QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2013 SKQB 178**

Date: **2013 05 10**
Docket: Q.B.G. 1630/2012
Judicial Centre: Regina

BETWEEN:

DANIEL DEMARIA

APPLICANT

- and -

THE LAW SOCIETY OF SASKATCHEWAN

RESPONDENT

Counsel:

Daniel Demaria — for himself
Fred Zinkhan — for the respondent

JUDGMENT
May 10, 2013

SCHWANN J.

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[1] Daniel DeMaria ("DeMaria") was refused admission to membership in the Law Society of Saskatchewan. He applies by way of judicial review to set aside the decisions made in this regard, and in particular seeks the following relief

> 1. An order in the nature of *certiorari* quashing the decision of the Benchers of the Law Society of Saskatchewan (the "Law Society") rendered on July 11, 2012 (the "Benchers' Decision");

2. An order in the nature of *certiorari* quashing the August 8, 2011 decision of the Admissions and Education Committee of the Benchers (the "A & E Decision");

3. An order in the nature of *mandamus* directing the Executive Director of the Law Society to immediately approve his application for admission as a lawyer in this province; and

4. An order permanently enjoining the Law Society from posting the Benchers' Decision and the A & E Decision on the Law Society's website.

BACKGROUND

[2] DeMaria's involvement with the Law Society began in June 2008 when he commenced articles in Regina with the Merchant Law Group. In the course of his articles, a fellow student with the law firm came forward of his own volition to the Law Society concerning incidents of improper collaboration and cheating on bar course (CPLED) assignments. In so doing, he implicated DeMaria.

[3] On the heels of this admission, DeMaria entered into an agreed statement of fact with the Law Society in July 2009. He recognized and took full responsibility for his conduct in the CPLED matter. The Admissions and Education Committee ("A & E

Committee") considered the agreed statement of fact and on September 8, 2009 directed DeMaria to redo portions of the CPLED course. The upshot of the A & E Committee's sanction was that DeMaria's period of articles was extended beyond the usual term of one year.

[4] On July 28, 2010, DeMaria applied to become a member of the Law Society. He submitted an application (Form A-8) for admission as a lawyer based on his student-at-law status, together with an affidavit from his principal deposing that he was "a fit and proper person" for admission to the Law Society. He also tendered thirty letters of reference.

[5] The Executive Director of the Law Society took the unusual step of referring DeMaria's application to the A & E Committee for consideration. The A & E Committee in turn ordered a *viva voce* hearing for purposes of assessing DeMaria's application. A "notice of hearing" dated August 18, 2010 was served on DeMaria prior to commencement of the A & E hearing. DeMaria contends this notice failed to specify "the circumstances to be inquired into at the hearing"as required by Rule 230(4)(c) of the *Law Society of Saskatchewan Rules* (the "Rules"), and in any event was not served within 30 days prior to hearing.

[6] The hearing transpired over a period of three separate days on December 17, 2010, January 17, 2011 and April 13, 2011. DeMaria testified on his own behalf. He also filed an opinion letter from Dr. Arnold, his physician, and letters of reference. The Law Society called three witnesses, N.R., L.M. and C.B. On the final day of hearing, DeMaria introduced rebuttal evidence consisting of additional letters of reference, a copy of his

bank statement and proof that he had taken an internet ethics course. DeMaria was allowed to split his case and called evidence both before and after the Law Society's case was put in.

[7] DeMaria was represented by experienced senior legal counsel at the A & E Hearing.

[8] By written decision rendered on August 8, 2011, the A & E Committee denied DeMaria's application for admission on the basis he had not satisfied the Committee of his good character. This decision was posted to the Law Society's publicly available website.

[9] Pursuant to ss. 24(3) and (4) of *The Legal Profession Act, 1990*, S.S. 1990-91, c. L-10.1 (the "Act"), DeMaria sought a "review" of the A & E Decision before a quorum of Benchers (the "Benchers' Review"). The review hearing took place on December 9, 2011. It was preceded by three separate case management meetings.

[10] The Benchers' released their written decision on July 11, 2012 under the sole signature of the Chairperson, Paul Korpan, Q.C. The Benchers' Decision did not alter the outcome of the A & E Committee hearing, that is, the original decision denying DeMaria's application for admission was upheld.

[11] Like the earlier A & E Decision, the Benchers' Decision was also posted to the Law Society's website.

DECISIONS UNDER REVIEW

[12] After hearing the evidence from both sides, the A & E Committee concluded:

> 50. ... The evidence before the Committee indicates an ongoing series of inexplicable behavior that included threatening, a tendency to physical violence, lying, intimidation, and obsessive behavior. The Applicant surreptitiously accessed a fellow lawyer=s[sic] computer and regularly taped telephone and personal conversations. All of this activity continued after the CPLED Violation Decision. The Applicant was unable to provide any mitigating circumstances to explain this behavior. He showed a willingness to misuse the Judicial system through the use of bizarre pleadings and use of threats of litigation against fellow lawyers to suppress testimony.
>
> 51. The overarching consideration regarding Mr. Demaria=s[sic] application is public protection, despite the grave consequences an adverse decision may have on the Applicant. Although there is no evidence of the Applicant applying the same tactics evidenced in this hearing to clients or with lawyers outside MLG with whom he had contact, the Committee are satisfied that the Applicant=s[sic] actions vis a vis the lawyers in his firm and with respect to this hearing are sufficient evidence of lack of good character to deny admission to the Law Society of Saskatchewan at this time.

[13] On review, the Benchers found the hearing committee had a legitimate basis for concern with the applicant's character and suitability for admission as a lawyer, and was therefore justified on the whole of the evidence to deny his application.

STANDING

[14] DeMaria invokes the long standing legal principle which restricts the participatory rights of statutory tribunals on judicial review to submissions on jurisdiction

alone, and not the substantive merits. Even though the Law Society was a "party" to the impugned decisions, and at that, a party with an obvious interest in its outcome, he argues that as a matter of law, the Law Society's participation on judicial review is confined to submissions on jurisdictional issues. Reliance is placed on the oft-referenced Supreme Court of Canada decision, *Northwestern Utilities Ltd. v. Edmonton (City)*, [1979] 1 S.C.R. 684, 89 D.L.R.(3d) 161, and the more recent Alberta Court of Appeal decisions *Brewer v. Fraser Milner Casgrain LLP*, 2008 ABCA 160, 432 A.R. 188 and *Alberta (Minister of Employment and Immigration) v. Alberta (Information and Privacy Commissioner)*, 2010 ABCA 304, 490 A.R. 208.

[15] Some background is necessary in order to properly address this issue. DeMaria submits Huber, in his capacity as in-house legal counsel for the Law Society, took on a prosecutorial role *vis-à-vis* him (DeMaria) both before the A & E Committee and before the Benchers where Huber argued to sustain the underlying A & E Decision on its substantive merits. Furthermore, although now represented by outside legal counsel before this Court, DeMaria submits the Law Society as a statutory tribunal should be restricted to submissions on jurisdiction alone and be prevented from advancing argument on the substantive merits in seeking to uphold and preserve the outcome of both decisions.

[16] The Law Society submits the line of cases relied upon by DeMaria simply do not apply to its legislative model. The Act creates a conceptual separation of function in how the Law Society, as a deemed statutory corporation, delivers its diverse legislative mandate. It is not a tribunal *per se*. Instead, the separate "tribunal" or decision-making functions of the Law Society come about when panels are appointed from time to time

(e.g. the A & E Committee) to conduct hearings. In carrying out their assigned adjudicative functions, these panels operate independently from the Law Society *qua* corporation, and from the Benchers as the governing body.

[17] The Law Society emphasizes that in appearing before the A & E Committee, Huber was not counsel for the tribunal but counsel before the tribunal, much in the same way legal counsel for DeMaria was counsel before the tribunal. As such, the Law Society submits Huber's participation at the Benchers' Review was not a case of the tribunal engaging its own counsel to defend its own decision on appeal. Simply stated, at the Benchers' Review and in proceedings before this Court the Law Society, as a corporation, has a full right to be heard.

[18] In the interests of preserving adjudicative independence of administrative agencies, it has long been understood that limits should be placed on the degree of their participation in judicial review proceedings. In general terms, participation has been restricted to jurisdictional issues (*Northwestern Utilities*, *supra*), standard of review (*Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94, 502 A.R. 110), and in providing an explanatory role with regard to its record. (*Alberta Teachers' Association v. Alberta (Information and Privacy Commissioner)*, 2011 ABQB 19, 509 A.R. 92)

[19] While the rigid approach to standing articulated in *Northwestern Utilities, supra,* and its progeny has obvious merit where the statutory tribunal exercises a purely adjudicative function over a dispute involving two adverse parties, its application to administrative bodies and delegates which perform other more diverse functions is less

clear. As a matter of practicality, if the tribunal is unable to make submissions on the substantive merits, the applicant effectively appears unopposed.

[20] The breadth of role assigned by legislation to some administrative bodies, particularly in a modern context, was described in *Leon's Furniture Ltd., supra,* at para 21:

> 21 ...Many of them receive and investigate complaints, and can generate complaints themselves. They often have an important policy making role, as well as an educational role within their sphere of activity. Often their adjudicative and policy making roles cannot be separated. If their investigations reveal a breach of the regulatory regime, some tribunals essentially take over the prosecution of the complaint, and effectively have carriage of the entire proceeding. They become the investigator, prosecutor, and adjudicator. The original complainant does not and is not expected to participate, except possibly as a witness. In some cases the complainant cannot even settle the complaint without the consent of the tribunal: *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 48. In these situations the applicability of the *Northwestern Utilities* principle is less obvious.

