

IN THE MATTER OF *THE LEGAL PROFESSIONS ACT*, 1990
AND AN APPLICATION FOR ADMISSION AS A LAWYER
BY LOUIS MERCIER

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

A. INTRODUCTION

1. The Applicant, Mr. Louis Mercier, comes before the Admissions and Education Committee (the Committee) to seek admission to The Law Society of Saskatchewan (LSS) as a lawyer. The Committee, in first instance, reviewed the written application and other documents and directed that a hearing be held pursuant to Rule 230 of the Rules of the LSS (the Rules). The Applicant has fulfilled the usual requirements of a 12 month articling period and the successful completion of the Bar Admission Course (CPLED Program). However, given the context of the Applicant's previous history of cheating during the CPLED Program, a hearing was held to determine whether he met the other requirements of admission found in Rules 171 and 180, and particularly whether his admission would be inimical to the best interests of the public or the members or would otherwise harm the standing of the legal profession generally. Woven within this test is the question of the good character of the Applicant.

B. THE STATUTORY AND RULES CONTEXT

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

Section 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...
- (d) complies with the rules; and
- (e) fulfills any other requirements that the benchers may prescribe.

Section 24(3) A person whose application for admission pursuant to this section as a member is refused:

- (a) may request the benchers to review the application; and
- (b) has the right to appear before the benchers in support of the application.

3. The Rules, with respect to this application are:

171(1) To qualify for admission as a lawyer after having enrolled as a student-at-law an applicant must: . . .

- (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:
 - ...
 - (v) any other information and documents required by the Act or these Rules which is requested...

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;

...

(d) 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.

4. In this case a Hearing was conducted. A decision of the Committee which recommends refusal of an application may be sent to the Benchers under Section 24(3) of the Act for a review.

C. THE COMMON LAW OF GOOD CHARACTER

5. Both counsel referenced the decision of *Thibaudeau v. Law Society of Upper Canada* (2010) ONLSHP 0060, dated June 18, 2010 and *Birman v. Law Society of Upper Canada* (2006) 0032. In the later case it was stated:

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

- (a) the nature and duration of the misconduct;
- (b) whether the applicant is remorseful;
- (c) what rehabilitative efforts, if any, have been taken, and the success of such efforts; and
- (d) the applicant's conduct since the proven misconduct.

6. In *Thibaudeau*, supra, it was also stated:

The onus is on the Applicant to prove that he is of good character at the time of the hearing of the application. The standard of proof is the balance of probabilities. The relevant test is not whether there is too great a risk of future abuse by the Applicant of the public trust, but whether the Applicant has established his good character at the time of the hearing on a balance of probabilities. The test does not require perfection or certainty. The Applicant need not provide a warranty or assurance that he will never again breach the public trust. The issue is his character today, not the risk of re-offending.

7. Further in *Thibaudeau* references are made to other decisions and authorities and quoted as follows:

...character is that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which undoubtedly include, among others, integrity, candour, empathy and honesty.

D. THE FACTS

8. The Applicant received his common law degree from the University of Ottawa in 2008. He is presently 25 years of age. He was recruited to Saskatchewan and the Merchant Law Group (MLG) to article and, particularly, to work in the class action field. He began his articles with MLG along with others, including a previous acquaintance, D.D., an individual who subsequently, it is alleged by the Applicant, became a bully and tyrant towards the Applicant and caused the Applicant to become complicit in a scheme to combine forces to complete certain assignments and modules of the CPLED Program, in violation of the Program and the integrity policies of the Program.

9. The details of the violations of the CPLED Program and its policies are outlined in an earlier decision of the Committee, with addendums, (the CPLED Violation Decision) and the agreed statement of facts filed within that proceeding. The CPLED Violation Decision held that the Applicant had let down the entire

profession and acted in a way that caused the public to question the integrity of all lawyers. His actions were considered a serious breach of integrity. The Applicant and D.D. were ordered to, among other things, redo certain portions of the CPLED Program and have their ability to apply for admission as a lawyer delayed for a period of time. They were also fined and ordered to pay a portion of the costs of the proceedings.

10. The Applicant claims that he cheated and otherwise breached ethical standards as a result of a peculiar set of circumstances. This included the bullying nature of his co-accused, the stress of working and his articles at the MLG (which included a compensation scheme that provided immediate compensation rewards for more billable hours during the articling period), and being generally vulnerable at the time. He felt depressed at a certain point and throughout felt a lack of confidence. He states now that he is genuinely remorseful and will not allow himself in the future to be in a similar situation. He feels shame and humiliation and apologizes for his actions. He states that he has learned to communicate with others when stressful matters beset him and to not isolate himself again. He states that he can address similar stressors in the future by seeking help and dealing with the situation immediately.

