

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF AN APPLICATION
FOR MEMBERSHIP BY:

A [REDACTED] C [REDACTED], Applicant

NOTICE OF REFERRAL FOR A HEARING

Pursuant to section 14 of Regulation 7-1, adopted by Council under the *Chartered Professional Accountants of Ontario Act, 2017*, and the By-law governing the Chartered Professional Accountants of Ontario (CPA Ontario), I hereby request the Admission and Registration Committee (ARC) to convene an oral hearing in respect of this application.

THE GROUNDS FOR THE REQUEST ARE:

1. The Applicant applied for membership with CPA Ontario on March 17, 2020. Having reviewed the application for membership, I am not satisfied that the Applicant has provided evidence of good character as required under section 3.4 of Regulation 7-1.
2. The particulars are as follows:
 - a. In [REDACTED] application for admission to membership, the Applicant answered “yes” to the question, “Have you ever been found guilty of a criminal offence or other similar offence for which a pardon has not been granted or are there any other charges pending against you”?
 - b. The Applicant advised CPA Ontario that [REDACTED] pled guilty on August 2, 2012 and as a result was convicted of breaching section 253(1)(b) (operating a motor vehicle with more than 80 milligrams of alcohol in 100 milliliters of blood) and section 335 (take motor vehicle without consent) of the *Criminal Code of Canada*.
 - c. The Applicant was sentenced to a suspension of [REDACTED] driver’s license for one year, a prohibition from operating or driving a motor vehicle for a period of one year, a \$1,500 fine, and one-year reporting probation order. Prior to sentencing, the Applicant paid restitution to the owner of the motor vehicle in the amount of \$1,823.65 to cover the shortfall of the victim’s insurance.
 - d. On September 16, 2019, the Parole Board of Canada granted the Applicant a Record Suspension under the *Criminal Records Act*.

3. The Applicant disclosed the criminal conviction at the time of [REDACTED] application for Student Registration. The Applicant was approved for Student Registration on May 24, 2017.
4. I have determined that the Applicant otherwise meets all the criteria to be registered as a member.

Date: January 12, 2021



Heidi Franken, CPA, CA
Registrar

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: A good character hearing into A [REDACTED] C [REDACTED], an applicant for membership with the Chartered Professional Accountants of Ontario pursuant to Regulation 7-1: Membership, Obligations and Standing, Section 14: Good Character on Admission, as amended.

TO: [REDACTED] C [REDACTED]

AND TO: Registrar, CPA Ontario

DECISION AND ORDER MADE MARCH 17, 2021

DECISION

Having heard and seen the evidence and submissions of the parties, the Tribunal is satisfied that the applicant is of good character as required under Regulation 7-1: Membership, Obligations and Standing, Section 14: Good Character on Admission.

ORDER

The Tribunal, having been advised by the Registrar the applicant otherwise meets all the requirements of admission, directs the Registrar to admit A [REDACTED] C [REDACTED] as a member of CPA Ontario.

DATED at Toronto this 17th day of March 2021.



Bernard S. Schwartz, FCPA, FCA
Deputy Chair, Admission and Registration Committee

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: A good character hearing into A [REDACTED] C [REDACTED], an applicant for admission as a member of the Chartered Professional Accountants of Ontario, pursuant to Regulation 7-1: Admission to Membership, Obligations and Standing, as amended

BETWEEN:

A [REDACTED] C [REDACTED]

-and-

**REGISTRAR, CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

APPEARANCES:

For the Applicant [REDACTED] C [REDACTED]-M [REDACTED]: Self-represented

For the Registrar: Ms. Lara Kinkartz, Counsel

Heard: March 17, 2021

Decision and Order effective: March 17, 2021

Release of written reasons: April 6, 2021

REASONS FOR THE DECISION MADE MARCH 17, 2021

I. BACKGROUND AND FACTS

[1] This hearing was held by videoconference to determine whether the Applicant, A [REDACTED] C [REDACTED] (the "Applicant") was of good character at the time of the hearing and thereby met the requirements for admission to membership in the Chartered Professional Accountants of Ontario ("CPA Ontario"). The Applicant's good character was put into issue

as a result of ■ criminal conviction for driving with excess alcohol in ■ blood and take motor vehicle without consent on June 9, 2012. ■ application was referred by the Registrar to the Admission and Registration Committee (“ARC”).