[21] Having considered the applicable jurisprudence, and with an eye to a more functional approach, the Alberta Court of Appeal in *Leon's Furniture Ltd.* concluded as follows on the issue of participatory rights:

> 28 ... The *Northwestern Utilities* case should be used as a "source of the fundamental considerations". Its principle will often be applied with full vigour to administrative tribunals that are exercising adjudicative functions, where two adverse parties are present and participating. While the involvement of a tribunal should always be measured, there should be no absolute prohibition on them providing submissions to the court. Whether the tribunal will be allowed to participate, and the extent to which it should participate involves the balancing of a number of considerations.
>
> (See also: *Alberta Teachers' Association v. Alberta (Information and Privacy Commissioner), supra*)

[22] Through enactment of *The Legal Profession Act, 1990*, the Legislature of this province has entrusted self-regulation of lawyers to its members. Self-governance is not a right; it is a privilege. In the exercise of its powers and in the discharge of its responsibilities, the Law Society must principally concern itself with the public interest and its protection. This primary role finds expression in s. 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.

[23] As noted, the broad public interest objective is to be achieved by ensuring that governance of members is undertaken in accordance with the Act and Rules, and with oversight over matters of integrity, knowledge, skill, proficiency and competence of members.

[24] Self-governance of professions has two central features: the authority to licence and the ability to discipline.

[25] Admissions, unlike discipline, requires the Law Society to play a screening or preventive role to ensure prospective members have appropriate accreditation and otherwise comply with the Act and Rules. It is not adversarial in the sense the applicant

is pitted against a complainant or third person. The admission process is essentially applications based with prospective members applying for the right or privilege of licensure to practice law in this jurisdiction. In contrast to the Law Society's discipline function, there is no "complainant" driving this decision-making function, that is, the Law Society is not called upon in the context of admissions to discharge an adjudicative function between two competing parties in the traditional sense of that concept.

[26] Moreover, as the gatekeeper of admissions, the Law Society can hardly be said to be a detached observer. While the Legislature has prescribed certain professional standards (s. 24), the Benchers themselves are empowered with rule-making authority over "the admission of lawyers as members" (s. 10(f)). In the discharge of this gatekeeping function, the Benchers must act in the public interest.

[27] These considerations, and in particular the legislative construct and role assigned to the Law Society in relation to the admission process, renders the Law Society's participatory role in these proceedings not only appropriate, but necessary.

JURISDICTION AND STANDARD OF REVIEW

[28] There is no statutory right of appeal from a decision rendered by the Benchers pursuant to ss. 24(3) and (4) of the Act. The within application is therefore one of judicial review only.

[29] The touchstone case of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, describes the framework of approach to standard of review issues. At para. 62, the Supreme Court directed:

> 62 In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review. [emphasis added]

[30] Adopting the guidance of *Dunsmuir*, consideration turns to whether existing Saskatchewan jurisprudence in relation to Law Society matters has already determined the degree of deference owed on questions of fact and law.

[31] It is well understood that in relation to decisions of discipline and penalty, the appropriate standard of review is one of reasonableness. (*Merchant v. Law Society of Saskatchewan,* 2009 SKCA 33, 324 Sask. R. 108 and *McLean v. Law Society of Saskatchewan*, 2012 SKCA 7, 385 Sask. R. 182). However, as Jackson J.A. points out in *McLean,* at para. 11:

> 11. ... The review, however, must be a meaningful one, having regard for the existence of justification, transparency and the intelligibility of the decision under review, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47.

[32] In this regard, the tribunal's reasons "...must be read together with the outcome and serve the purpose of showing whether the result falls within a range of

reasonable outcomes... (see: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 at para. 14 ". (para.12, *McLean, supra)*

[33] In short, as summarized in *McLean, supra,* a review on a reasonableness standard requires the court to consider: (i) the existence of justification for the reasons; and (ii) the defensibility of the outcome in light of the reasons that could be appropriately offered for the impugned conduct. (para. 12)

[34] The standard of review decisions in this jurisdiction emanate from statutory appeals on discipline and penalty matters. The matter before me, though, is an admissions issue. The Law Society submits, and I accept, that both the A & E Decision and the Benchers' Decision should be assessed on a reasonableness standard on questions of fact and credibility. Moreover, the Law Society acknowledges and accepts that on questions of law and mixed fact and law, the standard of correctness should apply. (*Law Society of Upper Canada v. Kazman*, 2011 ONSC 3008, [2011] O.J. No. 2361 (QL); *Shore v. Law Society of Upper Canada*, 96 O.R. (3d) 450 (Ont. Sup. Ct.))

[35] DeMaria is in general agreement with the Law Society's position on standard of review. Questions of jurisdiction, law and constitutional issues, and mixed fact and law, attract a standard of correctness. He acknowledges that questions of fact are to be reviewed on the reasonableness standard.

PRELIMINARY OBJECTIONS

[36] The Law Society had earlier applied by motion to strike discreet portions of the August 31st and September 12th, 2012 affidavits of David DeMaria for reasons of hearsay and other grounds. A decision on the impugned hearsay portions of these two affidavits was deferred to the hearing on the full judicial review application. In similar vein, DeMaria objects to the admission of the affidavit of Timothy Huber, sworn January 14, 2013.

[37] I find the content of all three affidavits to be both relevant and necessary to the various issues placed before this Court. In particular, I find the Huber affidavit helpful as it provides an explanatory role to the record. In the interests of a full and fair hearing, all these affidavits will be admitted save for those portions previously struck pursuant to earlier decision of this Court. (2012 SKQB 454, 407 Sask. R. 139)

THE ADMISSION & EDUCATION COMMITTEE DECISION

[38] The applicant's notice of motion enumerates numerous grounds of legal error on the part of the A & E Committee, however, in oral argument and in his brief of law the applicant confined his arguments to a handful of more focused points. The issues raised in relation to the A & E Decision are therefore the following:

1. Did the A & E Committee err in considering the applicant's "good character" in determining his application for membership?

2. Was the A& E Decision "doctored"or altered, and if so, was it a nullity?

3. Did the Law Society err by characterizing DeMaria's application as a question of "admission" instead of a question of "discipline"? Was the applicant deprived of his rights to an investigation, to be charged, and to be given notice and disclosure of the case against him?

4. Whether the burden of proving conduct unbecoming was on the Law Society? Did the A & E Committee improperly shift the onus of proving good character to the applicant?

5. Did the A & E Committee err by disregarding letters of exemplary conduct, and in accepting the credibility of the Law Society's witnesses?

6. Was the fairness of the hearing compromised by a reasonable apprehension of bias?

[39] Before delving into the specific arguments advanced by the applicant, an expanded discussion of the concept and framework pertaining to professional self-regulation is helpful.

[40] Constitutionally speaking, regulation of professions falls under the provincial sphere of power derived from the province's power to make laws in relation to property and civil rights. (s. 92(13), the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11) Through the enactment of the *Constitution Act*, this province saw fit to delegate regulatory power and oversight over lawyers in Saskatchewan to the Law Society of Saskatchewan as a self-governing entity.

[41] Self-regulation of professions is said to serve three distinct sets of interests. These interests have both a public and private dimension. They are often competing and this tension gives rise to the need for careful balancing.

[42] The first of these interests is the public interest. "The primary purpose of the establishment of self-governing professions is the protection of the public. This is achieved by ensuring that only the qualified and competent are permitted to practice and that members of the profession conform to appropriate standards of professional conduct." (James T. Casey, *The Regulation of Professions in Canada*:, looseleaf, vol. 1 (Scarborough, ON: Carswell, 1994), p. 1-3). (See also: *Pearlman v. Manitoba Law Society Judicial Committee,* [1991] 2 S.C.R. 869, [1991] 6 W.W.R. 289)

[43] The membership or body of a self-regulated profession itself also has a broad but distinct interest. In order to maintain public respect and confidence, the membership as a whole has an interest in ensuring that the governing organization is effective and properly functioning, and is perceived to be so by the general public.

[44] The last interest accrues to individual members of the profession including those who aspire to become members. It is self-evident that the powers of a self-governing

body have potential to seriously effect an individual's reputation, professional standing and right to practice. As evidenced by the within application, the off-shoot of this delegated power lies in the supervisory powers of the courts.

[45] The self-governance model of professional regulation attempts to balance these three interests by: restricting or controlling right of entry to practice (s. 30), authority to license or admit individuals as members (s. 24), and ability to discipline members. The latter two regulatory features is encapsulated in the following description:

> The licensing power is essentially the authority to decide who shall be permitted to earn their living by the pursuit of a particular calling. This means that professional organizations act as the gatekeepers to the profession in their assessment of the qualifications of prospective members. Once an individual becomes a member of a profession, the professional organization has the power to regulate the conduct of the licensee by establishing rules of practice and standards of conduct enforceable through the discipline process.
>
> (*The Regulation of Professions in Canada, supra*, p.1-1)

[46] Admission of lawyers is typically applications based. In broad terms, admissions in Canada generally follows upon evidence of completion of specified educational requirements, a term of articles and satisfactory proof of "good character". The "good character" requirement is said to be preventive rather than reactive or punitive.

> The question of whether a candidate is of sufficient good character and reputation to be admitted for registration is a question within the peculiar province of the Benchers, and it was the intention of the Legislature to

> entrust that decision to them. In the absence of any power being given to review their decision, the Court has no jurisdiction to substitute its own view of what is sufficient proof for that of the Benchers.... [footnotes admitted]
>
> (*The Regulation of Professions in Canada, supra*, vol 2 at p.16-3: *Rajnauth v. Law Society of Upper Canada* (1993), 13 O.R. (3d) 381, 102 D.L.R. (4th) 443 (Ont. Div. Ct.)

