

THE LAW SOCIETY OF UPPER CANADA IN THE MATTER OF the Law Society Act;
AND IN THE MATTER OF the application for admission of Alan Cecil Preyra, of the Town
of Richmond Hill, a student member. Preyra, Re, 2000 CanLII 14383 (ON LST),
<<http://canlii.ca/t/1gssl>> retrieved on 2015-09-08 ¹

BEFORE: Carole Curtis, Chair
Bradley Wright
Andrew Coffey

HEARD: December 8, 9 and 11, 1999

REASONS FOR DECISION

Introduction

The purpose of this hearing is to determine whether the applicant is of good character (under section 27(2) of the Law Society Act, R.S.O. 1990, c. L.8, as amended), and should now be admitted to the Bar. The applicant is Alan Preyra, a 33 year old student-at-law who has completed the Bar Admission Course and his articles.

The applicant completed law school at Queen's University in 1994 and completed Phase One of the Bar Admission Course in June 1994. He was unable to find an articling job and in August 1994, in his attempt to find an articling job, the applicant intentionally falsified his law school marks and other academic credentials and pursuits to prospective employers, as follows:

- He altered 11 grades on the transcript.
- He sent the altered transcript to at least five law firms.
- His resume falsely indicated he was a candidate for the Rhodes scholarship.
- The cover letter falsely indicated he intended to pursue a Master of Laws degree at Harvard but could not do so because of financial reasons.
- He misrepresented that he had submitted two lengthy research papers in various different areas to several law journals for publication (including papers on international taxation and intellectual property, competition law and intellectual property, competition law and liability in tort, mergers and monopolies and law and economics).
- He falsely stated that he had been offered five or six articling interviews during articling week.
- He falsely told one law firm that another law firm had told him they would rank him if he ranked their firm.

These misrepresentations were uncovered in August 1994. The details of the misrepresentations, the discovery of them, and the investigation that followed are set out in the Agreed Statement of Facts attached as Appendix A. Even after his misrepresentations were exposed, the applicant continued to misrepresent what had happened in significant ways.

- He told the Dean of his law school that he sent false transcripts to only one or two firms.
- He did not disclose the full extent of the misrepresentations to the mentor assigned him by the Law Society (Chuck Magerman), and told the mentor that he had reported it to the Law Society himself.

¹ See *Preyra, Re*, 2003 CanLII 48959 (ON LST) for decision admitting candidate.

- In a document prepared by him to be given to prospective employers in January 1998, he did not disclose the full extent of the misrepresentations, but continued to claim that he self-reported, not that he had been caught.
- He continued to misrepresent the extent of his behaviour, even to his own lawyer (Derek Freeman), and his articling employer (David Diamond) until November 1998, when he was finally honest with them about the details of his misrepresentations.

The Test for Admission

The applicant's counsel acknowledged that all of the applicant's behaviour (the falsification of transcripts, the misrepresentations to law firms and to others, the fact that he was less than candid, even misleading with the Law Society and his general inability to be completely honest about the events until late 1998) dealt directly with honesty and integrity.

These misrepresentations go to the very heart of who lawyers are and what lawyers do. Integrity is fundamental to the competence of a lawyer; competence necessarily includes integrity. The applicant was not of good character from at least 1994 through to at least late 1998. The question for the admissions panel is whether the applicant has changed since November 1998 and is now of good character.

The purpose of the good character requirement is to ensure that the Law Society can protect the public and maintain high ethical standards in the lawyers the Law Society admits to practice. Any decision about this Application must serve to protect the public and maintain high public confidence in the Law Society's self-governance.

The definition of good character is set out in previous decisions of Law Society admissions panels, and is an evolving definition. The definition is not exhaustive, and refers to a bundle of attributes which, when taken together, amount to good character:

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 would include, among others, integrity, candour, empathy and honesty[1].

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 of 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 his re-offending.

