

**CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
ADMISSION AND REGISTRATION COMMITTEE**

**IN THE MATTER OF AN APPLICATION
FOR STUDENT BY:**

A [REDACTED] K [REDACTED], Applicant

NOTICE OF REFERRAL FOR A HEARING

Pursuant to section 13 of Regulation 9-1, 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 to be registered as a student with the CPA Ontario on June 18, 2020. Having reviewed the application for registration, I am not satisfied that the Applicant has provided evidence of good character as required under Regulation 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Registration.
2. The particulars are as follows:
 - a. In [REDACTED] application for student registration, 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 was required to fill out a questionnaire where [REDACTED] indicated [REDACTED] was found guilty or liable to penalty, or other sanction under:
 - i. “Operation while impaired - Section 320.14(1)(a)”; and
 - ii. “Operation while impaired – blood alcohol (80 plus) – Section 320.14(1)(b).
 - c. However, the trial transcript indicates that the Applicant was convicted of:
 - i. “Operation while impaired – committing an offence while operating a motor vehicle, or has the care or control of the motor vehicle whether it is in motion

or not, while the person's ability to operate is impaired by alcohol or a drug, thereby violating Section 253 (1) (a) of the Criminal Code of Canada.”

- d. The incident occurred on November 24, 2018. The Applicant entered a guilty plea on December 24, 2018.
 - e. On December 24, 2018, the Court imposed the following sentence:
 - i. Fine of fifteen hundred dollars to be paid in 30 days, plus the victim fine surcharge;
 - ii. Driver's license shall be suspended; and
 - iii. Prohibited from operating or driving a motor vehicle for a period of one year.
3. I have determined that the Applicant otherwise meets all the criteria to be registered as a student.

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] K [REDACTED], an applicant for registration as a student with the Chartered Professional Accountants of Ontario pursuant to Regulation 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Registration, as amended.

TO: A [REDACTED] K [REDACTED]

AND TO: Registrar, CPA Ontario

DECISION AND ORDER MADE MARCH 22, 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 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Admission.

ORDER

The Tribunal, having been advised by the Registrar the applicant otherwise meets all the requirements of registration, directs the Registrar to admit A [REDACTED] K [REDACTED] as a student with CPA Ontario.

DATED at Toronto this 22ND 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] K [REDACTED], an applicant for registration as a student with the Chartered Professional Accountants of Ontario, pursuant to Regulation 9-1: Student Registration, Obligations and Standing, as amended

BETWEEN:

A [REDACTED] K [REDACTED]

-and-

**REGISTRAR, CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

APPEARANCES:

For the Applicant:	Self-represented
For the Registrar:	Katie Archibald, Counsel
Heard:	March 22, 2021
Decision and Order effective:	March 22, 2021
Release of written reasons:	April 22, 2021

REASONS FOR THE DECISION MADE MARCH 22, 2021

I. BACKGROUND AND FACTS

[1] This hearing was held by videoconference to determine whether the Applicant, A [REDACTED] K [REDACTED] (the "Applicant") was of good character at the time of the hearing and thereby met the requirements for registration as a student with the Chartered Professional Accountants of Ontario ("CPA Ontario"). The Applicant's good character was put into issue as a result

- [2] of [REDACTED] criminal conviction on December 24, 2018 for having care and control of a motor vehicle while [REDACTED] ability to operate the vehicle was impaired by alcohol. [REDACTED] application was referred by the Registrar to the Admission and Registration Committee (“ARC”).

The Applicant’s Application to CPA Ontario

- [3] The Applicant applied to be registered as a student with CPA Ontario on June 16, 2020. In response to one of the questions on the application for registration, the Applicant answered affirmatively that [REDACTED] had previously been convicted of a criminal offence.

- [4] The Applicant submitted a supplementary form to CPA Ontario regarding [REDACTED] conviction, where [REDACTED] wrote as follows:

“I was at a school party, but instead of calling a taxi, I slept in my vehicle. It was during the middle of winter, so I decided to sleep while my car was running for the heat. I had a 3-month driving suspension and 9 months of driving with an interlock system in my vehicle.”

