BONNIE MARWOOD
HEARING DATE: April 19, 2021
DECISION DATE: May 28, 2021
***Law Society of Saskatchewan v. Marwood*, 2021 SKLSS 2**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF BONNIE MARWOOD,
OF SASKATOON, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Counsel: Timothy Huber for the Law Society of Saskatchewan
Bonnie Marwood for herself

INTRODUCTION

1. Public confidence in the legal profession is very important. In situations where a lawyer's psychological or medical issues have lead to professional misconduct and disbarment, it is possible for that lawyer to regain the privilege to practice law through sufficiently compelling evidence of rehabilitation. The legal profession has a special responsibility to recognize cases of genuine and enduring rehabilitation, which an applicant seeking reinstatement as a lawyer has the burden of establishing through independent corroborating evidence.

2. This is the application of Ms. Bonnie Marwood for reinstatement as a lawyer. In 2012 Ms. Marwood resigned in the face of discipline, which is equivalent to disbarment. The matter now comes before the Hearing Panel of the Competency Committee of the Law Society of Saskatchewan (LSS) pursuant to Rule 729(1)(f) of *The Rules of the Law Society of Saskatchewan* (*Rules*). This Hearing Panel must determine whether Ms. Marwood is suitable to practice, whether she is competent to practice, and whether her reinstatement would be harmful to the public interest, or to the standing of the legal profession generally, as set out in Rule 729 of the *Rules.*

FACTS

3. On September 21, 2012, the Conduct Investigation Committee of the LSS issued a decision accepting the resignation of Ms. Marwood. The decision on that matter is published on the website of the LSS together with the Agreed Statement of Facts ("ASOF") that formed the

basis for the decision. The facts that gave rise to Ms. Marwood's resignation in the face of discipline were serious, and included the following:

a. Allowing her trust account to become and remain overdrawn, failing to maintain proper books and records, and otherwise misusing trust monies and accounts;
b. Misleading the LSS with respect to rectifying trust overdrafts;
c. Misappropriating client funds;
d. Failing to comply with undertaking made to the LSS with respect to trust management and accounting issues;
e. Providing legal services to multiple clients while suspended from practice by the LSS;
f. Entering into a debtor/creditor relationship with her clients; and
g. Entering knowingly in to a business transaction with her clients without ensuring they received independent legal advice.

4. The conduct in question took place in 2008 and 2009. Ms. Marwood was disqualified from practice for non-payment of fees effective January 1, 2009. At that time she also had a number of client complaints outstanding and outstanding trust account deficiencies. The investigation into her conduct continued after her administrative suspension and revealed a variety of issues that resulted in the formal complaints being laid. After she received formal notice of her suspension she continued to practice law. During the resignation process, Ms. Marwood cited psychological and medical issues as the primary cause of her misconduct. Ms. Marwood's application for reinstatement comes 12 years after she left the practice of law. Prior to her resignation she had been a practicing lawyer for three years.

5. The parties in this matter filed several exhibits by consent. This included a letter written by Ms. Marwood dated December 14, 2020 which contained her evidence in chief. Ms. Marwood was subject to cross examination by counsel for the LSS, and to questions from the Hearing Panel. She did not call any other witnesses but did file by consent letters of reference from four individuals. The LSS did not call evidence. The parties agreed that Ms. Marwood bore the burden of proving her suitability on a balance of probabilities. There were no objections to the jurisdiction or constitution of the Hearing Panel.

6. Ms. Marwood's evidence was detailed in respect of the personal circumstances that led to her misconduct. This included the sudden and tragic loss of her husband, her addiction to painkillers following surgery, and other family loss. She testified that "grief and crippling depression combined with the effects of painkillers from my recent surgery led me into a vortex of self-destruction." She also testified that her memory of the events that led to her resignation was "hazy"; she also had no vivid recollection of signing the ASOF with LSS counsel.