It is important not to confuse the good character requirement for admission with notions about forgiveness or about giving an applicant a second chance. The admissions panel is not in the forgiveness business, the test to be applied is clear, and the admissions panel is to determine if the applicant is of good character today. The Law Society Act does not permit an admissions

panel to apply any test other than that relating to the applicant's good character at the time of the hearing[2].

The Evidence

The Applicant's Evidence

The applicant comes from a success-oriented family of ten children, all of whom have achieved significant academic and vocational success. He explained his behaviour in altering his transcript as motivated by his belief that "some of my grades weren't competitive, I wasn't competitive. He described himself as without a safety net in 1994, and having no one he could turn to and rely on when he felt out of control (although his brother was at law school with him in the same class at law school).

The applicant described a healing process for himself that began in September 1994 with a breakthrough at the end of 1998, when he says he fully accepted the extent of his wrongdoing. The applicant says that until the end of 1998 he was still running away from the other details of his wrongdoing. The applicant says that he became an honest person with the Law Society in late 1998, and that he became an honest person before that in other aspects of his life.

The applicant entered therapy from December 1998 to March 1999 with a psychologist, Dr. Leon Steiner. Dr. Steiner treated the applicant with a technique known as brief dynamic psychotherapy during six sessions over a three-month period. There is no therapy, although there is ongoing therapeutic contact (telephone calls). It is the position of the applicant and Dr. Steiner that the applicant's behavioural patterns of misrepresentation and deception, which lasted for at least four years, have now been treated in the six sessions.

The applicant has had some very good things happen to him in the last few years. He married in May 1999, and had two very positive work relationships with the lawyers who acted as his articling principals (Winfield Corcoran and David Diamond). In two major areas of his life (home and work), the applicant has some very good supportive relations.

The Articling Principals' Evidence

Both Winfield Corcoran and David Diamond gave evidence on the applicant's behalf. They were each his articling principals (one after the other) and are now his friends. They were straightforward and supportive. They testified that he had demonstrated honesty and integrity in their offices and in the handling of his files, and that he was a very competent articling student. The applicant was still working for David Diamond at the time of the hearing.

Competence, however, does not prove good character. As well, even his articling principals didn't learn all the details of the applicant's misbehaviour and misrepresentations when they hired him. The applicant was not entirely honest with either of them about what he had done. Both articling principals admitted that they learned of some of the details of the applicant's behaviour for the first time at the hearing.

The Medical Evidence

The medical evidence was detailed, complicated, extremely technical, often contradictory, and in some respects inconclusive. There were five medical reports prepared by three different doctors: Two psychologists (Dr. Leon Steiner and Dr. Percy Wright) and a psychiatrist (Dr. Philip Klassen). All three doctors were present when the applicant gave his evidence, and all three doctors gave evidence.

Dr. Steiner, a registered psychologist in private practice, was the applicant's treating psychologist during six sessions from 17 December 1998 to 25 March 1999. He prepared a report dated 25 March 1999.

Dr. Klassen is the attending psychiatrist in the Forensic Program at the Centre for Addiction and Mental Health at the Clarke Institute of Psychiatry. He conducted a psychiatric assessment of the applicant at the request of the Law Society. He met with the applicant for four hours between 19 July and 3 August 1999, read the applicant's medical history, and interviewed family and associates. His report dated 12 September 1999 included the report of Dr. Wright.

Dr. Wright, a staff psychologist at the Clarke Institute of Psychiatry, METFORS Division, did not meet the applicant, but was retained by Dr. Klassen to review and report on the validity of the two-personality profiles (the Minnesota Multiphasic Personality Inventory-2) and the supporting raw data prepared for the applicant by Dr. Steiner (the MMPI-2 profiles).

Dr. Klassen's report of 12 September 1999 resulted in two replies from Dr. Steiner, dated 9 November and 17 November 1999. Dr. Wright replied further in a report dated 26 November 1999.

The MMPI-2 Profiles

There was much testimony about the two MMPI-2 profiles of the applicant prepared by Dr. Steiner. The MMPI-2 profile test has been in use in one form or another since the 1940's and is described as the "gold standard" in impression management detection. It uses about 566 questions and four validity scales.