The Applicant’s Application to CPA Ontario

- [2] The Applicant applied to be registered as a student with CPA Ontario in 2017. In ■ application, ■ answered affirmatively that ■ had been convicted of a “criminal or similar offence”.
- [3] When the Applicant applied for student registration in 2017, the regulation in effect (Regulation 6-1) did not provide for hearings into good character matters. Accordingly, the Vice President Student Services (“VPSS”) conducted a written review of the Applicant’s application and documents relevant to ■ criminal convictions. By letter dated May 26, 2017, the VPSS asked the Applicant to provide additional information respecting the offence in a questionnaire, as well as ■ reflective thoughts about the offences and letters of reference.
- [4] On June 9, 2017, the Applicant completed the questionnaire, and ■ explained that in 2012, ■ was found guilty of offences under sections 253(1)(b) and 335 of the *Criminal Code*. ■ advised that these convictions related to an offence that took place on June 9, 2012. The Applicant wrote that ■ took full responsibility for ■ actions and ■ had pleaded guilty to the offences. In a letter accompanying the questionnaire, the Applicant provided detailed information about what had happened and ■ response to these events (see below). ■ also provided several reference letters.
- [5] The Applicant was subsequently approved for student registration.
- [6] When the Applicant had completed the CPA student program, ■ applied for admission to membership with CPA Ontario on March 17, 2020. The Applicant again disclosed that ■ had previously “been convicted of a criminal or similar offence.”
- [7] By this time, the regulations had changed and the Registrar was required to refer applications for membership to the ARC if they were not satisfied with the evidence of good character provided by an applicant. The Registrar found that the Applicant met all of the criteria for registration as a member other than the good character requirement.

The Events Leading to the Applicant's 2012 Conviction

- [8] The events at issue occurred in the summer of 2012, when the Applicant was ■ years old and had just finished ■ final year at university.
- [9] In ■ evidence at the hearing, the Applicant explained that on the evening of June 8, 2012, ■ had been at a party at the home of a friend's parents. ■ testified that ■ had consumed so much alcohol that ■ could not recall the specific details of that evening; for example, ■ could not recall getting in a car or getting the keys. The Applicant testified that ■ later learned that ■ had taken the car belonging to ■ friend's parents in the early hours of the morning.
- [10] According to the police report, at 3:30 on the morning of June 9, 2012, the police received a call that there had been a single car accident. When they arrived at the scene, the police noted that the road was wet from a previous rainfall. The road had a gradual left turn before an intersection, with a heavily wooded area to the right side and a residential property on the left. The police concluded that the car driven by the Applicant had failed to negotiate the corner and drove off the road about a quarter of the way into the turn. The car landed sideways in the wooded area and was hung up off the ground by trees and brush. One witness described the Applicant as "clearly shaken and upset". The police detected a strong odour of alcohol on the Applicant and ■ was ultimately arrested for driving under the influence. The Applicant recalled being in an ambulance and knowing that ■ had done something wrong.

The Criminal Charges and Conviction

- [11] The Applicant was arrested and charged with operating a vehicle after consuming alcohol in such a quantity that the concentration thereof in ■ blood exceeded 80 milligrams of alcohol in 100 millilitres of blood, contrary to section 253(1)(b) of the *Criminal Code*. ■ was also charged with taking a motor vehicle without the owner's consent, contrary to section 335 of the *Criminal Code*.
- [12] The Applicant testified that ■ met with a lawyer shortly after the incident, who provided ■ with various options. The Applicant testified that ■ decided to plead guilty because ■ wanted to take responsibility and that was the right thing to do.

- [13] The Applicant pleaded guilty to both offences on August 2, 2012. The Applicant was represented by counsel. There was a joint submission on sentencing made for: a \$1500 fine; a one year driving prohibition; and, a probation order for one year in relation to taking the car without the owner's consent.
- [14] In ■ submission on sentencing, the Applicant's lawyer argued that the Applicant, who was ■ years old at that time, had acknowledged that ■ had made a grave mistake. Prior to the hearing, the Applicant had paid \$1,823.65 in restitution to the owner of the car, which covered the shortfall the owner had to pay after insurance coverage, again because ■ wanted to take responsibility for ■ actions and felt that the payment was the right thing to do. The Applicant told the Court that ■ had learned from ■ mistakes.
- [15] In ■ reasons for sentence, the judge expressed concern about how the Applicant's actions would have upset and frightened ■ parents, and how fortunate ■ was that ■ did not kill ■ or others. The judge noted the bright future that the Applicant had ahead of ■ and ■ accepted the joint submission, waiving the victim fine surcharge, and recommended that the Applicant apply to an Interlock program, described below, once the fine was paid.