[47] While the underlying purpose of the "good character" requirement is well intentioned, (i.e. public protection, maintenance of high ethical standards and public confidence), it nonetheless entails a subjective evaluation. Its expression in practice has potential for arbitrariness and discrimination. Moreover, its discretionary basis has potential to lead to unpredictability, inconsistency and vagueness. (Gavin MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline*, looseleaf (Toronto:Carswell, 1993), p. 23-1-6)

[48] Like the admissions process, the power to discipline is rooted in public protection, maintenance of high professional standards and preservation of the public's confidence in the legal system. Concerns addressed through discipline proceedings include competence, ethics and conduct. For the reasons which follow, an expansive discussion of this facet of the Act is unnecessary other than for comparative purposes.

[49] Before delving into the specifics of DeMaria's application, two grounds of attack not advanced in these proceedings bear mention. DeMaria does not challenge the *vires* of the Law Society Rules which lie at the core of some of his arguments, nor does he challenge the authority of the Benchers to pass the Rules. Second, DeMaria does not seek to impugn the two decisions on a constitutional law or *Canadian Charter of Rights and Freedoms* ("*Charter*") basis.

[50] Having clarified the scope of his attack, I now turn to the specific grounds of alleged error.

1. Did the A & E Committee err in considering the applicant's "good character" in determining his application for membership?

[51] The core issue before the A & E Committee was whether it was in the best interests of the public or the profession at large for the applicant to be admitted as a lawyer member of the Law Society of Saskatchewan. In this respect, their focus zeroed in on whether the applicant possessed the requisite "good character" to practice law in this province.

[52] It is DeMaria's position the A&E Committee had no jurisdiction to take into account "character" in assessing his application for admission, and in doing so, the Committee committed an error of law. He advances several arguments in this regard: i) he had satisfied the administrative criteria for admission laid out in Rule 171(1); ii) he had previously satisfied the good character test for acceptance as a student-at-law; iii) s. 24(1) of the Act, which had been amended two months prior to his application, removed "good character" as a factor; iv) the test articulated in Rule 180(1)(b) is too vague and should be construed narrowly; v) any concerns should have proceeded down the discipline trail by virtue of ss. 40 and 59 of the Act; and vi) only the executive director was empowered to make this determination.

[53] Many of DeMaria's arguments are rooted in other grounds of challenge addressed below and will not be discussed under the rubric of the "good character" argument. Once those lines of attack are parsed, the two issues which remain are these:

the effect of amendment to s. 24(1) of the Act and whether admission to student-at-law status satisfied the good character test.

[54] A comparison of the legislative language employed in s. 24(1) both pre and post amendment is an appropriate starting point. Prior to the 2010 amendment, s.24(1) provided:

> 24(1) A person who is a permanent resident of Canada or a Canadian citizen may apply to the society to be admitted as a lawyer, and the society may admit that person as a member where that person:
>
> (a) produces evidence satisfactory to the benchers of service as a student-at-law or practice as a lawyer;
>
> (b) produces testimonials satisfactory to the benchers of good character and of good standing in the law society of any jurisdiction in which the person is a lawyer or student-at-law;
>
> (c) produces evidence that the person possesses academic qualifications at least equal to those required for registration in and graduation from the College of Law of the University of Saskatchewan;
>
> (d) complies with the rules; and
>
> (e) fulfils any other requirements that the benchers may prescribe. [emphasis added]

[55] Following this amendment, which came into effect on May 20, 2010, the sub-section provided:

> 24(1) Any person may apply to the society to be admitted as a lawyer, and the society may admit that person as a member if that person:
>
> (a) produces evidence satisfactory to the benchers of service as a student-at-law or practice as a lawyer;

> (b) produces evidence that the person has completed a legal education program that is prescribed in the rules;
>
> (c) complies with the rules; and
>
> (d) fulfils any other requirement that the benchers may prescribe.

[56] The principle difference between these provisions lies in deletion of the requirement to procure "testimonials satisfactory to the benchers of good character and of good standing in the law society of any jurisdiction in which the person is a lawyer or student-at-law". This, of course, was formerly housed in s. 24(1)(b). (There are some other minor changes to the wording which are more of a housekeeping nature and not in issue in these proceedings.)

[57] Subsection 24(1)(c) (which was s. 24(1)(d) of pre-2010 amendment) is directly relevant to DeMaria's challenge and was unchanged by the 2010 amendment. This provision stipulates that as part of the admissions process, the Law Society may admit an applicant as a member provided that person "complies with the rules".

[58] For purposes of the "compliance with rules" discussion, Rule 180(1) enters into the discussion. It directs the executive director to consider or take the following action upon receipt of an application under Rule 171 for admission as a lawyer. Rule 180(1) in its entirety provides:

> 180.(1) In considering an application under Rules 171 and 172 the Executive Director:
>
> (a) may make whatever enquiries and investigations considered necessary;

> (b) shall consider whether the admission is inimical to the best interests of the public or the members or would harm the standing of the legal profession generally;
>
> (c) may approve for admission to membership as a lawyer, an applicant who satisfies the Executive Director that he or she has complied, or will prior to formal admission comply with:
>
> i) the provisions of the Act and these Rules applicable to the applicant; and
>
> ii) any requirements imposed by the Benchers under section 24(1)(e) of the Act; or
>
> d) refer the application to the Committee. [emphasis added]

[59] With the repeal of ss. 24(1)(b), DeMaria submits the 2010 amendment effectively removed the "good character" requirement, and in proceeding as they did the A & E Committee erred by ignoring this intentional legislative change. He further submits the law must be narrowly construed so as not to re-read the good character component back into the admissions process. Finally, he argues, the Benchers erred by failing to recognize that Rule 180 was unconstitutionally vague.

[60] This line of argument was raised before the Benchers who found the Hearing Committee was correct in its approach. The Benchers reasoned that amendment to s. 24(1) simply removed the requirement to produce testimonials as evidence of good character but did not displace nor remove the more broadly stated good character test enshrined in Rule 180(1)(b). They arrived at this conclusion having applied a liberal and expansive interpretation to the Act and Rules and in reading the Act as a whole with an eye to its

overarching public protection objective. This broad objective, they concluded, found expression in s. 3.1 of the Act and was consistent with existing common law.

[61] I agree with the Benchers' analysis of this issue. To begin with, *Churko v. Law Society of Saskatchewan*, 2011 SKQB 327, 388 Sask.R. 22 affirmed that a liberal and expansive approach should be taken in relation to this Act. I similarly agree that assessment of good character must be undertaken with the primary object of public interest and protection in mind viewed through the touchstones of integrity, knowledge, skill, proficiency and competence. The following passage from *Lawyers & Ethics: Professional Responsibility and Discipline*, *supra*, explains the purpose sought to be served by the "good character" requirement:

> 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.
>
> These purposes are commendable and there can be no doubt about the relevance of the good character requirement to the practice of law. The law is concerned with questions of right and wrong, and fairness and unfairness. At least one commentator has argued that as our society has become more secularized, the law has replaced religion as our primary moral touchstone.
>
> The requirement that lawyers must be of good character finds expression also in what is in most jurisdictions not coincidentally the first rule of professional conduct: lawyers must discharge with integrity all duties owed to clients, the court, the public, and other members of the profession. "Integrity," the first commentary to this rule says, "is the fundamental quality of any person who seeks to practise as a member of the legal profession.

[62] Similarly, in *Rajnauth v. Law Society of Upper Canada*, *supra*, at p. 384, the court said:

> The purposes of the good character requirement include the protection of the public, the maintenance of high ethical standards, and the maintenance of public confidence in the legal profession.
>
> (See also *Shore v. Law Society of Upper Canada,* (2009), 96 O.R. (3d) 450, [2009] O.J. No. 1608 (QL) (Ont. Sup. Ct.)

[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. This is precisely what both the A & E Committee and the Benchers did.

[64] Neither do I find merit to the applicant's argument that he previously satisfied the good character threshold by operation of Rule 150 when he was admitted as student-at-law. A fair reading of the Act and Rules, having regard to the objectives and purposes of the Act enshrined in s. 3.1 and the Law Society's obligations in relation to the admissions process, simply does not support DeMaria's argument.

2. Was the A& E Decision "doctored" or altered, and if so, was it a nullity?

[65] DeMaria submits the A & E Decision is a nullity because it was both unsigned and "doctored".

[66] The first prong to this argument is DeMaria's contention the August 8, 2011 decision was unsigned as was the decision ultimately placed before the Benchers for review. DeMaria argues the signature of the decision-maker must be affixed to the decision to evidence the fact the person adopts the contents of the document and/or that the person was responsible for the content of that document. He argues an unsigned decision is not a decision. Reference is made to these authorities: *Wah Shing Television Ltd. and Partners v. Canadian Radio-television Telecommunications Commission*, [1984] 2 F.C. 381, [1984] F.C.J. No. 161 (QL) (F.C.T.D.) and *Herman Motor Sales Inc. v. Registrar of Motor Vehicle Dealers and Salesman* (1980), 29 O.R. (2d) 431, 113 D.L.R. (3d) 370 (Ont. H.C.).

[67] As a matter of good practice, all members of a hearing panel should sign the decision they render. In her text *Administrative Law in Canada*, 4th ed., (Toronto: Butterworths, 2006), at p. 87, Sara Blake offers these comments on the issue at p. 87:

> All members of the hearing panel should sign the decision to indicate their concurrence or dissent, though not expressly required. One purpose of the signatures is to provide proof that the document is a decision of the tribunal and that each signatory participated in the decision. Another purpose is to disclose the identity of those who participated in a decision so that parties may review it for bias. (See also: *Herman Motor Sales Inc. v. Ontario (Registrar of Motor Vehicle Dealers & Salesman)*, (1980), 29 O.R. (2d) 432 at 435 (Div. Ct.); *R.D.R. Construction Ltd. v. Nova Scotia (Rent Review Commission)*, [1982] N.S.J. No. 546 N.S.R. (2d) 71 at 85 (C.A.) ...)