7. Unfortunately, the Applicant suffered further personal misfortune following her exit from the legal profession. She admitted that she "sought the relief that addiction affords" during this time. She eventually sought treatment in 2013 when she completed four weeks of in-patient treatment for addictions at South Country Treatment Centre in Lethbridge Alberta. A letter from an addictions counsellor at this treatment centre was filed in support of Ms. Marwood's application. The letter is dated November 13, 2013. The author describes the treatment program as providing clients with the "opportunity to discover and learn alternative activities to replace previous dependencies. These lifestyle changes are facilitated through group process, one-to-one counselling, recreational activities and life skills development." The Applicant's evidence was that following treatment she has sustained recovery. However, due to other difficult life circumstances, she was not able to continue putting her life back in order until several years later.

8. Ms. Marwood refers to her life beginning anew in October, 2017. At this time she had begun working as an editor for *Gladue* reports which piqued a renewed interest in criminal law. She then returned to legal academic studies in 2018 which is when she began her Masters degree. She expects to complete her LLM in April of this year. During the time in which she was pursuing graduate studies she was diagnosed with ADHD. Ms. Marwood's evidence is that she has done fairly extensive research into the condition of ADHD, both for her general knowledge and to learn how circumstances from her life may have contributed to her ADHD symptoms. The Applicant reflected that ADHD (at the time undiagnosed) may have contributed to her difficulties that led to disbarment. Despite the challenges of living with ADHD, she testified she can order her life in a way that those deficits do not affect her. She said she has learned to fashion her life in a way to accommodate this, and she cites her academic success as evidence of that. She is currently on prescription medication to manage her symptoms. She is also under the care of a psychologist with the University of Saskatchewan's Wellness Team. It was clear that her work with her psychologist is focused on the condition of ADHD and not addiction recovery. Her psychologist did not give evidence at the hearing. As stated earlier, Ms. Marwood called no witnesses. This was unfortunate in the eyes of the Hearing Panel, as explained below.

9. At the conclusion of the Applicant's evidence in chief (which was filed entirely on paper), she answered questions of the Respondent's counsel, and of the Hearing Panel.

THE APPLICATION FOR READMISSION AND REST FOR REINSTATEMENT

10. Our decision is governed by Law Society Rule 740 which states, in part:

> Decision of the Hearing Panel
>
> 740(1) The Hearing Panel may:
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> (a) Approve the application with or without conditions; or
> (b) Deny the application
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> (2) The Hearing Panel decision shall be by majority vote.
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> (3) The Hearing Panel shall provide written reasons for its decision and advise the applicant of a right to apply to the Appeal Panel pursuant to subsections 23(4) and 24(3) of the Act where applicable.

11. Pursuant to Rule 729(2), the Applicant bears the onus of proving that:

(a) They are suitable to practice;
(b) They are competent to perform the required duties, as applicable; and
(c) Granting the application would not be inimical to the public interest or the members and would not harm the standing of the legal profession generally.

12. The term "suitability to practise" is defined in Rule 701, which states:

> "Suitability to Practise" means honesty, governability, financial responsibility and respect for the rule of law and the administration of justice and "suitable to practise" has a corresponding meaning."

13. In Order to determine the questions articulated in Rule 729(2) the Hearing Panel must look to the common law. The common law as it relates to applications for reinstatement of disbarred lawyers is accurately summarized in *Nolin v. Law Society of Saskatchewan* (April 26, 2010) at paragraph 10 as follows:

> 10. In *Bates,* at paragraphs 13 to 17, the following is stated:
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> A readmission panel should take into account ten principles and eight considerations when determining whether an applicant has met all six elements of the test for readmission. There is some overlap among the concepts.
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> The ten principles are:
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> 1. The Society regulates the legal profession in the public interest.
> 2. Public confidence in the legal profession is more important that the fortunes of any one lawyer.
> 3. The ability to practice law is not a right but a privilege.
> 4. Once the privilege is lost, it is hard to regain.
> 5. The privilege may be regained no matter how egregious the conduct that led to its loss provided sufficiently compelling evidence of rehabilitation is presented. This will be hard to do.
> 6. The privilege may be regained where…the misconduct was committed as a result of a psychiatric or medical disorder that is very unlikely to reoccur because the disorder has been successfully treated.
> 7. The privilege may be regained where…the misconduct did not have its origins in a medical or psychiatric disorder, but the applicant has established genuine and enduring rehabilitation.
> 8. The legal profession of all professions has a special responsibility to recognize cases of true rehabilitation; however, as rehabilitation will be claimed by virtually all applicants, independent corroborating evidence is required to establish that the rehabilitation is genuine and enduring.
> 9. The burden of proof on readmission is close to, but is not as high as, the criminal law burden of beyond a reasonable doubt. The burden of proof on an applicant seeking readmission is at least as high as the burden on the Society when it seeks to disbar a lawyer.
> 10. The reinstatement must not be detrimental to the integrity and standing of the bar, the judicial system, or the administration of justice, or be contrary to the public interest.
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> The eight considerations… are:
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> (a) The applicant's character, standing and professional reputation in the community in which he resided and practiced prior to disbarment;
> (b) The ethical standards which he observed in the practice of law;
> (c) The nature and character of the charge for which he was disbarred;
> (d) The sufficiency of the punishment undergone in connection therewith, and of the making or failure to make restitution where required;
> (e) His attitude, conduct, and reformation since disbarment;
> (f) The time that has elapsed since disbarment;
> (g) His current proficiency in the law;

(h) The sincerity, frankness and truthfulness of the applicant in presenting and discussing the factors relating to his disbarment and reinstatement.

The six elements of the test for readmission following disbarment…that applicants must meet, to a very high standard, are as follows:

1. Applicants must show by a long course of conduct that they are persons to be trusted, who are in every way fit to be lawyers.
   This "long course" will rarely if ever be less than ten years, often reaching permanence, in cases of serious professional misconduct such as dishonesty, even where the misconduct arose out of a medical or psychiatric disorder since successfully treated. The earlier the application, the more careful the panel should be in deciding whether the applicant has proved his or her trustworthiness and fitness to be once again a member of the Society.

2. Applicants must show that their conduct is unimpeached and unimpeachable, and this can only be established by evidence of trustworthy persons, especially members of the profession and persons with whom applicants have been associated since disbarment.

   Such evidence should demonstrate that the witnesses are sufficiently aware of the salient features of the disbarment as to be able to give informed and relevant evidence concerning the applicant. Otherwise, the weight given to their evidence will be reduced.

3. Applicants must show that a sufficient period of time has elapsed before an application for readmission will be granted.

   Disbarment is the most serious penalty a Law Society tribunal can impose. It must last considerably longer than the longest suspensions Law Society tribunals tend to impose.

   Applicants must show that they have long since removed themselves from the circumstances that led to their disbarment and from any unsettled or unresolved tentacles of the aftermath. The requirement that sufficient time must elapse is designed partly to ensure that an applicant is clear of the brambles that arose from the thorny ground of his disbarment, and partly to ensure as much as possible that the decision to readmit is supportable, will not redound (sic) harmfully to the Society, and is in the long-term interests of the public and the profession. For example, if, at the time of the application for readmission , an applicant is still engaged in litigation arising out of the subject matter that led to the disbarment, even if the litigation is an effort to clear his name, then, absent compelling reasons to the contrary, the panel is likely to regard the application as premature. The applicant may well clear his name, but until then, the Society, having disbarred him for the conduct for which he now seeks absolution in the courts, is entitled to wait until the absolution is obtained before considering readmission.