The developers of the test determined that the validity of the test is compromised unless the test is time-limited. If too much time is taken, spontaneity is lost and tailoring of answers can occur. Therefore, the test should be administered in a clinical setting, in a controlled environment, and not taken home.

All three doctors agreed that the results of the MMPI-2 profiles do no[t] provide conclusive information about the applicant in and of themselves. The doctors all stated, each in his own way, that MMPI-2 profiles are useful tools, to be used with the aid of patient interviews, clinical history, and professional judgment. An MMPI-2 profile is not meant to be used as a stand-alone tool, but is meant to be used in conjunction with other information. The other information a clinician gathers can affect how the MMPI-2 profile is interpreted.

The first MMPI-2 profile test occurred on 5 January 1999 and the second on 29 March 1999. (Although the second MMPI-2 test was done on 29 March 1999, the report of Dr. Steiner

dated 25 March 1999 makes reference to the results of that second profile. This anomaly was not resolved in the evidence, and suggests that perhaps either the report or the test result is incorrectly dated. The panel was neither concerned nor influenced by the anomaly.)

The first MMPI-2 test indicated that the applicant was highly defensive and lacked insight into his personality. The second test, administered less than three months later at the end of the Steiner sessions, indicated very low defensiveness. The applicant was allowed to take the second test home for completion and return it the next day.

Evidence of Dr. Steiner

Dr. Steiner, the applicant's treating psychologist, identified the applicant's problem as "weak moral character rather than any psychiatric disturbance". Dr. Steiner defined character as "long standing personality traits, which are not amenable to change", but added that a person can learn how to adapt. Dr. Steiner said that there was no evidence of extreme pathology and that the applicant's problems were more in a moral sphere.

Dr. Steiner treated the applicant with a technique known as brief dynamic psychotherapy. He testified that, in his opinion, the applicant has turned the corner, was now aware of the reasons for his past bad behaviour, and was now of good character. Dr. Steiner was satisfied that six sessions has been enough to effect the change in the applicant because the applicant had been ready to change and only needed some late assistance. Dr. Steiner's view was that the comparison of the two MMPI-2 profiles indicated that the applicant had changed for the better. However, Dr. Steiner said that while the applicant was much better adjusted today, it was not possible to state that there had been a substantial personality change.

Dr. Steiner also noted that many people "pad their resumes", suggesting that the applicant's behaviour in that regard had not been very serious. Even the applicant's own counsel acknowledged that all of the applicant's behaviours (the falsification of transcripts, the misrepresentations to law firm and to others, the fact that he was less than candid, even misleading with the Law Society, and his general inability to be completely honest about the events until late 1998) dealt directly with honesty and integrity. "Padding resumes" is a very serious and fundamental breach of integrity and ethics for anyone who wishes to become a lawyer.

Evidence of Dr. Klassen

Dr. Klassen is a forensic psychiatrist, who works with issues dealing with the legal process, and conducts assessments and prepares reports for the Law Society and other professional disciplinary bodies. Both his report and his oral testimony were extremely detailed. He found no mental illness in the applicant, but described him as experiencing, in 1994, grandiosity, a sense of being special or unique, with a need for admiration and, perhaps most significantly, a sense of entitlement. The medical evidence established that the applicant had been very angry throughout law school and in the period immediately after law school.

The fact that the applicant came from a high-achieving, and success-oriented family, coupled with the fact that he struggled at law school, resulted in anger, a sense of injustice, and a sense of entitlement in the applicant. He felt that others had an easier time, and that he was being treated unfairly. The sense of failure was a blow to his self-esteem, which resulted in a counterattack. Dr. Klassen described the applicant in 1994 as an angry man who was going to take control of the profession that had treated him badly.

Dr. Klassen's analysis was that the applicant had been involved with serious transgressions in 1994 and had continued behaving in duplicitous and fraudulent ways for a number of years after that.