[68] Contrary to DeMaria's contention, Huber's January 14, 2013 affidavit suggests otherwise. Paragraph 13 explains how the A & e Decision was, in fact, signed by the Committee members:

> 13. A decision was ultimately rendered by the Admissions and Education Committee panel on August 8, 2011 (the "A&E Committee Decision"). The Appellant's Application for Admission was denied. The A&E Committee Decision was signed by each panel member separately as they are all from different cities. I first received the A&E Committee Decision electronically from George Patterson, Q.C. The A&E Committee Decision was provided in Microsoft Word format with blank signature lines. The Law Society requires all decisions be provided in Word format to allow for subsequent publication without retyping the content. When the Word format of the A&E Committee Decision was provided to me, Mr. Patterson simultaneously provided me with a scanned PDF of the final page of the A&E Committee Decision with his signature line completed. Joel Hesje, Q.C. emailed me and his fellow panel members the final page with his signature line completed. Loreley Berra appears to have printed off the signature page sent by Mr. Hesje and signed that page before having it delivered to the Law Society. The content of both signature pages is the same but for an apparent page numbering glitch on the Mr. Patterson's page. The final page of the Word version of the A&E Committee Decision sent to me by Mr. Patterson, is exactly the same as the page signed by Mr. Hesje and Ms. Berra. Attached hereto as **Exhibit "H"** is a copy of the A&E Committee Decision dated August 8, 2011 including signature pages. I had not seen the A&E Committee Decision or any drafts prior to receiving it from Mr. Patterson. I did not know the outcome of the hearing or any details in connection with the A&E Committee Decision prior to the date I received it and signature pages from the panel.

[69] This explanation satisfies me that the A & E Decision rendered by Messrs. Patterson and Hesje and Ms. Berra was in fact signed by each of them, albeit on different dates and by counter-part. The signature process was not fatal. In any event, the decision filed with the Law Society's return in these proceedings, as well as the A & E Decision filed by DeMaria himself in his "Judicial Review Appeal Book" (Vol. 1, p. AB-036), bears the signature of all three decision-makers.

[70] The second aspect to DeMaria's argument lies in the suggestion the Law Society, through its legal counsel, "doctored" the decision before its release. DeMaria supports his theory by pointing to the different page numbering appearing at the top of

each counter-part signature page (Mr. Patterson's version showed page 20 whereas Mr. Hesje's and Ms. Berra's each displayed page 21 at the top), the markedly different file path appearing at the bottom left of each signature page, and the fact the file path on the "final" decision is different from any on the three signature pages. These discrepancies, particularly Huber's involvement, he argues, constitutes a fraud and renders the decision a nullity.

[71] Huber explains what transpired in relation to both the signature pages and file path discrepancies in his January 14, 2013 affidavit:

> 24. I received a Microsoft Word version of the A&E Committee Decision from Mr. Patterson (along with his signature page) on August 9, 2011 at 8:29 AM. The Microsoft Word formatted document that I received contained formatting errors so that quotation marks and apostrophes appeared incorrectly. The Law Society is required to address formatting errors from time to time as a result of decisions being written and provided for publication by third parties (benchers) who are often using different versions of word processing software or different platforms entirely (Corel Word Perfect as opposed to Microsoft Word). ...
>
> 25. I had seen this formatting error on previous occasions in relation to other matters. Based on my experience with this particular error, I held the view that manual correction of the document by our office was the only effective method of correction.
>
> 26. At 9:36 AM, I forwarded the original email received from Mr. Patterson to my assistant asking her to correct the formatting errors. The formatting errors were corrected and my assistant provided me with a corrected and renamed document via email at 10:27 AM. When the corrected document was renamed and saved in on our network, it received the document number (00028276.DOCX) shown on the lower left of each page. I emailed the corrected A&E Committee Decision to Bill Johnson, Q.C. at 10:45 AM, 18 minutes after receiving it from my assistant.
>
> 27. I did not make any substantive changes to the A&E Committee Decision I received from Mr. Patterson beyond asking my assistant to correct the obvious formatting errors (specifically the correction of all misformatted quotation marks and apostrophes illustrated above). The A&E Committee Decision is in every other respect the same decision received

> from Mr. Patterson and signed by the other panel members. So far as I am aware, the A&E Committee Decision (as corrected) and signature pages provided to me by George Patterson, Q.C., Loreley Berra and Joel Hesje Q.C. all pertain to the decision that they themselves wrote and that the same decision was ultimately shared and published in the form they intended (with proper quotation marks and apostrophes).

[72] In response to why the converted .pdf version shows "Tim" as the author, he offers this explanation at para. 29:

> 29. Prior to forwarding the corrected version of the A&E Committee Decision to the web site administrator I converted the document to a PDF format. I did this conversion using a "print to PDF" feature, from my desktop computer. All documents that I convert to PDF format in this manner show me "Tim" as the author of the document. The metadata in connection with the A&E Committee Decision on the Law society web site shows me as the author of the document only because of the fact that I converted the decision from Microsoft Word format to PDF format for online posting. Despite what the metadata indicates, I did not author the A&E Committee Decision. The A&E Committee Decision was authored by George Patterson, Q.C., Joel Hesje, Q.C. and Loreley Berra.

[73] The law provides some leeway for a tribunal to obtain typing, editorial and even legal assistance from persons who are independent from the parties. (*Administrative Law in Canada,* p. 91, *supra*, *Bovbel v. Canada (Minster of Employment and Immigration),* [1994] 2 F.C. 563, 113 D.L.R. (4th) 415 (Fed. C.A.) leave to appeal to Supreme Court of Canada refused [1994] S.C.C.A. No. 186 (QL); *Khan v. College of Physicians and Surgeons of Ontario*, (1992) 94 D.L.R. (4th) 193, 9 O.R. (3d) 641 (Ont. C.A.)). Indeed, even where a tribunal's legal counsel assists in drafting reasons for the decision, a breach of the rules of natural justice will not occur so long as the decision is the product of the thought processes of the decision-makers themselves. (*Wolfrom v. Assn. of Professional Engineers and Geoscientists of the Province of Manitoba*, 2001 MBCA 152, (2001) 206 D.L.R. 4th 147) There are limits to the application of this principle.

"...there comes a point when assistance may go too far and reasons for decision can no longer be said to have been the product of the thought processes of the panel...." (*Wolfrom*, *supra*, para. 23)

[74] Huber's affidavit evidence demonstrates that he exercised a limited administrative or clerical role in directing the correction of formatting errors brought about by use of different versions of word processing software or platforms. Under his direction, these formatting errors were corrected by his assistant and the document subsequently renamed. In this respect, to the extent he was involved, it was merely of a clerical or formatting nature. I am also satisfied the conversion process to .pdf, which resulted in the file path bearing the word "Tim", in no way became his document nor is it proof he altered its contents. In the face of these explanations, I am not satisfied a reasonable inference can be drawn that the document was anything other than the product of the A & E Committee.

[75] All of that said, the aforementioned cases and principles derived from them deal with situations where legal counsel <u>for</u> the tribunal was nominally involved with the final decision. None of these cases deal with a situation involving legal counsel <u>before</u> the tribunal, *i.e.* for one of the parties.

[76] At a minimum, the process engaged upon by the committee, (*i.e.* Mr. Patterson sending the decision directly to Huber prior to obtaining signatures from the other two members, Huber subsequently directing the re-formatting and his conversion to a .pdf version), all raise legitimate concerns about the integrity of the process itself. However, given the explanation provided, I find the A & E Decision was not rendered a nullity by the corrective, re-formatting undertaken by the Law Society. In any event, having regard to the whole of the facts, and in particular the fact DeMaria availed himself of the review

process before the Benchers in relation to the A & E Decision, I am satisfied any deficiency was cured by the subsequent review proceedings and there was no manifest unfairness to the DeMaria's rights.

3. Did the Law Society err by characterizing DeMaria's application as a question of "admission" instead of a question of "discipline"? Was the applicant deprived of his rights to an investigation, to be charged, and to be given notice and disclosure of the case against him?

[77] DeMaria argues the Law Society fundamentally erred by mis-characterizing his situation, process and rights as one of "admissions" instead of one of "discipline". The upshot of this mis-characterization were numerous procedural errors and the breach of natural justice, specifically: i) failure to adhere to and follow the Part IV processes of the Act; ii) failure to provide proper notice, and specifically, failure to adhere to the requirements of Rule 230(4); iii) failure to provide *Stinchcombe* (*R. v. Stinchcombe*, [1995] 1 S.C.R. 754, 96 C.C.C. (3d) 318) disclosure; and iv) shifting the burden of proof by forcing him to disprove allegations of alleged wrongdoing.

[78] DeMaria's core argument (*i.e.*, discipline v. admission) has no merit for the simple reason that he, as the applicant, engaged the admissions process by filing a Form A-8 application for admission as a lawyer. Section 24 of the Act provides broad authority for a person to apply to the Law Society for admission as a member and directs the Law Society to admit that person as a member if the requirements of s. 24(1) are met to the satisfaction of the executive director. Incorporated within the ambit of s. 24 are the administrative requirements or criteria set out in Rule 171:

> 171. (1) To qualify for admission as a lawyer after having enrolled as a student-at-law an applicant must:
>
> (a) satisfy the Executive Director that the applicant will, prior to formal admission, satisfactorily complete the articling period;
>
> (b) satisfy the Executive Director that the applicant:
>
> (i) will, prior to formal admission, satisfactorily complete the Bar Admission Program; or
>
> (ii has satisfactorily completed the examination on Saskatchewan statute law, court procedure and practice.
>
> (c) satisfy the Executive Director that the applicant will, prior to formal admission, satisfactorily complete any other requirements of the Act or Rules imposed by the Committee or the Benchers; and
>
> (d) deliver to the Executive Director:
>
> (i) a completed application for admission as a lawyer in a form approved by the Benchers;
>
> (ii) a completed principal's affidavit or, in the case of a student-at-law who served as a law clerk, a completed affidavit from the supervising Justice, in a form approved by the Benchers;
>
> (iii) in the case of an applicant who has completed the Bar Admission Program, an affidavit of attendance of the Program.
>
> (iv) the lawyer admission application fee fixed by the Benchers under subrule 830(1); and
>
> (v) any other information and documents required by the Act or these Rules which is requested.