Events Following the Conviction

- [16] The Applicant paid ■ fine immediately after the trial and ■ participated in the probation without incident.
- [17] The Applicant completed a "Back on Track" program on September 15, 2012. The Applicant testified that this was a one-day program that provided in-depth education about the consequences of drinking and driving and highlighted the impact of excessive drinking generally. ■ learned about different tolerance levels for alcohol and various other issues.
- [18] Although the Court ordered that ■ driver's licence be suspended for one year, the Applicant was able to participate in a reduced sentence program by installing an ignition device in ■ car. This device required the Applicant to blow into a breathalyzer installed in ■ car before the car would start. Any trace of alcohol on the Applicant's breath would not allow the car to start.

- [19] The Applicant testified that ■ has never driven under the influence since the 2012 incident. In fact, ■ said that ■ had abstained from alcohol for several months after the accident and drank only casually after that. Since ■ has become a ■ and started studying to be an accountant, the Applicant said that ■ priorities have changed. ■ stated that approximately four-and-a-half years ago ■ made the choice to live a life of complete sobriety because ■ is determined to be a positive role model to ■ children.
- [20] The Applicant testified that ■ learned a lot from the events of 2012. ■ testified that ■ specifically learned how easy it was to get out of control, specifically with alcohol, and that this was a huge “wake up call.” ■ described the accident and conviction as “the most impactful event of my life.”
- [21] Five years after the completion of ■ sentence, the Applicant was able to apply to the Parole Board of Canada for a Record Suspension (referred to at the time as a “Pardon”). ■ testified that the application process for the Record Suspension was quite involved, but ■ wanted a Pardon so that ■ could do volunteer work at school events, including coaching junior basketball. On September 19, 2020, the Applicant received a Record Suspension from the Parole Board of Canada. The Record Suspension stated, amongst other things, that the conviction should no longer reflect adversely on the Applicant’s character, unless it was subsequently revoked. The Board added that the Applicant had been of good conduct since the convictions.
- [22] After the incident, the Applicant worked in the community in a number of capacities, including working at the local Chamber of Commerce. In 2015, the Applicant decided to pursue a career in accounting and ■ began work in a staff accountant position while completing ■ CPA Ontario courses. ■ completed the program in September 2019.

Character Evidence

- [23] The Applicant provided the Panel with the following reference letters:
- a. February 19, 2021 – In a letter from a retired educator and family friend, the referee indicated that she had known the Applicant in high school and ■ was an excellent communicator and an active student. She was aware of the drinking and driving incident and believed that it was out of character. She stated that ■ had matured since that time.

- b. February 20, 2021 – An employer and respected community member wrote that the Applicant was an excellent employee at the Chamber of Commerce and was a leader at work. She was also aware of the drinking and driving incident and believed that it was out of character. She stated that the Applicant took the matter very seriously.
- c. February 22, 2021 – A member of CPA Ontario who employed the Applicant in his office was highly complimentary of the Applicant's people skills, honesty and integrity. He wrote that the 2012 event was an isolated incident. He had observed the Applicant socially and said that the Applicant was sober at extracurricular office events and other activities outside the office.

II. ISSUES IN THIS HEARING

- [24] The issue in this application was whether the evidence demonstrated on a balance of probabilities that the Applicant was of good character at the time of the hearing and could be admitted as a member of CPA Ontario.

III. DECISION

- [25] The Panel found that the Applicant established on a balance of probabilities that ■ was of good character at the time of the hearing and granted ■ application for admission as a member of CPA Ontario.

IV. REASONS FOR DECISION

Good Character Requirement in Regulations

- [26] All applicants for membership in CPA Ontario are required to provide evidence of good character satisfactory to the Registrar (subsection 3.4 of Regulation 7-1). It is implicit in this mandatory requirement that the onus is on the applicant to establish their good character. The standard of proof in regulatory matters, unless stated otherwise, is "balance of probabilities"; in other words, the applicant must establish that it is more likely than not that they are a person of good character.