- [5] The Registrar asked the Applicant to produce additional documentation about [REDACTED] conviction and [REDACTED] provided the following: the transcript from [REDACTED] court appearance on December 24, 2018; a document entitled “Reflection Piece”; letters respecting [REDACTED] Alcolock and Back on Track programs; three letters of reference; proof of payment of the fine ordered by the Court; and [REDACTED] current driving abstract.

- [6] In the “Reflection Piece,” the Applicant stated, amongst other things, as follows:

“Although the situation was embarrassing and tough, it really taught me to be more responsible, and to be accountable for my actions. It taught me to think two steps ahead. I have significantly reduced my alcohol intake when I go out for a party, and when I plan on drinking, I always leave my vehicle at home, and take a taxi instead.”

- [7] The Registrar referred the Applicant’s application to the ARC and advised that the Applicant otherwise met all criteria for registration as a student.

The Criminal Charges and Conviction

- [8] According to the police reports, on November 24, 2018, the Applicant was found in a parked, but running, vehicle in a parking lot. The security guard who found the Applicant was unable to wake ■■■ up, however when the police arrived, ■■■ was awake. The police detected an odour of alcohol on the Applicant and observed vomit on the running boards of the driver's side door and on the ground. The Applicant advised the police officer that ■■■ had consumed only two whiskeys a few hours before at a nearby pub. After questioning the Applicant, the police saw ■■■ take the keys out of the ignition.
- [9] The Applicant was placed under arrest. At the police station, the Applicant provided two samples of ■■■ breath, the lower of which contained 200 milligrams of alcohol in 100 milliliters of blood. The Applicant was charged with having care and control of a vehicle while impaired by alcohol, contrary to section 253(1)(a) of the *Criminal Code*.
- [10] On December 24, 2018, the Applicant attended Superior Court and pleaded guilty to the offence as charged. ■■■ was represented by Duty Counsel. Counsel for the Crown noted that the Applicant had entered a guilty plea at the earliest opportunity; however, they were concerned that the Applicant's blood alcohol reading made ■■■ "grossly impaired." Duty Counsel advised the Court that the Applicant was ■■■ years old, and a full-time student taking Accounting and working as a bookkeeper. Duty Counsel submitted that the Applicant had made a horrible mistake that would not be repeated by the Applicant, who was taking full responsibility. Counsel also advised the Court that the Applicant did not have an alcohol problem.
- [11] The Crown and the Duty Counsel made a joint submission to the Court for the following disposition:
- a. a \$1,500 fine, plus surcharge; and
 - b. a 12-month driving prohibition.
- [12] The Court expressed concern that a young ■■■ would get to a blood alcohol level of 200 milligrams. The Court noted the impact of the conviction on the Applicant's insurance and ■■■ mobility with a criminal record. The Court accepted the joint submission and sentenced the Applicant accordingly.

- [13] Although the Court ordered a one-year suspension of ■ licence, on January 28, 2019, the Applicant participated in a program which allowed ■ to drive with an ignition device installed in ■ vehicle. This device required the Applicant to blow into a breathalyzer installed in ■ vehicle and it would only start if there was no trace of alcohol on ■ breath.
- [14] The Applicant also completed a program called Back on Track, which was an eight-hour educational program about substance abuse and the dangers of driving under the influence of substances.
- [15] The Applicant paid the fine (\$1,500) and surcharge (\$400) ordered by the Court. ■ testified that ■ also had to pay a fee (\$1,200) because ■ vehicle had been impounded.
- [16] The Applicant's driver's licence was reinstated on March 26, 2019. The Applicant's driving record showed a further conviction for speeding dated September 14, 2020.

The Applicant's Evidence

- [17] The Applicant testified that November 24, 2019 was "the worst night of [my] life." ■ acknowledged that ■ was intoxicated to a level that might have caused health issues. Had it not been for the arrival of the police, ■ said, ■ did not know what might have happened.
- [18] When asked on cross-examination why ■ had lied to the police about ■ alcohol consumption, the Applicant testified that ■ had just woken up and was trying to process what had happened.
- [19] The Applicant explained that the Back on Track program was required if ■ wanted to get ■ driver's licence reinstated early, but ■ said that it made ■ even more aware of the dangers of alcohol, and particularly of binge drinking.
- [20] With respect to the interlock device, the Applicant testified that it taught ■ never to get in a car with any alcohol in ■ system again.
- [21] A panel member asked the Applicant about ■ current alcohol consumption and the Applicant answered that ■ had reduced ■ drinking by 90% and was now only a recreational drinker. ■ appreciated that cannabis and alcohol were equally dangerous when mixed with driving.

