

WeirFoulds Partners Reinstate Character Assessment Decision on Judicial Review

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In a decision addressing the application of the standard of review on internal administrative appeals, WeirFoulds Partners Ben Kates and Amy Block secured a favourable result for the Law Society of Ontario (LSO) in *Law Society of Ontario v. McLellan*, [2024 ONSC 7204](#). The December 2024 ruling by the Divisional Court addressed the deference owing to the trier of fact in professional licensing decisions dealing with the good character of legal professionals.

The case centered on a licensing application from a previously disbarred lawyer who also had multiple fraud convictions. Initially, the Law Society Tribunal Hearing Division had dismissed the application, finding that the applicant failed to meet the good character requirement essential for legal licensing in Ontario. A subsequent internal appeal decision by the Law Society Tribunal Appeal Decision overturned the decision at first instance and ordered a new hearing. Among other things, the Appeal Panel held that the Hearing Panel placed undue focus on the extent to which the respondent apologized to and paid restitution to its victims. It felt he deserved more credit for his academic work and volunteerism in the area of wrongful convictions, which he had undertaken after being disbarred.

The Divisional Court's ruling restored the original Hearing Division decision, effectively blocking the respondent's attempt to regain his licence to practise law. The Court found that the Appeal Division's decision was unreasonable due to its misapplication of the appellate standard of review. More specifically, it held that the Appeal Panel misstated the Hearing Panel's decision and the evidence, impermissibly reweighed the evidence, pressed its own view about the weight given to that evidence, and then characterized this group of issues as giving rise to a palpable and overriding error. The Divisional Court held that the Appeal Panel's conclusions not to be justified on an appellate standard of review.

The Divisional Court's treatment of the standard of review reminds us that good character cases are not about the mechanical application of factors. Rather, the statutory requirement for lawyer and paralegal licensees to be of good character is grounded in LSO's statutory mandate to protect the public. The factors to be considered when assessing good character will not always be ascribed the same weight. Ultimately, credibility assessments will play a significant role in the discretionary decision of whether an applicant meets the good character requirement, and the conclusions reached in this respect by the panel that heard the evidence should not be interfered with without good reason.

To learn more about Ben Kates and Amy Block, please visit their respective profiles.

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