- [27] Under Section 14 of Regulation 7-1, where an applicant for membership in CPA Ontario does not provide evidence of good character satisfactory to the Registrar, the Registrar

shall refer the matter to an oral hearing before the ARC. Sections 16 to 22 of the Regulation sets out the parameters for the hearing and the powers of the ARC.

- [28] In the seminal good character decision for CPA Ontario, *GB v. Registrar, Chartered Accountants of Ontario (November 26, 2019)*, the Panel found that when a matter is referred to the ARC for a good character hearing, the panel's assessment of the applicant's good character must be respecting their character at the time of the hearing. In other words, while the criminal conviction may *prima facie* establish that the applicant historically made a poor ethical choice or exercised poor judgment, the issue for the panel's determination is whether the applicant is currently a person who possesses good character.

What is Good Character?

- [29] "Good character" is not defined in the CPA Ontario Regulations; however, the following definition from a Law Society decision, *Law Society of Upper Canada v Preyra*, 2000 CanLII 14383, has been adopted by CPA Ontario panels:

"[Good character consists of] 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."

- [30] In an often cited article about good character, Madam Justice Southin of the British Columbia Court of Appeal elaborated and wrote as follows:

"[G]ood character" means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law...Character...comprises...at least these qualities:

1. An appreciation of the difference between right and wrong; and
2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;

3. A belief that the law at least in so far as it forbids things which are *malum in se* must be upheld and the courage to see that it is upheld.

[31] The purpose of the good character requirement for various professions, including the accounting profession, is to protect members of the public who retain professionals and more broadly to ensure that the profession maintains a reputation for high professional and ethical standards. Gavin MacKenzie, in his book *Lawyers and Ethics: Professional Responsibility and Discipline*, stated that the objectives of the good character requirement are the same as the principles of discipline, namely to:

“...protect the public, to maintain high ethical standards, to maintain public confidence in the legal profession and its ability to regulate itself, and to deal fairly with persons whose livelihood and reputation are affected.”

[32] Section 7 of Regulation 7-1 states that the Registrar shall not admit an applicant without being satisfied that the admission will not put the public at risk or bring the reputation of the accounting profession into disrepute.

Factors Determining Good Character

[33] It is well established that ARC panels conducting a good character hearing must review the evidence relating to the good character of an applicant as framed by the following factors:

- a. The nature and duration of the misconduct;
- b. Whether the applicant is remorseful;
- c. What rehabilitative efforts, if any, had been taken and the success of such efforts;
- d. The applicant's conduct since the misconduct; and
- e. The passage of time since the misconduct.

[34] The calculation of whether a person is of good character is not a mathematical formula but rather is based upon a combination of these factors, which are often overlapping and inter-related.

Analysis

Nature and Duration of Misconduct

- [35] Counsel for the Registrar argued that the mere fact of criminal convictions reflects negatively on the character of an applicant. She submitted, however, that the Panel must look behind the convictions and consider the underlying events and misconduct. Driving while under the influence is a serious offence and has attracted society's condemnation because of the dangers posed to the public.
- [36] Counsel for the Registrar provided the Panel with jurisprudence about the impact of Pardons (now referred to as Record Suspensions) on the Panel's consideration of the criminal convictions. The Supreme Court of Canada reviewed this issue in *City of Montreal v Quebec*, 2008 SCC 48, where an applicant for employment as a police officer was rejected on the basis that she had been found guilty of a criminal offence (shop-lifting). The applicant for the position appealed the decision on the basis that she had been pardoned for the offence and that a hiring prohibition based on prior convictions that had since been pardoned offended the *Charter of Rights and Freedoms*. The Supreme Court found that a Pardon generally restored the person's reputation but did not erase the past. The Court held that it was not a violation of the *Charter* for an employer to consider the facts and circumstances that lead to the offence in order to support their decision about the fitness of the person for the job. The employer must show, however, that the decision to reject the applicant was not based on the mere fact of a conviction, but rather on the underlying facts and circumstances.
- [37] The *City of Montreal* analysis was applied to a good character hearing before a Law Society Appeal Panel in *LSUC v Tunney*, 2016 ONLSTA 20. There, the Appeal Panel found that a Record Suspension received by a paralegal licensing candidate did not foreclose a review of the candidate's prior criminal offences. The Panel concluded at para [51] of the decision as follows:

“In our view, the existence of a Pardon and/or a discharge disposition does not preclude a hearing panel from considering the facts underlying the prior, pardoned conduct or the facts underlying a prior, pardoned discharge in the context of a good character hearing. The existence of a pardon and/or discharge is a relevant fact that must be considered, and in many cases is likely to operate in the applicant's

favour. However, this is not necessarily so. Each case must be approached on a case-by-case basis in accordance with the *Armstrong* factors [the 5 factors listed above] and other relevant information.”