[22] The Applicant was also asked if ■ had sought counselling after the incident and ■ said that ■ had received counselling to talk about ■ feelings and to learn how to say “no” at parties. On further questioning, the Applicant added that ■ had learned that ■ should not “fall to peer pressure” and “should always plan ahead.” ■ added that ■ family and Church were very supportive.

Character Evidence

[23] The Applicant provided the Panel with three reference letters. Two of these references testified at the hearing on ■ behalf. The following is a brief summary of the written and/or oral evidence of these individuals:

- a. The Applicant’s supervisor, SH, wrote a reference letter in June 15, 2020 in which she advised that the Applicant was an accounting assistant at their company. She stated that ■ maintained high standards and had an excellent attitude towards ■ work. Although in her letter she did not comment on the Applicant’s criminal conviction, in her oral testimony she advised that the Applicant had told her about the conviction. SH felt that what had happened to the Applicant was a mistake made by a young and immature kid. SH testified that she and the Applicant had spoken many times about the incident and ■ was always very forthcoming. She said that the Applicant struggled with what ■ had done and expressed that ■ felt really bad. She felt that ■ had learned ■ lesson and that this would not happen again. SH had observed the Applicant at a Christmas party and noted that ■ only had one beer and conducted ■ appropriately.
- b. The Applicant’s former accounting professor, GM, wrote in a letter dated July 17, 2020 that the Applicant was a good student who would regularly ask questions after class. There was no mention of the criminal conviction in this letter.
- c. JP, a senior manager at the Applicant’s employment, wrote a reference letter dated July 20, 2020 and gave oral evidence at the hearing. In his letter, JP was complimentary of the Applicant’s personality and accounting skills. In his oral evidence, he described the Applicant at the last Christmas party, where ■ had had only one drink and was later picked up by ■ mother. There was one other time that JP recalled that he had seen the Applicant have a drink. The Applicant had come to his home to help with a project and they had a beer together at lunch. Although the

Applicant had driven home, JP testified that the Applicant drove home several hours after consuming the beer. JP testified that the Applicant was embarrassed about the conviction and was very forthcoming about what had happened. He believed that the Applicant would not get into the same situation again.

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 registered as a student with CPA Ontario.

III. DECISION

[25] The Panel found that the Applicant established on a balance of probabilities that [REDACTED] was of good character at the time of the hearing and granted [REDACTED] application for registration as a student to CPA Ontario.

IV. REASONS FOR DECISION

Good Character Requirement in Regulations

[26] Under subsection 3.3 of Regulation 9-1, the Registrar shall register as a Student with CPA Ontario any individual who provides evidence of good character satisfactory to the Registrar. The Registrar shall not register an applicant without being satisfied that the registration will not put the public at risk or bring the reputation of the profession into disrepute (subsections 6.1 and 6.2 of Regulation 9-1).

[27] If an applicant does not provide evidence of good character satisfactory to the Registrar, the Registrar shall refer the matter to an oral hearing before the ARC (section 13 of Regulation 9-1). In referring the matter to the ARC, the Registrar is not making a decision about the applicant's good character, but rather they are finding that they have not been given sufficient evidence by the applicant to make a decision about good character or that the evidence provided on its face requires testing for credibility.

[28] If the ARC determines that an applicant is not of good character, they shall make an order refusing the applicant's registration and may impose restrictions and conditions for

reapplication if appropriate (section 19). If the ARC determines that the applicant has met the good character requirements, the panel shall make an order registering the applicant on such terms and restrictions as the Committee considers appropriate (section 21).

What is Good Character?

[29] “Good character” is not defined in the CPA Ontario governing documents; 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 (section 6 of Regulation 9-1). 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.”

Who Bears the Onus and What is the Burden of Proof?

