

An Analysis of the “Good Character” Requirement

To ensure that lawyers in the province meet “high standards of learning, competence and professional conduct”, Province Y requires all applicants to demonstrate that they are of “good character”. More accurately, these requirements search for the absence of behaviour that indicates bad character, such as workplace complaints, school discipline allegations, and police charges. The question at hand is whether the current assessment for good character is fair and reasonable. While the purpose of the “good character” requirement is generally sound, in practice, the requirements are gratuitous. Due to the nature of the job, law societies are justified in their concern over the character of prospective lawyers. But in my opinion, in its current state, the “good character” requirements show no meaningful review of the “character” of its applicants and results in the excessive scrutiny of Black, Indigenous, and other minority peoples. The requirements, to a lesser extent, violate the right to equality under s.15 of the *Canadian Charter of Rights and Freedoms* (CCRF) through adverse-effect discrimination.

The purpose of the “good character” requirement is at *prima facie* legitimate—as the ethics and character of the lawyer play a key role in the pursuit of justice, it is only fair that law administration seeks to ensure that all law applicants have high ethical standards and that clients can trust their ability to best represent them in court. But the method in which this purpose is pursued has various flaws; in particular, it runs on the assumption that “*character*” is a reliable indicator of a person's ethics. Empirical evidence has shown that this is not the case—as “character” changes over time and is subjective, there is no objective way to judge it or link it to current ethical standing (Woolley). Past cases have shown there is no consistent judgment on the character of the applicant. Two leading decisions made by the Law Society of Upper Canada,

P(DM) and *Rizzotto*, dealt with past misconduct of serious criminal nature—sexual assault and voter fraud, respectively (Woolley). While both applicants were judged unlikely to re-offend, only Mr. Riozotto was admitted. If there is no consistency regarding the application of character judgement in regard to similar offences, then the reliability of the assessment comes into question. While the good character requirement is universally applicable, due to the lack of individual investigations and focus on misconduct, its enforcement is at most, superficial.

In addition to the lack of substantial evidence that ethical judgement about character is reliable, the requirement in itself ignores the individual experience of the applicant. As the “good character” requirement asks for all individuals to recount all their contacts with the criminal justice system regardless of the outcome or reasoning, it ignores the effects of circumstance on the applicant’s past actions. The requirements violate equality rights, as s.15 of the *CCRF* grants all individuals the right to have “equal benefit of the law... without discrimination based on race, national or ethnic origin...” (*CCRF*) in addition to the *Canadian Human Rights Act*, which prohibits discrimination based on “conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.”(*CHRA*). Under the pretense of being “objective”, the “good character” requirement adversely discriminates against minority applicants, who are statistically more likely to come in contact with the criminal justice system as a result of systemic oppression (Yoon and Bernstien). The impact of the requirement goes beyond discriminating against minority groups during the administrative process, but further into representation in the legal field. The awareness of a requirement that looks at past criminal history or charges and asks for personal information can discourage minority groups from practicing law altogether. This leads to a lack of diversity among lawyers and legal professionals, who set policies without the input of the marginalized communities. The extent to which the

good character requirement discriminates against minority groups is not proportional to its ability to predict the outcome of reported cases.

The “good character” requirement is not inherently undesirable—but its process must be restructured to adequately and equitably judge the ethical standards of its applicants. Rather than focus on the indeterminate “character” of the applicant, the requirements should instead focus on their “fitness” for the ethical rigours of the legal practice. The selection committee should look for circumstances and evidence in which the applicant demonstrates they are ethically sound, rather than irreverent background information on the applicant. The “good character” requirement has opportunities to effectively judge legal applicants—but in its current standing, its outcome will only continue to place unfair burdens on minority applications with no discernible impact on the judgment of the applicant’s ethics.

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