[79] Rules 171 and 180 must be read together. Upon receipt of an application for admission, Rule 180 empowers the executive director to make further enquiries or investigations, as considered necessary (Rule 180(1)(a)), and/or to refer the application to a Committee (Rule 180(1)(d)). Its significance bears repeating:

> 180.(1) In considering an application under Rules 171 and 172 the Executive Director:
>
> (a) may make whatever enquiries and investigations considered necessary;

...

(d) refer the application to the Committee.

[80] Ultimately, though, Rule 183 directs the executive director to either grant the application or refer the application to the Committee:

> 183.(1) The Executive Director may grant any application or may refer any application under Rule 171, 172 and 181 to the Committee.
>
> (2) The Committee may, in its discretion, make a decision on a review of the record or conduct a Hearing pursuant to Rule 230.

[81] While the executive director is empowered by Rule 180(1)(a) to undertake "whatever enquiries and investigations considered necessary", he is not mandated to do so and may opt instead, as he did here, to refer the application to the committee responsible for admissions.

[82] In summary, to simply convert the admissions process into a question of discipline with its attendant rights and processes was not an option open to the executive director under the Rules when confronted with Demaria's application for admission.

[83] DeMaria contends s. 59 of the Act mandates the Law Society to apply the Part IV discipline process to him and their refusal to do so resulted in a loss of jurisdiction. I disagree. Section 59 simply says the discipline process set out in Part IV applies to students-at-law in the same manner it does to fully admitted members. It does not direct the Law Society to apply the full rigor of the investigative process to admissions applications simply because the person happens to be a student-at-law.

[84] In the alternative, DeMaria submits that he was not given adequate notice of the hearing nor disclosure of the case to be met and in consequence was denied a fair hearing before the A & E Committee.

[85] In general terms, the duty of fairness and principles of natural justice must be taken into account when a statutory tribunal has the power to make a decision affecting the rights or interests of an individual. Fairness requires that notice be given to all parties who may be affected by a decision to alert them to the interests at stake so they may be positioned to respond. "Fairness requires that the hearing and decision be restricted to the matters set out in the notice. If other matters are to be considered, the notice should be amended and an adjournment may be required." (*Administrative Law in Canada*, *supra,* page 29-30)

[86] Through its Rules, the Law Society has codified both the right to notice and its constituent elements when an admissions hearing is ordered. Rule 230(4) provides:

> 230.(4) When the Committee orders a hearing under this Part, it shall promptly notify the applicant in writing of:
>
> (a) the purpose of the hearing;
>
> (b) the date, time and place of the hearing; and
>
> (c) the circumstances to be enquired into at the hearing.

[87] Consistent with the requirements contained in Rule 230(4), the Chairperson of the hearing committee provided written notice to DeMaria on August 18, 2010 advising him of the date, time and place of the hearing, and of its general purpose. Plainly, this document was deficient inasmuch as it failed to address "the circumstances to be enquired into at the hearing". (Rule 230(4)(c))

[88] Rule 230(4)(c) does not, however, mandate that all constituent elements of the rule be embodied in a singular document. In this regard, compliance with the formal notice requirement must be considered in light of other correspondence and disclosure exchanged between the parties leading up to the hearing, including:

- memorandum of August 6, 2010 from Tom Schonhoffer, Q.C. to the A & E Committee, with copy to DeMaria's legal counsel, where issues of integrity and allegations of intimidation, fraud and assault were flagged .

- email of August 30, 2010 from Huber to DeMaria's legal counsel to inform him of the Law Society's position on DeMaria's application for admission.

> ... Essentially, the primary concern is that Daniel has not exhibited good character in his conduct surrounding the CPLED course and ultimately this proceeding. ... What I intend to focus on is Daniel's treatment of Louis throughout articles, and specifically in January 2009 .... Daniel's conduct *vis-à-vis* Nicholas and Chris is also consistent with the criminal code definition of obstruction of justice. Daniel's conduct generally also appears to violate portions of Chapter IX of the Code of Professional Conduct, not to mention the Oath of Office that he would have to swear if he was admitted which includes a promise not to promote suits upon

> frivolous pretenses. The areas that I intend to canvass are set out in the cansay statements that I have shared.
> ...

- disclosure of "can say" statements from each of the witnesses intended to be called as witnesses by the Law Society.

- disclosure of a draft statement of claim purportedly prepared by DeMaria in relation to proposed proceedings in the state of New York which had come to the attention of the Law Society in the summer of 2010. The draft claim names the applicant as plaintiff and various members of the Saskatchewan legal profession with whom the applicant had been involved, including Huber, as defendants.

[89] DeMaria submits the "can says" and disclosure fell well short of the evidence actually presented by the Law Society at the hearing.

[90] I am satisfied the can say statements sufficiently identified the nature of the evidence lead by the Law Society through its three witnesses. Although it was merely in outline form and lacked factual particulars, the law does not require a higher degree of precision particularly in admissions cases where the applicant bears the onus. Viewed in this context, I find the Law Society's concerns regarding DeMaria's character were flagged in the can say statements and related documents.

[91] Even if disclosure was deficient in some respect, I find the deficiency was cured by the manner in which the hearing itself proceeded. DeMaria was allowed to split his case over the course of the three hearing days interspersed with long periods of adjournments. Specifically, DeMaria put in his evidence on December 17, 2010 followed by the Law Society's case a month later on January 17, 2011. The applicant was permitted to give rebuttal evidence on January 17th and again on April 13th when the hearing resumed. DeMaria took advantage of this opportunity by shoring up his case with additional letters of reference, documentary evidence and confirmation he had taken an internet ethics course.

[92] The law recognizes the obligation for fulsome disclosure in discipline cases because of the potential for loss of livelihood and an unfair stain on a professional person's reputation. The scope of disclosure in these types of cases is said to be this:

> ... In professional discipline, factual particulars should be described in the notice of hearing or in a supplementary document. Both the client and the specific misconduct should be identified. However, a notice should not read like an Information in a criminal proceeding. How detailed it should be depends on the complexity and seriousness of the case. ...
>
> (*Administrative Law in Canada, supra,* at p. 40)

[93] As the learned author goes on to observe, shortcomings in disclosure are not necessarily fatal and can be cured.

> ... A failure to provide details in the notice of hearing can be cured by full disclosure of the evidence to be filed at the hearing. The tribunal is not restricted to considering only the facts alleged in the notice of hearing, but should make its decision in light of all of the facts adduced at the hearing. The notice is merely an outline of the alleged facts.
>
> (*Administrative Law in Canada, supra,* at pps. 40-41)

[94] I am satisfied by the evidence that proper notice was given and that DeMaria received the disclosure required by law. Even though he may not have known precisely what the Law Society witnesses testified to, he knew the case he had to meet prior to the hearing. Moreover, even if disclosure fell short in some respects when the hearing first proceeded, the fact he was allowed to split his case and call rebuttal evidence not once but twice, coupled with the lengthy adjournments interspersed between hearing dates gave him sufficient time to review the information presented and prepare a response.

4. Whether the burden of proving conduct unbecoming was on the Law Society? Did the A & E Committee improperly shift the onus of proving good character to the applicant?

[95] In matters of discipline, it is well understood that, based on cogent evidence of convincing weight, the Law Society bears the burden of proving the charges. (*Lawyers & Ethics*, *supra*, p. 23-14, 23-15). It is also established law that in the absence of legislation to the contrary, the onus of proof in admissions applications is borne by the person seeking admission to membership. "In admission hearings, the burden of proof is on applicants, who are required to show on a balance of probabilities that they are of good character as of the date of the hearing". (*Lawyers & Ethics*, *supra*, p. 23-14; see also: *Preyra v. Law Society of Upper Canada*, [2000] L.S.D.D. No.60 (QL); *Joshi v. British Columbia Veterinary Medical Assn.*, 2010 BCCA 129, 3 B.C.L.R. (5th) 269)

[96] Part 7 of the Rules governs the "Admissions" process, with Rules 230 and 240 thereof directly touching upon Admissions & Education Committee hearings. Rule 230(13) affirms the referenced common law approach to onus:

> 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.

[97] DeMaria argues the onus contemplated by Rule 230(13) is confined to his obligation to satisfy the administrative requirements and criteria for admission but where good character is in issue, the onus is reversed. According to the applicant, the A & E Committee inappropriately placed the onus on him to disprove unproven, non-specific, speculative and conclusory allegations of misconduct made against him.

[98] The Ontario decision of *Birman v. Law Society of Upper Canada*, 2005 ONLHP 6, [2005] L.S.D.D. No. 13 (QL) upon which DeMaria relies, considered onus in an admissions context when confronted with numerous allegations of sexual misconduct. *Birman* suggests that where the alleged misconduct of a criminal nature lies at the root of the good character issue, the onus shifts to the Law Society to prove the alleged misconduct to the requisite degree of proof. Further, in the ordinary course where a Law Society's opposition to the application is entirely based upon unproven allegations of misconduct, *Birman* suggests the applicant's present good character must be presumed. (para. 9)

[99] Care must be taken not to overstate or mis-apply the principle espoused in *Birman*. Not only does the *Birman* approach run contrary to the onus prescribed by Rule 230(13), it recognizes the prospect that other relevant evidence will inform the decision. As the *Birman* decision goes on to observe at para 10:

> 10 Here, in the course of the hearing, the Society raised other conduct of the applicant associated with his articling position at Lowndes & Harrison that the Society alleged was also relevant to the applicant's present character.