4. Applicants must show that they have entirely purged their guilt.
   In most cases, where they have expressed both a sincere admission of guilt and genuine remorse, this means showing that they have fully extricated and distanced

themselves from the conduct and circumstances that led to disbarment. In cases where they sincerely believe they were not guilty, it means showing that the issue of their guilt is sufficiently removed from their current circumstances as to be nearly moot when the panel considers their fitness for readmission. We adopt the reasoning in *HISS*:

> Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance creates a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hard-retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law…Honest men would suffer permanent disbarment under such a rule. Others, less sure of their moral positions, would be tempted to commit perjury by admitting to a non existent offence (or to an offence they believe is non existent) to secure reinstatement. So regarded, this rule, intended to maintain the integrity of the bar would encourage corruption in these latter petitioners for reinstatement and, again paradoxically, might permit reinstatement of those least fit to serve… Accordingly, we refuse to disqualify a petitioner's reinstatement solely because he continues to protest his innocence of the crime for which he was convicted. Repentance or lack of repentance is evidence, like any other, to be considered in the evaluation of a petitioner's character and of the likely repercussion of his requested reinstatement.
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> In determining whether guilt has been purged, a panel may also take into account other factors as appropriate such as (1) how much the applicant has suffered as a result of the disbarment, and (2) what, if any, restitution has or could have been made.

5. Applicants must show by substantial and satisfactory evidence that it is extremely unlikely that they will misconduct themselves if permitted to resume practice.

   The first duty of the Law Society is to protect the public interest, especially public confidence in every member of the Society. Nothing is more corrosive to that confidence than the spectre of a group of lawyers readmitting a lawyer who was expelled for dishonesty only to have the lawyer commit another act of dishonesty. A readmission panel must be convinced to very close to beyond a reasonable doubt, including by independent corroborating evidence, that the lawyer will not re-offend.

6. Applicants must show that they have remained current in the law through participating in continuing legal education since the termination of their membership in the Society, or that they have a plan acceptable to the Society that will enable them prior to readmission to become sufficiently current in the law to fulfill their responsibilities as lawyers.

   An applicant must meet all six elements of the test; otherwise the application should be denied.

14. With respect to the six elements of the test stated above, the hearing panel in *Nolin*, supra. modified a portion of the *Bates* test which is relevant to the consideration of this application. With respect to the ninth consideration and fifth element of the *Bates* test, the panel in *Nolin* found, in keeping with the Supreme Court's direction in *McDougall v. F.H.* (2008) 3 S.C.R. 41, that the

correct standard of proof that an applicant must meet is a "balance of probabilities", not the "close to beyond a reasonable doubt" standard applied in *Bates*. However, evidence must always be "clear, convincing and cogent" in order to satisfy the burden of proof.

THE APPLICATION OF THE TEST TO THE APPLICANT

A. Applicants must show by a long course of conduct that they are persons to be trusted, who are in every way fit to be lawyers.

15. In applying this element of the test, the "long course of conduct" to be considered is the time that has passed since the misconduct occurred. In this case, the misconduct occurred in 2008 and 2009, and the Applicant resigned in the face of discipline in 2012. She has been out of the practice of law for 12 years. To suitably address this consideration in a fulsome way, we turn our minds to the steps taken by the Applicant to address the underlying medical and psychological issues that contributed to her misconduct and subsequent disbarment.

16. There is no dispute that Ms. Marwood's abuse of prescription opiates was a primary factor that led to her disbarment. Her evidence at the hearing was that after she completed the 28 day in patient program in 2013 she neither accessed out-patient support for addiction, nor participated in a traditional "12 step" program for addicts. There were some inconsistencies in her evidence with respect to her recovery. For example, at one point in her evidence she asserted that she sought treatment early in her addiction. Later she agreed that it was about 5 years before she sought treatment, and then said that it was a long process to "right" herself. She testified that she no longer encounters addiction triggers, although she referred to herself as having an "addictive personality", which the Panel finds hard to reconcile. However, the Applicant did explain that she has a network of support, including her family and her psychologist, whom she has been seeing for the last year. She has found new ways of coping with stress that are healthy. She has quit smoking, found some positive hobbies, and physical activity. She testified that she has drawn from the wisdom of her aboriginal heritage, and connection to her spirituality to assist her in sustaining recovery. We observe that it may have been of assistance to the panel to hear *viva voce* evidence from those people that the Applicant identifies as supports in her recovery. Given the consequences to her practice that her opiate addiction had in the past, the Hearing Panel was looking for independent evidence to assuage concerns regarding sustained recovery and relapse prevention.