Only in late 1998 or early 1999 did the applicant decide to discontinue his struggle with the Law Society. Dr. Klassen expressed doubt that this was the result of his therapy. He noted that the therapeutic contacts had been brief. He noted that of the six sessions with Dr. Steiner, it was not clear how many sessions were assessment sessions. He described the result of the sessions as more confession than treatment. Dr. Klassen's skepticism about Dr. Steiner's therapy was related to the applicant's history of duplicity over a long period of time, which appeared to be caused by a personality of character deviation which, in turn, was a foundation of lying.

Dr. Klassen described the relationship between character and behaviour, stating that behaviour flows from character. In 1994, the applicant displayed bad behaviour from which an inference could be drawn about bad character. In 1999, the applicant displayed good behaviour. The question for Dr. Klassen was whether this was the result of a conscious decision on the part of the applicant to change his behaviour without an underlying change in character (in which case, his earlier behaviour was related to transient factors), or whether that good behaviour flowed from the applicant's bad character as yet unchanged.

Evidence of Dr. Wright

Dr. Wright is an expert in the interpretation of MMPI-2 profiles. He has 20 years experience in the field and has interpreted about 750 tests since 1992.

Dr. Wright testified that the first MMPI-2 profile revealed that the applicant was not open to change and not ready for therapy. Dr. Wright testified that the applicant's second MMPI-2 profile results were striking in that they revealed a profile he had never seen before. According to the two profile results, the applicant went from being more defensive than 98% of the population to being less defensive than 16% of the population. Dr. Wright testified that the results were not internally consistent, not clinically viable and that they defied common sense.

The results indicated, to Dr. Wright, that the applicant had not yet truly come to grips with his underlying personality disorder, and that compelling additional evidence would be necessary to overcome the profile results. Normally, the test is administered in a controlled environment over a 75 minute period. The applicant had had 24 hours. Dr. Wright's impression was that the applicant had clearly tried to beat the test in an unsophisticated way. Dr. Wright was of the opinion that the applicant was still overly vulnerable to engaging in duplicitous impression management to a dangerous degree.

Admission With Supervision or Other Conditions

The applicant proposed that the admissions panel had authority to attach supervisory of other conditions to the applicant's licence to practise law. The test for admission is set out in section 27(2) of the Law Society Act. "An applicant for admission to the Society shall be of good character".

The admissions panel has no jurisdiction to impose conditions on admission. The statutory authority does not allow for a conditional license. Either the applicant is of good character and is admitted, or the applicant is not of good character and is not admitted. If the admissions panel has concerns about an applicant such that it feels it must attach conditions to the admission, then the applicant has failed the test for admission.

Recent amendments to the Law Society Act provide explicit authority for the imposition of terms and conditions on a suspended lawyer returning to practice following a discipline suspension (see section 35 of the Law Society Act). However, no comparable provision exists regarding admissions. In addition, By-law 11, which deals with Bar Admission Course requirements, does not allow a panel to impose conditions to practise as an admission requirement.

Decision

Being a lawyer is a great privilege; it is a gift, not a right. It is not automatic, and does not necessarily follow from passing law school and the Bar Admission Course. More than simply meeting the academic standards, the statutory scheme is clear that an applicant must also be of good character.

The applicant engaged in duplicitous behaviour over a long period. He failed to be entirely honest about it for four years. This was not a single lapse of judgment resulting from a stressful situation. Even after being caught, the applicant had several opportunities to admit his misrepresentations to all that he should have. He did not do so. As recently as one year before the hearing, the applicant was still misrepresenting the truth to people close to him, and was still failing to be honest with his articling principal, and even with his own lawyer.

The transition from being a person not of good character to one of good character is a process, not an event. It may or may not happen to someone who was not of good character. It may or may not happen to this applicant. The applicant asserts that he has been in the process of change since 1994. Central to the task of the admissions panel is to determine whether that process is concluded.

The applicant has not satisfied the onus of proof, on the balance of probabilities, that he is now of good character.

Dated this 20th day of April 2000.