11. The Applicant claims that he “self reported” his misconduct to the CPLED director, but acknowledges that this was after he discussed the bullying problem and the accompanying cheating to another lawyer at MLG who had raised the possibility that he might have to report the Applicant.

12. In anticipation of his admission application, the Applicant sought counseling from a clinician at Parr Consulting. He has attended at the counselor on 4 occasions. The stated purpose of the counseling was to determine if the Applicant had an alcohol or other substance abuse problem, a concern that had

been raised by D.D. in counter allegations against the Applicant. The Applicant has not received, nor has he sought, any counseling regarding his apparent subjectivity to bullying and misconduct.

13. The Applicant was able to transfer his articles to the Hunter Miller law firm at some point after the discovery of the misconduct. He states that he enjoys the work at this firm and the focus on family and criminal work. He particularly appreciates the ability to discuss matters with other members of that firm and that the environment there is of a different character than at the MLG. At the time of this application he has effectively articulated for 2 years. He would like to continue in the current practice but acknowledges that he may have to seek other practice possibilities.

14. Many letters of reference on behalf of the Applicant were filed at the Hearing, many commenting on his good character. Not surprisingly, the letters all speak in a favourable way to the support of his application. Many, but far from all, were aware of the details of the misconduct.

15. As a result of the CPLED Violation Decision, the Applicant has prepared an essay on his conduct, appeared before the CPLED Program and taken other steps. He has taken an ethics course and participated in collaborative law training.

E. APPLICATION OF THE TESTS

16. The Committee accepts that it must make its determination of the Applicant's good character and whether the test in Rule 180 is met as of the time of the application, based on the balance of probabilities, recognizing that the onus of proof is on the Applicant. We further accept that the overall test does not

require perfection or certainty and the core issue is good character, not the risk of re-offending. We recognize that good people can do bad things and good and bad people can, to a certain extent, change their behaviours or ameliorate the conditions that can lead to bad behaviour.

17. Good character is also something that can be hard to define, or if defined, hard to apply as a legal definition to a particular individual. Many letters of reference may assist in the determination based on the common sense principle that “you know it when you see it”. Candid admission of past misconduct and genuine remorse, regret and embarrassment can further assist in the determination. We note however that the full ability to consider the credibility of the Applicant is hindered by the fact that D.D. was not a witness in these proceedings. This is not a criticism of the way the Hearing was conducted, but a reality none the less.

18. We need to consider the nature and duration of the misconduct. This is outlined in the CPLED Violation Decision, which provided its own sanctions. We need to consider whether the Applicant is remorseful and we are prepared to find that he is. We need to consider any rehabilitation efforts and find that the actions required by the CPLED Decision and the steps taken by the Applicant following same provide some comfort in this regard (essay, speaking to fellow students and further ethics courses taken). As well, the new work environment has assisted in this. Finally, we need to consider the Applicant’s conduct since the proven misconduct and we find nothing that causes us great concern other than as indicated below.

F. FURTHER CONSIDERATIONS

19. The overarching consideration regarding Mr. Mercier's application is public protection. Due diligence must be exercised in the consideration of admission to the LSS as a lawyer.

20. We remain concerned that the previous misconduct may have arisen as a result of a lack of mentorship or supervision and based on an underlying vulnerability of a psychological nature. The first issue appears to arise partly from the high performance and demand characteristics of certain legal practice environments. The second issue, partly arising from alleged bullying, has not been addressed with his counselor in the sense of what has or will be done to prevent similar behaviour or dynamics from emerging should the Applicant find himself in similar circumstances. None of these concerns are currently or in the future the subject of existing or planned processes that can be said to be in place to the satisfaction of the Committee at this time.

G. DECISION

21. Based on the above, it is the decision of the Committee to approve the Applicant as a lawyer on the following conditions:

1. Mr. Mercier must practice under the supervision of another practicing member of the LSS approved by the Executive Director and under a set plan of supervision approved by the Executive Director;
2. Mr. Mercier is to engage in counseling with the current counselor at Parr Consulting or another counseling provider on the issues identified by the counselor relevant to the causes of the previous

misconduct and authorize the counselor to provide reports to the Executive Director regarding progress, if any, and whether further counseling is, at some point, no longer necessary. In particular, the Committee recommends that Mr. Mercier develop awareness regarding why he found himself vulnerable to the influence he states was applied to him and develop insight and strategies to avoid similar influences.

3. These conditions shall remain in effect for a minimum of 2 years after admission, after which Mr. Mercier may apply to the Chair of the Committee to vary or remove any or all of the conditions. The counseling requirement may be terminated earlier upon the approval of the Committee.
22. We thank both counsel on behalf of the Applicant and the LSS for their assistance in the conduct of the Hearing.

Dated the 8th day of July, 2010.

Evert van Olst, Chair

Greg Stevens

Lorraine St. Cyr