B. Applicants must show that their conduct is unimpeached and unimpeachable, and this can only be established by evidence of trustworthy persons, especially members of the profession and persons with whom applicants have been associated since disbarment.

17. The Applicant did not call *viva voce* evidence in support of her application, but she did file letters of references from members of the legal community who have worked closely with her since her disbarment. These individuals were Heather Heavin, Kathleen Makela, Benjamin Ralston, and Jacques Toupin-McGillis.

18. Mr. Ralston and the Applicant worked together in an academic setting. His letter stated he was familiar with Ms. Marwood's work as a *Gladue* report editor and graduate student, and he had directly supervised her as his teaching assistant for one course on Indigenous land governance. Mr. Ralston was familiar with the events that led to the Applicant's exit from practice, having requested this information from the Applicant prior to writing his letter. Despite his

acknowledgement of the seriousness of the conduct that led to disbarment, Mr. Ralston stated he viewed the Applicant as a person of good character. He noted that in his interactions with her she demonstrated a commitment to integrity, candour, empathy, and honesty.

19. Likewise, Ms. Heavin was aware of the salient features of the Applicant's disbarment. Ms. Heavin knows the Applicant through the College of Law, University of Saskatchewan, where she is a professor and Associate Dean of Research and Graduate Studies. Ms. Heavin spoke highly of the research the Applicant undertook during her studies and the importance of the insight provided in the Applicant's thesis. During personal interactions she finds Ms. Marwood to be thoughtful and candid. She is impressed by Ms. Marwood's careful legal analysis skills and the importance of her research into the impact of FASD on offenders. She believes the Applicant holds herself to a very high standard.

20. Ms. Makela also has had many interactions with the Applicant in an academic setting. She notes Ms. Marwood's strong work ethic, high degree of professionalism, and her kind disposition. She too is impressed with Ms. Marwood's legal research skills. Ms. Makela asked the Applicant for the LSS decision to accept her resignation which the Applicant provided to her. Being aware of the circumstances that led to her disbarment, Ms. Makela writes that she has observed the Applicant's commitment to candour, empathy, honesty and integrity.Mr. Toupin-McGillis stated in his letter that the Applicant was integral to his success in law school, having mentored him during that time. While Mr. Toupin-McGillis spoke highly of the Applicant's generosity, sincerity, and knowledge, he did not indicate an awareness of her past actions which led to disbarment.

21. While it may have been preferable to have *viva voce* evidence rather than only reference letters, the Hearing Panel believes that Ms. Marwood has met the requirements of this element of the test. Each letter spoke positively about the Applicant's conduct over a prolonged period of time. Three of the authors of said letters were made aware of the circumstances of the Applicant's disbarment, and had turned their minds to the character of Ms. Marwood in recent years.

C. Applicants must show that a sufficient period of time has elapsed before an application for readmission will be granted.

22. The Applicant has been away from the practice of law for 12 years, and it has been nine years since her disbarment. We have no concerns under this branch of the analysis.

D. Applicants must show that they have entirely purged their guilt.

23. The misconduct that led to the Applicant's disbarment occurred during an extremely difficult time in her life. With the 12 years that have now passed since that time, we turn our minds to what actions she has taken to address her wrongdoing, and what insights she has gained in the process.