> In our view, the broad-ranging inquiry implicit in a determination of whether an applicant is presently of good character permitted the Society to explore conduct other than that which prompted the inquiry at first instance, as long as the applicant was provided with a full and fair opportunity to address these matters. There was no suggestion advanced by very capable counsel on behalf of the applicant, Ms. Liva, that there was any procedural unfairness or prejudice to the applicant in having to deal with this other conduct. The applicant and his counsel were able to address and, indeed, lead evidence on this conduct.

[100] As discussed above, the Committee's assessment of good character turned on four key reasons along with DeMaria's lack of remorse for prior actions. (A&E Decision, paras. 42-46) Apart from the comments which follow, none of these reasons were premised on misconduct of a criminal or quasi-criminal nature, and all formed part of the tapestry of evidence relevant to the applicant's good character.

[101] The broadly stated concern expressed in para. 42 – a perceived propensity to abuse the legal system – arguably merits closer scrutiny because of this sentence: "There is evidence of obstruction of justice in attempts to intimidate witnesses." The "obstruction of justice" language overstates the findings made by the Committee, in my view. The Committee heard and accepted evidence of threats to commence legal action or report fellow students and associates to criminal or civil authorities. In fact, in the evidence before it the Committee found that DeMaria had continued with intimidating and abusive behavior by naming the Law Society's legal counsel and other Law Society members in a draft racketeering claim intended to be filed in the United States. The Committee found this to be an outright attempt to intimidate.

[102] Intimidation of colleagues and Law Society staff is a significant issue in and of itself and in my view clearly puts into issue DeMaria's character. Those findings stand

on their own and it was unnecessary for the Law Society to prove actual "obstruction of justice" on a balance of probabilities. Although that sentence was ill-advised, it did not invoke a shifting of the burden otherwise imposed by Rule 230(13).

[103] In any event, and as previously noted, the A & E Decision did not stand on "misconduct" reasons alone. The Committee also expressed concern for the applicant's lack of integrity, lack of civility, inability to control temper, inability to change behaviour following the imposing of earlier sanctions and a palpable lack of remorse or need for rehabilitative measures. (paras. 42-24)

5. *Did the A & E Committee err by disregarding letters of exemplary conduct, and in accepting as credible the evidence of the Law Society witnesses?*

[104] DeMaria tendered thirty letters of reference from fellow students, other lawyers, former teachers and employees with his law firm. These letters speak positively to DeMaria's professionalism, civility, dedication, legal abilities, courtesy to opposing counsel, and work ethic. The Committee accorded little weight to these letters essentially for three reasons. First, some were merely *pro forma* letters provided to the writers "some of whom amended them before submitting, others did not". Second, not all of the writers were aware of the "gravamen" of the hearing. And finally, s. 24 of the Act, as amended, had dispensed with the requirement to file testimonials. (A & E Decision, para. 24)

[105] When proceedings resumed on the final day of hearing, DeMaria was permitted to file further letters of reference speaking to his good character. The Committee declined to give these letters much weight because the applicant had failed to produce these individuals as witnesses so their evidence could be tested under cross-examination.

[106] DeMaria contends the Committee erred by disregarding the favorable evidence adduced in the tendered letters "in favor of dubious and unreliable testimony, by self-interested witnesses who were each fearful of the Law Society". (Brief of Law, para. 90)

[107] With regard to the evidence of these witnesses, the Committee concluded:

> 49. ...
>
> (c) The Committee is cognizant of the "he said, she said" nature of some of the evidence adduced, however, where that evidence was conflicting we find the evidence of the three members called by the LSS more compelling. We do not characterize the Applicant's actions since the CPLED Violation Decision to be mere immaturity. We view it instead as lack of character as defined herein.

[108] There is limited scope to interfere with findings of fact, credibility and weight assigned to the evidence on judicial review.

> Today, findings of fact are reviewed by the deferential standard of reasonableness on an application for judicial review, other than where the standard is prescribed by legislation and apart from review for errors in the fact-finding *process*. This standard, or the more deferential one of patent unreasonableness, had been applied by reviewing courts for a number of years prior to *Dunsmuir*. Although the Court in *Dunsmuir* collapsed the two degrees of reasonableness into one, it affirmed that deference is to be accorded to findings of fact. Accordingly, as before, only those findings that

> are not logically or rationally explained or not plausible given the evidence, will be subject to review and correction. Moreover, as before, it will continue to be difficult not to accept findings based on credibility. [footnotes omitted]
>
> (Donald J. M. Brown and John M. Evans *Judicial Review of Administrative Action in Canada*, looseleaf, (Toronto:Canvasback, 2012) vol. 3, p. 14-50)

[109] Similarly, in *Administrative Law in Canada*, *supra*, the learned author expresses the same opinion. At p. 213 she says:

> Findings of fact are reviewable only if patently unreasonable. An unreasonable finding of fact is one that is not supported by any evidence. A court will not review the evidence considered by the tribunal to determine whether there was sufficient evidence to support a finding of fact. A court will go no further than to determine whether there was any evidence, and only essential findings of fact upon which the decision of the tribunal turns will be reviewed in this manner. Non-essential findings of fact are not reviewable. [footnotes omitted]

[110] As regards matters of credibility and weight, Blake goes on to comment:

> It is rare for a court to set aside a finding on credibility, because the tribunal, having heard the witnesses, was in the best position to assess credibility. [footnotes omitted]
>
> The weight given to evidence is reviewable only if patently unreasonable. The choice as to which evidence is important and the weight given to each item of evidence is based, in part, on the tribunal's expertise. The failure to mention an item of evidence in the tribunal's reasons is not proof of a failure to consider it but only proof that the tribunal did not regard it as being of sufficient importance as to require mention." [footnotes omitted]

[111] The applicant submits the evidence of the Law Society's three witnesses lacks credibility, should have been accorded little, if any, weight and, in any event, failed to

meet the burden of demonstrating misconduct. DeMaria characterizes their testimony as speculative, inconsistent, non-specific, and full of conclusory allegations of wrongdoing. Viewed at its worst, he claims it to be riddled with fabricated incidents, obvious contradictions and lies. One witness is said to have a propensity for violence and anger management issues. He claims their version of events was offered without supporting evidence.

[112] DeMaria's brief of law contains excerpts from transcripts of conversations which allegedly occurred between himself and the witnesses. I am asked to disregard the witnesses testimony against the content of these transcripts and having regard to inconsistencies in testimony and personal attacks levelled against them in his brief of law.

[113] The Law Society submits the evidence proffered by its witnesses was sufficient to justify the findings of fact and conclusions derived from those facts, and that it was positioned to filter the evidence against the recognized hallmarks of "good character" in order to support the conclusion it came to. Based on the evidence which it did accept, the Committee concluded DeMaria had shown a repeated propensity to abuse the legal system (para. 42), a demonstrated dishonesty towards colleagues, a lack of integrity on his part (para. 43), an inability to control his temper and marked lack of civility towards fellow articling students (para. 44), and an inability to appreciably change behavior subsequent to the sanctions imposed by the earlier Violation Hearing Committee. (para. 45)

[114] There is nothing to suggest the Committee erred in its assessment of credibility. As with all *viva voce* hearings, the decision-maker is better placed than a reviewing court to consider the evidence, assign appropriate weight and assess the

credibility of witnesses. For this reason, deference in such matters is typically owed to the decision-maker. Moreover, in these proceedings it would be improper for a reviewing court to simply accept a different version of the evidence or an after the fact critique of their testimony.

[115] With regard to the issue of the testimonial letters, a self governing body is not obliged to simply accept an applicant's evidence of good character tendered in the form of testimonial letters over *viva voce* evidence to the contrary. (*Joshi v. British Columbia Veterinary Medical Assn., supra*) I find the Committee did not err in attaching little weight to these letters.

6. Was the fairness of the hearing compromised by a reasonable apprehension of bias?

[116] The applicant maintains the actions of the chairperson of the A & E Committee, George Patterson, were biased or give rise to a reasonable apprehension of bias. The particulars of the alleged bias are these: i) failure to ensure the applicant received notice of hearing in accordance with the Rule 230(4) requirements; ii) ignoring the effect of amendments to s. 24 of Act; and iii) improper *ex parte* contact with Huber prior to rendering the decision.

[117] The first two allegations have already been addressed and will not be reformulated under the guise of bias. The last expression of concern - an alleged *ex parte* discussion - flows out of an email from Mr. Patterson to Huber of August 9, 2011. To place this in context, in his capacity as Chair of the A & E Committee, Mr. Patterson

electronically forwarded the A & E Decision and his .pdf signature page to Huber by email with two attachments. The email concludes with this remark:

> "Do you want my copies of the transcripts. I could bring them to Elk Ridge in Sept. ...Is anyone going to golf up there? Cheers GWP"

[118] A central component of the duty of fairness requires tribunal members to discharge their adjudicative functions with independence and impartiality. The latter embraces concepts of bias and reasonable apprehension of bias. (*Judicial Review of Administrative Action in Canada*, *supra*, p. 11-1) This principle is grounded in the need to ensure that statutory decision- makers base their decisions on the evidence adduced and applicable law, and are not subject to improper influences, considerations or predispositions. The decision-maker must not only be neutral, but must be seen to be neutral.