[38] The Panel adopted this analysis and found that it could not deny the Applicant membership in CPA Ontario merely because ■ had a criminal conviction in the past, however it could review the circumstances leading to the conviction despite the Pardon. The panel noted the seriousness of the offence of drinking and driving, and also the wrongdoing in taking a vehicle without the owner’s permission. However, the Panel accepted the evidence of the Applicant and ■ character witnesses that this was an isolated event, rather than part of a pattern of poor judgment and decision-making.

Whether Applicant is Remorseful

[39] The Panel noted the Applicant’s numerous expressions of remorse in ■ correspondence to CPA Ontario during the student and membership application processes in 2017 and 2019, where ■ indicated that after the accident ■ was filled with regret, embarrassment, sadness and anger. ■ wrote that ■ had let ■ family down as well as friends and ■. In terms of taking the car of ■ friend’s parents, the Applicant wrote that ■ felt terrible about betraying the trust of that family. The Applicant also acknowledged that ■ was fortunate to have walked away from the accident without hurting ■ or others.

[40] The Applicant had promptly pled guilty to the criminal charges and took full responsibility for ■ actions prior to ■ criminal trial by paying the car owner for the portion of damages to the vehicle not covered by insurance.

[41] The Panel observed that the Applicant expressed genuine remorse at the hearing and ■ did not minimize or try to explain away ■ behaviour in any way. One of ■ references also noted that the Appellant had expressed remorse to him.

[42] In conclusion, the Panel found that the Applicant had insight into ■ actions in 2012, had learned from them, and expressed true remorse on several occasions since the events, both in word and deed.

Rehabilitation Efforts and the Success of Such Efforts

[43] The Applicant completed the “Back on Track” program and in [REDACTED] evidence, it was clear that [REDACTED] had gained insight and knowledge in this program. The Panel was impressed by the Applicant’s current mature view about drinking. [REDACTED] had changed [REDACTED] lifestyle since the accident. In [REDACTED] words, this was the most impactful event of [REDACTED] life.

[44] The Panel noted the Applicant’s community involvement, [REDACTED] work with youth and sports, and [REDACTED] supportive family environment. The Applicant had clearly restored [REDACTED] reputation in [REDACTED] community.

Applicant’s Conduct Since the Misconduct

[45] The Panel found that there was no evidence of any misconduct on the part of the Applicant since 2012. The evidence before the panel was that the Applicant was a contributing member of [REDACTED] community, a hard-working and respected employee and a devoted parent. The Parole Board of Canada also found in 2019 that the Applicant’s conduct since the convictions had been good.

The Passage of Time Since the Misconduct

[46] The Panel noted that the underlying events were over eight years old and occurred when the Applicant was a young [REDACTED]. The Panel accepted the evidence of the Applicant that [REDACTED] life today is very different from the lifestyle [REDACTED] enjoyed in 2012 when [REDACTED] was [REDACTED] years old.

Conclusion

[47] The Panel concluded that the Applicant’s misconduct was from a single series of events that occurred many years ago. The Applicant expressed clear and genuine remorse both in [REDACTED] words and actions, and had engaged in rehabilitation that resulted in a changed lifestyle. There was no evidence of misconduct since 2012.

[48] For these reasons, the Panel found that the Applicant had proven ■ good character and, because ■ had satisfied all other membership requirements, directs the Registrar to admit ■ as a member of CPA Ontario.

Dated this 6th day of April, 2021



Bernard S. Schwartz, FCPA, FCA
Admission and Registration Committee – Deputy Chair

Members of the Panel

Naresh Agarwal, Public Representative
Margot Howard, Public Representative
Seemant Thakkar, CPA, CMA, CGA

Independent Legal Counsel

Susan J. Heakes