24. Ms. Marwood's evidence was that, through somewhat serendipitous circumstances, she had the opportunity to reconnect with one of the victims of her misconduct, years later. She took that opportunity to write a letter of apology to that person. She also testified that she also apologized to a lawyer for whom she appeared as agent after having been suspended by the LSS. On the subject of restitution to clients who suffered financial loss as a result of her misconduct, the Applicant was largely unable to say whether and in what way she had reimbursed them. Her evidence was that she had attempted to pay back the money she took, but due to her

memory difficulties could not be more specific than this. It seems that the Applicant has not made fulsome efforts to determine whether there is restitution outstanding to any of her past clients.

25. At one point in the proceeding a panel member asked the Applicant a question which referred to the Applicant's past conduct as containing "honesty that was less than ideal". The Applicant bristled at this suggestion, saying she had not been dishonest, but rather "broken". While the panel can wholeheartedly agree that Ms. Marwood was broken by traumatic and tragic life circumstances, it is also true that she acted dishonestly. The fact that she does not see that after 12 years of reflection concerned us greatly. Further, when questioned as to details of her misconduct she gave evidence that contradicted the evidence on which her original Application to Resign in the Face of Discipline was accepted. To some degree we are prepared to attribute that to the Applicant's memory difficulties and the passage of time. We do not expect perfect evidence from the Applicant. However, there was at least one such exchange where the Applicant seemed to be deliberately minimizing the conduct that led to her disbarment. This evidence related to her continued practice following her suspension by the LSS. The Applicant's evidence at the hearing was that she made one Court appearance after her suspension, due to the fact that she did not know she was suspended. She testified that she had not picked up her mail in two years and therefore did not receive notice of her suspension. She also made a point of saying that she did "win" (in Court) that day, which may suggest she thought a positive outcome in Court mitigated her wrongdoing.

26. In contrast to the Applicant's evidence at the hearing for her Application to be reinstated, we now recite relevant portions of the evidence on which the Applicant's application to resign was accepted, and which she agreed to at that time, as follows:

> 9. On January 6, 2009, it was confirmed that the Member had not paid her annual fees and had not complied with her outstanding undertakings. She was placed on administrative suspension. *The Member was advised on December 10, 2008 that if she did not pay her fees in time, she would not be allowed to practice law after January 1, 2009.*
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> 10. The Member was given written notice of her suspension by way of a *registered letter* from Thomas Schonhoffer dated January 7, 2009. *This letter was successfully delivered to the Member on January 9, 2009.* On January 12, 2009, notice of the Member's suspension was provided to the Courts and the Membership.
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> …
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> 13. After the Member was suspended and notice provided to her and the profession, the Member continued to practice law. The following instances of unauthorized practice while suspended were identified.
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> a. The Member was operating her trust account after being suspended. The Delisle Credit Union provided confirmation that the Member was writing trust cheques from her account up to and including January 28, 3009 (sic). The Law Society arranged for specific pending cheques to be negotiated to prevent client harm. The Member's trust account with the Delisle Credit Union was frozen thereafter. **[Count #9 of Formal Complaint dated February 1, 2010]**

> b. The Member was also found to have been representing several other clients after her suspension. On or about January 14, 2009, she met with M.V. and signed a separation agreement. *The Member backdated the agreement to January 1, 2009.* On January 29, 2009, the Member made an appointment to meet with her client T.G. in relation to documents associated with a separation agreement that had been signed in November 2008. The Member asked T.G. to provide her with an additional $1,000.00 at this January 29, 2009 meeting. T.G. declined to pay as she was aware of the Member's suspension. *The Member did not tell T.G. that she was suspended until confronted, then minimized the situation.* On January 29, 2009, the Member met with S.B. to have a separation agreement signed. The Member provided legal advice to S.B. on this date. The Member asked S.B. for $2,700.00. opposing counsel later confirmed that the Member had delivered signed documents in relation to the S.B. file on January 29, 2009. It was determined that he Member had signed a Certificate of Lawyer and a Certificate of Independent Legal Advice with respect to a Consent of Non-Owning Spouse indicating she was a "practicing solicitor for the Province of Saskatchewan", both while suspended. The Member was found to have done work on the D.C. file as well. This included appearing in the Court of Queen's Bench on or about January 14, 2009 and corresponding with opposing counsel on January 19, 2009. [**Counts #10, #11,#12 and #13 of Formal Complaint dated February 1, 2010];** (*emphasis mine*)