[119] The following passage succinctly describes the applicable test for bias:

> The test is the same for independence and impartiality. Would a reasonable person, knowing the facts, believe that the member may be influenced by improper considerations to favour one side? A reasonable apprehension is one held by a well-informed member of the public who is familiar with the decision-making process that governs the tribunal and the facts relevant to the alleged bias. The test is not actual bias because it is difficult to prove the actual state of mind of an individual. Proof of a reasonable apprehension of bias is sufficient. [footnotes omitted]
>
> (*Administrative Law in Canada*, *supra*, p. 101)

[120] One can readily see how Mr. Patterson's closing inquiry about golf might convey the impression he and Huber were on friendly terms, and perhaps more

importantly, the perception on Mr. Patterson's part that Huber's role somehow transformed from counsel before the Committee to counsel for the Committee. However, the facts surrounding this email must be considered against the applicable test for bias. To place the email in context, its purpose was to electronically convey the final A & E Decision to the Law Society subject to receipt of counter-part signatures from the two other Committee members. In Mr. Patterson's mind, the decision was final subject only to receipt of the counter-part signatures. Viewed in this context, I am not persuaded that an informed person familiar with this decision-making process would conclude that the outcome of this decision could be influenced by Mr. Patterson's inquiry about golf at an upcoming Benchers' meeting.

BENCHERS' REVIEW DECISION

[121] The applicant's notice of motion also seeks to set aside the Benchers' Decision on 10 separate grounds. In a similar vein, arguments were reduced down to these four core grounds of challenge:

1. Did the Benchers err by applying the wrong standard of review in sitting in review of the A & E Decision?

2. Did the Benchers err in failing to admonish counsel for making false representations and for relying on demonstrably false representations?

3. Did the Benchers lack quorum and therefore act without jurisdiction?

4. Did the Benchers fail to render a decision within 45 days and if so, is it a nullity?

5. Was the fairness of the hearing compromised by a reasonable apprehension of bias?

[122] I will deal with each argument in turn.

I. Did the Benchers err by applying the wrong standard of review in sitting in review of the A & E Decision?

[123] DeMaria submits the Benchers applied the incorrect standard of reasonableness to its consideration of the A & E Decision when it should have been assessed on the basis of correctness. He relies upon the following decisions in support of this proposition: *Law Society of British Columbia v. Dobbin*, 1999 LSBC 27, [2000] L.S.D.D. No. 12, (QL) at para. 12; *Law Society of British Columbia v. Martin*, 2007 LSBC 20, [2007] L.S.D.D. No. 170 (QL) at para. 14; *Law Society of British Columbia v. Berge*, 2007 LSBC 7, [2007] L.S.D.D. No. 153 (QL) at para. 19.

[124] The hearing transcript shows the Benchers were alive to the "standard of review" issue. Beginning at para. 20 of their decision, they recount discussion of this issue in a case management meeting convened on December 9, 2011. The Benchers then proceeded to consider the legislative context, nature of the decision as well as applicable jurisprudence in arriving at this conclusion:

> 29. For the purposes of this review, and on the basis of the submission of both Mr. Huber and the Applicant, the Benchers have applied the standard

> of review advanced by counsel, namely, a reasonableness standard on questions of matters of fact and/or mixed fact and law; and a correctness standard on questions of law. On review the error must be evident and shown to have affected the result of the decision as a whole. The party seeking review bears the onus throughout. In this case, the burden rests on the Applicant.

[125] The fact the parties had actually agreed upon the appropriate standard of review did not go unnoticed. At para. 24 the Benchers comment:

> 24. Mr. Huber and the Applicant agreed at the hearing that the standard of review should be one of reasonableness with respect to findings of fact or mixed fact and law, and correctness with respect to questions of law" (emphasis added)

[126] DeMaria was given fair warning this issue would be addressed at the outset of the hearing and given every opportunity to advance his position both in argument and through written submission. He chose not to do so and in any event, as noted above, he had agreed upon the appropriate standard of review before the Benchers.

[127] Given the position taken by DeMaria before the Benchers, I see no error of law on the part of the Benchers in proceeding as they did.

2. Did the Benchers err in failing to admonish counsel for making false representations and for relying on demonstrably false representations?

[128] DeMaria contends the Benchers' erred in not only failing to admonish Huber for alleged misrepresentations contained in his legal brief but in reliance upon those representations in rendering their decision.

[129] The impugned representations before the A & E Committee consisted of the following:

i) that DeMaria had received full disclosure of evidence in the Law Society's possession prior to the Admissions and Education hearing ("A & E hearing");

ii) that the can-say statements of Law Society witnesses provided to DeMaria set out the purported testimony of those witnesses;

iii) that the five month adjournment of the A & E hearing coupled with DeMaria's right to split his case provided a meaningful right of rebuttal and sufficient time to adjust for any unanticipated evidence adduced by the Law Society.

[130] There are two threads to this line of argument - procedural and substantive. DeMaria submits both give rise to an error of law on the part of the Benchers. As the underlying substance to Huber's so-called misrepresentations have been addressed above, I will limit consideration to whether the Benchers erred in failing to admonish Huber for taking the position he did in his written material.

[131] There are several reasons why the "failure to admonish" argument cannot succeed quite apart from the fact it is the Benchers' Decision which is subject to scrutiny in judicial review proceedings, not the submissions of the Law Society's counsel.

[132] First, apart from the proposition these submissions were not wrong in either law or fact, there is nothing to suggest Huber's submission resulted in DeMaria being treated unfairly. DeMaria was not constrained in his submissions to the Benchers. It was open to him to advance alternate legal positions to the issues at hand, to accentuate different facts or even provide a different slant on the facts. Both parties were entitled to and did in fact advance their respective views on these legal issues before the Benchers.

[133] Second, Law Society legal counsel was entitled to advance legal argument before the tribunal provided, of course, he did not intentionally mislead the decision-makers. As noted, many of the so-called misrepresentations are simply different positions taken on points of law (i.e. sufficiency of disclosure). The fact Huber was in-house legal counsel to the Law Society, is in my view, irrelevant. His assigned role was to appear before the A & E Committee (and subsequently the Benchers), not as an independent, impartial party nor as counsel to the Committee. He did nothing wrong.

[134] Third, it is not incumbent upon nor necessary for a decision-maker to admonish counsel in rendering a decision even if counsel's behavior justifies reprobation. Decisions must be rendered based on the law properly applied to the facts.

3. Did the Benchers lack quorum and therefore act without jurisdiction?

[135] DeMaria argues the Benchers lacked quorum and their decision is therefore a nullity. His argument is two-fold. First, he contends the hearing began improperly with 11 Benchers when 12 were required. Second, the Benchers' hearing concluded without quorum as evidenced by the fact the only signatory to the July 11, 2012 decision was that of the Chairperson, Paul Korpan.

[136] DeMaria submits s. 18(2)(b) of *The Interpretation Act, 1995*, S.S. 1995, c. I-11.2, confirmed by the Saskatchewan Court of Appeal in *Welsh v. Law Society of Saskatchewan*, [1997] 3 W.W.R. 532, 152 Sask. R. 127 (Sask. C.A.), dictates that twelve Benchers were required in order to meet the quorum requirement. It follows, he submits, that their decision to commence and proceed with the hearing in the absence of a quorum renders the July 11, 2012 decision a nullity. (See: *Amalgamated Transit Union, Local 1374 v. Saskatchewan Transportation Co.*, 2001 SKQB 374, 210 Sask. R. 46; *Sterling Crane v. International Assoc. of Bridge, Stone, Structural and Ornamental Iron Workers, Local 771*, (1992) 106 Sask. R. 239, [1992] S. J. No. 497 (QL) (Sask. Q.B.); *B. C. Government Employees Union v. Public Service Commission*, (1979) 10 B.C.L.R. 87, 96 D.L.R. (3d) 86 (B.C.S.C.))

[137] The quorum requirement cannot be excused or waived by the parties. (*Connor v. Law Society of British Columbia*, [1980] 4 W.W.R. 638, [1980] B.C.J. No. 1394 (QL) (BCSC); *Dennis v. Adams Lake Band*, 2010 FC 62, [2010] F.C.J. No. 56 (QL)).

(a) Lack of Quorum at Commencement of Proceedings

[138] Quorum establishes the minimum number of members of an administrative tribunal who are required to make a decision. It is trite law that a hearing determined by fewer than the specified number is invalid and the decision is void. It is also well understood that a lack of quorum cannot be waived by the parties.

[139] It is common ground that the Benchers' Review hearing proceeded with the Chairperson plus 10 Benchers, or 11 in total. The transcript shows that at the

commencement of the review hearing, each Bencher identified themselves for the record. DeMaria's lack of objection to jurisdiction or constitution is also confirmed on the record. (Transcript, pps. 1-4)

[140] Part 5 of the Rules deals with Benchers Meetings, with Rule 92(3) thereof addressing quorum. It provides:

> 92(3) At a meeting of the Benchers, 10 Benchers present at the meeting constitute a quorum.

[141] I am urged by DeMaria to ignore Rule 92(3) and instead utilize the general interpretive aids set out in *The Interpretation Act, 1995* for purposes of determining Benchers' quorum. Section 18, which addresses quorum, provides:

> 18(2) Where a board is established by or pursuant to an enactment:
>
> ...
>
> (b) if the number of members of the board is not a fixed number, at least one-half of the number of members in office is a quorum at a meeting of the board;

[142] DeMaria submits the Saskatchewan Court of Appeal decision in *Welsh v. Law Society (Saskatchewan)*, [1997] 3 W.W.R. 532, 52 Sask. R. 127 (Sask. C.A.), stands for the proposition that Law Society quorum must be calculated with reference to s. 18(2)(b) of *The Interpretation Act, 1995*.

