. Hammer and Ms. McIlmoyle was generally consistent, which lends credence to the evidence of each of them;

(b) Mr. Burns' behaviour, both while working at, and in the period after his resignation from, Ms. McIlmoyle's office, demonstrates issues with anger management and civility, which are of concern to this hearing panel. For example, Mr. Burns attended at Ms. McIlmoyle's home, while still employed by her, and referred to Ms. Hammer by a variety of derogatory terms. As well, the multiple phone calls and daily attendances at Ms. McIlmoyle's office by Mr. Burns, in his efforts to obtain his ROE, are disturbing. His evidence that he was instructed to do so by an unnamed individual with Service Canada defies reason and the Committee does not accept that evidence. The threat Mr. Burns made to Ms. McIlmoyle, requiring her to fill out the ROE and indicate that he was "laid off" or she "would be sorry", coupled with his repeated attendances at or near her home following his resignation, are significant factors in considering the issue of good character and the "inimical to the best interests" test. The evidence indicates that Mr. Burns engaged in a stalking type of behaviour, which understandably would have frightened Ms. McIlmoyle. The Committee is concerned that the public and the members of the profession could be harmed by having such a person admitted to the profession, even as a student;

(c) Mr. Burns' complaint about Ms. McIlmoyle to the Law Society of the Northwest Territories is also of concern to this Committee. While reporting infractions and concerns to a law society should not be discouraged, it appears to this Committee that this particular complaint was a measure of retribution after the messy parting of ways when Mr. Burns left Ms. McIlmoyle's employ. The Committee also notes that Mr. Burns' complaint regarding Ms. McIlmoyle followed his previous pattern, in that he had in the relatively recent past laid complaints with LSUC regarding Mr. McKee, his principal, and Mr. Burns' own counsel at the good character hearing. The filing of complaints to a law society in a vexatious manner is a consideration in determining both the question of good character and the issue of whether it is in the best interests of the profession to have Mr. Burns admitted as a student-at-law.

88. In light of the foregoing, the Committee finds that misconduct on the part of Mr. Burns has been demonstrated by his criminal record, his conduct in applying to be admitted to LSUC, and in his behaviour in relation to Ms. McIlmoyle, and her office and staff, in the Northwest Territories.

89. In addition to considering the nature of the misconduct, Birman, supra indicates the panel should consider the duration of the misconduct. The misconduct in this case spans a period of 1968 to 2011, when one includes the issues in Ontario and the Northwest Territories. No concerns have been raised since October, 2011; however, Mr. Burns has not been employed to any great extent in the legal field since that time.

90. The second factor to consider pursuant to Birman, supra is whether the applicant is remorseful. Certainly, Mr. Burns indicates that he is remorseful for some of the misconduct. In particular, he regrets his previous criminal behaviour. However, he has not indicated remorse, and indeed denies any misconduct, in relation to his time spent in the Northwest Territories. Mr. Burns also demonstrated no remorse for his conduct in his dealings with LSUC, apart from the regret he expressed regarding his uncivil communication with Ms. Worley.

91. The third factor in Birman, supra, pertains to rehabilitative efforts. What efforts have been taken by the Applicant and what is the success of those efforts? There was no evidence to suggest that Mr. Burns is undergoing any current rehabilitative efforts. The Committee therefore asked Mr. Burns whether he had recently taken any anger management courses or similar treatment programs. He indicated that he had not undertaken any such courses or treatment.

92. The fourth factor in Birman, supra is the conduct of the applicant since the misconduct. As indicated earlier, some of the misconduct in this case is quite recent and, as noted above, is of concern to this Committee. Thus, in considering this factor, the Committee can only note the lack of recognition and remorse in relation to his behaviour in the Northwest Territories.

93. Mr. Burns has also submitted evidence in support of his good character. This includes:

(a) Several letters from individuals attesting to his good character. While these documents were submitted to the panel by consent of the parties, it would have been helpful to the panel to have some witnesses who would have been subject to cross-examination and examination by the panel on the information provided in their respective letters. Two of the letters were unsigned, and one was undated, although the indication was that it was from 2008. A third letter, which was signed and dated, was not from someone in the legal field. The Committee notes that Mr. Burns most recent conflicts and demonstrations of misconduct have been in relation to the pursuit of a career as a lawyer. Thus, these letters were of little weight in the Committee's consideration of this application;

(b) Mr. Burns' significant reform from a life of criminal behaviour to obtaining a law degree. This speaks to a strength of character, which is a relevant consideration in assessing good character;

(c) Mr. Burns obtained a law degree while raising three children. This again, speaks favourably to his character and ability;

(d) Mr. Burns' involvement with the class action involving Saint John's. This suggests a spirit for public service;

(e) Mr. Burns' stated desire to assist those involved in the criminal justice system to reform their lives. The panel notes that such a desire is admirable.

94. Notwithstanding the evidence submitted by Mr. Burns in support of his character, the panel finds that the evidence of misconduct and the duration of that misconduct outweighs the

positive evidence brought forward by Mr. Burns. The Committee is particularly troubled by the more recent behaviour of Mr. Burns in the application process for admission to LSUC and in the Northwest Territories. The Committee believes that this conduct does not demonstrate good character and that there is a risk of harm to the public and the profession if Mr. Burns were granted admittance as a Student-at-Law in Saskatchewan.

V. CONCLUSION

95. Having regard to the onus on Mr. Burns and the evidence as outlined above, the Committee finds that Mr. Burns has not met the onus of establishing that he meets the criteria of "good character," as outlined in Rule 150 of The Rules of the Law Society of Saskatchewan. The Committee further finds that his admission would be "inimical to the best interests of the public, the members or the standing of the legal profession" pursuant to Rule151. The panel has concerns about the potential risk that Mr. Burns poses to the public and the profession given his past criminal issues, his conduct when applying to become a member of LSUC, and his issues in the Northwest Territories.

96. As a result, the Applicant's application for admission as a student-at-law is dismissed.

DATED at the City of Regina, Province of Saskatchewan, this 21st day of June, 2013.

"Darcia Schirr, Q.C.
Chair

"Sean Sinclair"

Brenda Hildebrandt, Q.C.