27. We understand and accept that the Applicant's memory of the misconduct is "hazy". What we do not accept is that when she speaks of her misconduct she tends to minimize her wrongdoing, or even justify it. We note that minimizing dishonest actions was one of the factors that led to her original disbarment. This is compounded by her evidence at this hearing that her actions that led to her disbarment were not dishonest in the first place. At this time Ms. Marwood does not fully acknowledge her misconduct, and for this reason her reinstatement would be inimical to the interest of the public. On this part of the test we find that the Applicant has not met the burden of proof.

E. Applicants must show by substantial and satisfactory evidence that it is extremely unlikely that they will misconduct themselves if permitted to resume practice.

28. There are many factors in the Applicant's evidence that we consider under this element of the *Bates* test. Firstly, we consider that the Applicant's misconduct that led to her disbarment was related to her medical and psychological issues at the time, including her active addiction to opiates. We acknowledge that, since 2013, the Applicant's evidence is that she has been in recovery from her addiction. We also consider the letters of reference filed in support of Ms. Marwood's application. These references were very positive and indicate, among other things, that the Applicant is well respected in the academic community she has studied and worked in for the past three years. The evidence on this point was satisfactory but not substantial. By that we mean that we did not have the benefit of any professional evidence to support the Applicant's assertion that she has sustained recovery. We also did not hear any *viva voce* evidence to support her application, except from the Applicant herself . Particularly in light of the severity of misconduct that led to her disbarment, it would have been appropriate in our view, and necessary under this branch of the test, to have more substantial evidence on these points. We are mindful of the Panel's comments in *Nolin v. Law Society of Saskatchewan April 26, 2010* as follows:

> Element 5 requires the Applicant to show by substantial and satisfactory evidence that it is "extremely" unlikely that he will misconduct himself again if permitted to resume practice. On this element again the first duty of the Law Society, which is to protect the public,

> becomes the primary focus. This includes maintaining the public confidence in every member of the Law Society. Though as we have earlier indicated, the standard of proof on the Applicant is the balance of probabilities test (still requiring clear and cogent evidence), the commentary is instructive by also referencing the need for convincing evidence in this regard, including independent, corroborating evidence.

Secondly we consider again the comments of the Applicant relating to her misconduct. We must do this because in order to contemplate the likelihood of future misconduct, we need to know whether the Applicant properly acknowledges her past misconduct. As discussed earlier, we are concerned with her evidence in this regard, and we are also concerned with the public perception of that evidence. Ms. Marwood denies that her past actions were dishonest. She gave evidence that contradicts the evidence on which her application to resign in 2012 was accepted. In doing the latter she appears to minimize her misconduct. Until the Applicant faces and accepts the true nature of her past actions and takes responsibility for them we cannot be satisfied under this branch of the test. We consider our first duty to be protection of the public and maintaining public confidence. Ms Marwood's reluctance to accept her past misconduct as dishonest will not instill public confidence. The misconduct that led to her resignation was serious, dishonest, and affected many of her clients negatively. Despite the numerous factors that Ms. Marwood has in her favor, we remain concerned about her testimony regarding her prior misconduct, and we cannot reconcile her evidence on these points in a way which allows us to grant her application at this time.

F. Applicants must show that they have remained current in the law through participating in continuing legal education since the termination of their membership in the Society, or that they have a plan acceptable to the Society that will enable them prior to readmission to become sufficiently current in the law to fulfill their responsibilities as lawyers.