[32] Under section 13 of Regulation 9-1, an applicant must provide satisfactory evidence to establish their good character. Here, the onus was clearly on the Applicant to convince the Panel that despite ■■■ previous misconduct, ■■■ was a person of good character at the time of the hearing.

[33] In the absence of a contrary standard of proof set out in the Regulations, the burden of proof applicable to other hearings of the committees of CPA Ontario should apply to good character hearings, namely proof on a balance of probabilities. Thus, the Applicant must satisfy the Panel that ■■■ was of good character at the time of the hearing on a balance of probabilities.

Factors Determining Good Character

[34] 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.

[35] 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

- [36] 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. Operating a vehicle while under the influence is a serious offence and has attracted society's condemnation because of the dangers posed to the public.
- [37] The panel noted the seriousness of the offence of drinking and driving. While the Applicant was not driving ■ vehicle on the evening of November 24, 2018, ■ judgment was clearly impaired; for example, ■ admitted that ■ had given false information to a police officer about how much ■ had had to drink. The Panel, however, 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

- [38] Prior to ■ application to CPA Ontario, the Applicant had taken responsibility for ■ actions by pleading guilty to the offence in court two months later.
- [39] The Panel noted the Applicant's expressions of embarrassment in ■ Personal Reflections.
- [40] During the hearing, the Applicant expressed genuine remorse several times and when ■ described what ■ had done, ■ did not minimize or try to explain away ■ behaviour. The Applicant even expressed gratitude to the police who found ■ in the parked car, given ■ dangerous level of alcohol consumption at that time.
- [41] The Applicant's references who testified commented on how forthright ■ was about ■ conviction and how much ■ regretted ■ actions.
- [42] In conclusion, the Panel found that the Applicant had insight into ■ actions in 2018 and had learned from them.

Rehabilitation Efforts and the Success of Such Efforts

- [43] The Applicant completed the Back on Track program and in ■■■ evidence, it was clear that ■■■ had gained insight and knowledge in this program.
- [44] The Applicant had also sought counselling to better understand why ■■■ had consumed so much alcohol on the evening in question. ■■■ learned valuable lessons about peer pressure and drinking.

Applicant's Conduct Since the Misconduct

- [45] There was no evidence of any serious misconduct on the part of the Applicant since November 2018. In fact, the evidence presented showed a diligent employee who contributed to ■■■ workplace, and who was prepared to work very hard to pursue a career in accounting.

The Passage of Time Since the Misconduct

- [46] The Panel noted that the underlying events occurred over 28 months before the hearing and occurred when the Applicant was a young ■■■.
- [47] In *GB (Re)*, where the applicant, G.B., was convicted of operating a motor vehicle with a blood alcohol level greater than 0.08 mg/ml, the panel expressed concern that the offence occurred 19 months before the hearing. They stated that in general, they would have preferred a longer period of time to observe the applicant's behaviour after the misconduct had occurred. The panel, however, was impressed by the rehabilitative measures taken by G. B. (Back on Track program, installation of interlock device, and reduced personal drinking as reported by a number of witnesses) and the fact that this was an isolated incident.
- [48] The panel found that the Applicant had engaged in similar rehabilitative efforts which were reflected in the mature attitude that ■■■ expressed about substance abuse during the hearing. The panel found that sufficient time had passed since the offence to assess the Applicant's current good character.

Conclusion

[49] The Panel concluded that the Applicant's misconduct was from a single series of events that occurred in 2018. The Applicant expressed clear regret in both [REDACTED] words and [REDACTED] actions and had engaged in rehabilitation that resulted in a changed lifestyle. There was no evidence of serious misconduct since 2018.

[50] For these reasons, the Panel found that the Applicant had proven [REDACTED] good character and, because [REDACTED] had satisfied all other membership requirements, directs the Registrar to register [REDACTED] as a student with CPA Ontario.

Dated this 22nd day of April, 2021



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

Members of the Panel

Donald Aronson, Public Representative

Margot Howard, Public Representative

Arvind Kamath, CPA, CA

Joseph Truscott CPA, CA, CMA

Independent Legal Counsel

Susan J. Heakes