[143] In my respectful opinion, the *Welsh* case is distinguishable from the within matter and ought not be literally applied. *Welsh*, a case primarily concerned with whether

ex-officio benchers should be included in the calculation of quorum, reached the conclusion it did without apparent consideration for *The Interpretation Act, 1995.*

[144] Section 3(1) of that Act is directly relevant to this issue. It provides:

> 3(1) This Act applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or the enactment. [emphasis added]

[145] The word "enactment" employed in s. 3(1) refers to an Act or regulation with the latter defined by s. 2 to mean "a regulation, order, rule, rule of court....". Based on these definitions, I am satisfied the Law Society Rules constitute a "regulation" as defined by *The Interpretation Act, 1995*, and thus an "enactment" for purposes of s. 3(1). Having found the definitions have been met, consideration turns to whether s. 3(1) should be applied to the circumstances.

[146] The intent of s. 3(1) is clear: the operation of *The Interpretation Act, 1995* is ousted and rendered inapplicable where a contrary intent appears in the operative Act or enactment. As the Law Society puts it, the general provisions contained in s. 18 of *The Interpretation Act, 1995* must yield to the manner in which the Law Society specifically addressed and determined quorum in Rule 92(3). I agree. I am satisfied Rule 92(3), which could not be more clear and direct, expresses a contrary intent with regard to how quorum is calculated for Benchers' meetings. Quorum is 10 Benchers.

[147] Having proceeded with 11 Benchers when the stipulated quorum is 10, the Benchers had the necessary quorum. The lack of quorum argument must therefore fail.

(b) Loss of Quorum

[148] As a secondary argument, DeMaria submits the Benchers ended their deliberations with a quorum of one *i.e.* the Chairperson, and thereby lost jurisdiction. He submits, this result is evidenced by the fact: 1) the July 11, 2012 decision was signed by Mr. Korpan alone; and 2) regardless of a singular signature, the names of Benchers who participated in the decision is noticeably absent from the decision itself.

[149] As discussed in relation to the A & E Decision, as a matter of good practice, all members of a hearing panel should sign the decision. The rationale is twofold: to provide proof the document represents the decision of the tribunal, and to disclose the identity of the decision-makers.

[150] There is nothing in the Rules or in the Act requiring a decision to be signed by each Bencher who participated in it. Having said that, and as a matter of good practice for the reasons expressed above, all members who participate in a hearing should sign the decision. Mere failure to sign does not make the decision legally flawed. (*Administrative Law in Canada*, *supra*, p. 87; *Herman Brothers, supra*)

[151] In any event, I am satisfied the wording of the July 11, 2012 decision reflects the unanimous decision of the Benchers who heard the review. The style of cause indicates it to be a "Decision of the Benchers on Review of the Admissions and Education Committee dated August 8th, 2011 in the Matter of the Application of Daniel DeMaria for Admission as a Lawyer". The concluding paragraph (81) states "For these reasons, the Benchers find no basis to interfere with the Decision of the Hearing Committee."

[emphasis added] When reviewed in this context, and having regard to the transcript, I am satisfied the July 11, 2012 decision bearing only the Chairperson's signature represents the unanimous decision of the Benchers who heard the review.

4. Did the Benchers fail to render a decision within 45 days and, if so, is it a nullity?

[152] DeMaria submits s. 53(1) of the Act required the Benchers to render their decision within 45 days from the date of hearing. As the decision was rendered a full seven months after the December 11, 2011 hearing date, he submits the Benchers exceeded the mandated time line and the decision is therefore a nullity.

[153] This argument is easily resolved by statutory interpretation. Section 53 falls under Part IV of the Act - Competence and Discipline. The "hearing" referenced in s. 53 (to which the 45 day mandatory time line applies) is a hearing on a discipline matter flowing out of a recommendation from an investigation committee (s. 47). Pursuant to s. 42 of the Act, the subject matter of the discipline hearing can be either a complaint (s. 40), an ethics referral (s. 40.1), or an investigation by the professional standards committee (s. 41).

[154] There is nothing in s. 53 or in the sections which precede it which connect the prescriptive requirements of s. 53 to an admissions hearing undertaken by the A & E Committee or a review by the Benchers under s. 24(3). This conclusion is reinforced by the definition of "hearing committee" as one appointed pursuant to s. 47 of the Act, i.e. a hearing flowing out of the discipline process described above.

5. *Was the fairness of the hearing compromised by a reasonable apprehension of bias?*

[155] As previously discussed, DeMaria submits that fairness of the hearing at both levels was compromised by a reasonable apprehension of bias in relation to the actions of several tribunal members. Four instances of bias are alleged in relation to the Benchers' hearing.

[156] The first concerns the alleged improper fraternization between Huber and the Benchers' Review Committee when Huber was seen having breakfast with several Benchers immediately preceding the review hearing. Fraternization is also alleged to have occurred following the hearing when Huber remained in the hearing room for a prolonged period of time after conclusion of the hearing. DeMaria describes these two events in his November 30, 2012 affidavit:

> 11. My appeal to the benchers which is now the subject of this judicial review took place on December 9th, 2012, in the Salon Batoche Room (the "Hearing Room") at the Bessborough Hotel in Saskatoon. I arrived to the Hearing Room approximately 15 minutes before the hearing began. When I arrived I saw Mr. Huber having breakfast with the benchers in the Hearing Room.
>
> 12. The appeal was adjourned at approximately 2:30p.m. and the benchers indicated that they would be reserving their decision. Immediately thereafter I packed my computer and materials and left the Hearing Room. As I expected Mr. Huber to leave the Hearing Room right behind me I did not close the door. After leaving the Hearing Room, I spent approximately 10 minutes in the hallway outside the Hearing Room so that I could ask Mr. Huber when he thought the benchers would be releasing their decision. After waiting ten minutes, and not knowing how long Mr. Huber would be, I left because I had to return a rental car in Regina by 5 or 6 p.m. and I did not want to be late. I could not see or hear what was happening in the Hearing Room while I was waiting in the hallway.

[157] Turning to the post-hearing activity, this Court is asked to draw a negative inference from the fact Huber did not immediately leave the hearing room at the conclusion of proceedings. DeMaria offers no direct evidence Huber spoke to or approached the Benchers following the hearing. Paragraph 12 simply indicates that Huber failed to leave the hearing room for at least 10 minutes after DeMaria departed. He had no visual contact with Huber. The affidavit does not indicate if any *ex parte* discussion occurred nor if Huber remained beyond 10 minutes.

[158] The applicant has brought to my attention the decision of this Court in *United Enterprises Ltd. v. Saskatchewan (Liquor and Gaming Licensing Commission)*, [1997] 3 W.W.R. 497, 150 Sask. R. 119 (Sask. Q.B.). This case is easily distinguishable on its facts. In finding a reasonable apprehension of bias in that case, the court alluded to multiple, flagrant instances of fraternization. I am satisfied that in relation to the two examples of fraternization, a reasonably informed bystander would not perceive bias based on these two incidents alone.

[159] The onus is on the applicant to establish bias or a reasonable apprehension of bias. The evidence set out in paras. 11 and 12 falls far short of meeting that onus.

[160] The applicant also makes numerous allegations of bias against the Chairperson, Mr. Korpan, specifically: i) proceeding without quorum; ii) pressuring the applicant to withdraw his objection in relation to Huber's appearance before the Review Committee; iii) failure of other members to sign the Benchers' decision; and iv) a seven month delay in rendering a decision.

[161] Aside from issue ii), the specific allegations of bias aimed at Mr. Korpan are not "bias" issues *per se*, but a mere repetition of previous grounds of attack (i.e. jurisdiction, procedural error, etc). All have been fully addressed within the context of arguments advanced and none give rise to the suggestion of impartiality.

[162] This leaves the contention Mr. Korpan was biased because he pressured the applicant to stand down on the issue of Huber's participation before the review panel.

[163] The scope of the participatory rights of the Law Society has already been dealt with on a substantive basis in relation to standing and will not be re-hashed except to say the unique regulatory structure and prevailing jurisprudence did not place Huber off-side before the Benchers and does not restrict the Law Society's participatory rights on judicial review. Even if I am wrong, a review of the transcripts from the case management meeting on October 17, 2011 leading up to the hearing does not bear out his complaint of undue pressure.

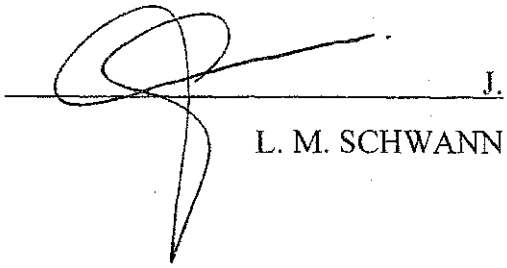
[164] It is apparent from an objective reading of the transcript that no pressure was exerted upon DeMaria to withdraw his objection. It was a strategic choice on his part to back down from this argument and it in no way amounts to bias.

[165] Similarly, I am not satisfied the allegations of bias aimed at Tom Campbell and Peter Hryhorchuk meet the requisite test. Simply having Huber as a Facebook friend falls far short of meeting the threshold.

CONCLUSION

[166] For the reasons given, the decision of the A & E Committee fell within a range of reasonable outcomes having regard to the whole of the evidence and the credibility of the witnesses. The A & E Committee did not err in concluding that the applicant had not met the onus of proving good character and therefore their decision to deny admission to the Law Society was a reasonable one. On matters of law, both the A & E Committee and the Benchers were correct.

[167] The application for *certiorai* to quash the Law Society's A & E Decision of August 8, 2011 and the Benchers' Review decision of July 11, 2012 is dismissed. As the applicant did not prevail in his application to quash, he has necessarily failed to establish a *prima facie* case sufficient to support the injunctive relief sought. His application for an injunction must also stand dismissed.



J.

L. M. SCHWANN