29. The Applicant returned to law related work in 2017, after being away from law for eight years. She did research for a law firm for a few months in 2017, then worked as a *Gladue* research officer at the Native Law Centre at the University of Saskatchewan for seven months, ending in February 2019. She taught an eight-week Aboriginal Property Law class through the Native Law Summer Program at the University of Saskatchewan in 2019, and anticipates completing her Master of Laws in April 2021, with her area of research being Dangerous Offender designations and Fetal Alcohol Spectrum Disorder. She has not been entirely disconnected from the law since she ended her practice. She is very knowledgeable in the area of criminal law.

30. While the Applicant may prefer to continue with a career in academia, or to work as a criminal defense lawyer, her evidence at the hearing was that she did not have a specific plan regarding her future in law. She referred to a number of possibilities, including real estate, family law, and corporate work. She frankly testified that she needs a job, and would like to be able to present herself to any firm as a lawyer.

31. We find that the Applicant minimized the effects that a 12 year absence from legal practice would have on her competency. Further, she demonstrates a lack of insight in to the gaps in her skills. For example, she testified that she is competent to practice in the area of real estate because she handled some land titles transfers for family members during her hiatus from practice, and that in "a couple days" she could update her family law skills to a level making her competent to practice in that area. This raises the additional concern that she will have difficulty identifying situations in practice (which all lawyers encounter) where she is out of her depth, or

where she needs to seek advice from a colleague. For these reasons, if we had seen fit to grant her application, we would have imposed a condition of direct supervision, similar to what would normally occur for a junior lawyer. We would have also ordered educational conditions, and practice restrictions for various areas of legal practice until she was able to demonstrate to the Director of Competency for the LSS that she was competent in those areas. We could envision appropriate conditions that the Applicant could practice under in the future to mitigate concerns regarding her competency, had she met the standard under other branches of the *Bates* test.

CONCLUSION

32. Based solely on the exhibits filed by the Applicant at the commencement of the hearing, it appeared that she had substantially met the test for reinstatement. However, her testimony as a whole raised concerns. Her answers to inquiries from the Panel demonstrated a lack of insight into her past misconduct and its severity. Ultimately the Applicant failed to acknowledge responsibility at a level that is expected for her application to succeed. Further, her evidence was inconsistent with the ASOF upon which her application to resign was accepted by the LSS in 2012, in ways which appear to minimize her wrongdoing. Lastly, the Panel was left wanting more fulsome evidence from third parties to support the application. For these reasons the applicant has not met the burden of proof on considerations 1, 4, and 5 of the *Bates* test. We are sympathetic to the Applicant's circumstances, but we must place the public interest above any one lawyer's career.

33. At the same time, we acknowledge the significant work that Ms. Marwood has done since 2012. She has completed in-patient treatment, overcome significant loss, and returned to the study of law to pursue a graduate degree. She has also made some amends to people she harmed in the past. We respect the Applicant's extensive efforts to engage with her Aboriginal culture and heritage, and to sincerely reflect on truths from her childhood, and we recognize the insight she has gained in the process. We believe that Ms. Marwood has the ability to continue this journey and we encourage her to reapply when she is in a position to provide more fulsome evidence and demonstrate insight in to the misconduct that led to her resignation in 2012. If the Applicant brings a subsequent application, it may be heard by a differently constituted Committee. It is not our intention to in any way prejudge the outcome of any future application as same would be determined on the facts and circumstances at the time of that application.

34. The Respondent did not specifically argue for an order of costs and we note that no costs were ordered in the disbarment decision. Based on this, we decline to order costs against the Applicant in these proceedings.

Dated at the City of Moose Jaw, in the Province of Saskatchewan, this 28th day of May, 2021.

"Suzanne Jeanson", Chair

Dated at the City of Regina, in the Province of Saskatchewan, this 30th day of May, 2021.

"Lynda Kushnir Pekrul"

Dated at the City of Regina, in the Province of Saskatchewan, this 28th day of May, 2021.

"Barbara Mysko"