

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 K [REDACTED] H [REDACTED], an applicant applying for registration as a student with the Chartered Professional Accountants of Ontario, under Regulation 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Registration and Section 14: Credibility on Registration, as amended.

BETWEEN:

K [REDACTED] H [REDACTED]

-and-

**REGISTRAR, CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

APPEARANCES:

For the Applicant, K [REDACTED] H [REDACTED]: Brandon Crawford, Counsel

For the Registrar: Lara Kinkartz, Counsel

Heard: March 7, 8 and 24, 2022

Decision and Order effective: June 3, 2022

Release of written reasons: June 3, 2022

REASONS FOR THE DECISION MADE JUNE 3, 2022

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I. INTRODUCTION

- [1] K [REDACTED] H [REDACTED] (the “Applicant”) applied to be registered as a student with the Chartered Professional Accountants of Ontario (“CPA Ontario”) on January 24, 2021. In [REDACTED] application, the Applicant answered affirmatively to two questions related to [REDACTED] good character: [REDACTED] wrote that [REDACTED] had been convicted of one count of Possession of Child Pornography; and that [REDACTED] wrote that [REDACTED] had been investigated for an allegation of academic misconduct and had to repeat the course.
- [2] The Registrar referred the Applicant’s application for registration to the Admission and Registration Committee (the “ARC”) on November 1, 2021 for consideration of the Applicant’s credibility and for a determination of whether the Applicant was of good character at the time of the hearing and thereby met the requirements for registration as a student in CPA Ontario.
- [3] For reasons set out below, the Panel found that the Applicant failed to provide satisfactory evidence that [REDACTED] was a person of good character at the time of the hearing. The Panel refused the Applicant’s request to be registered as a student with CPA Ontario.

II. PRELIMINARY ISSUE

Use of Court Documents in the Hearing that were subject to a Publication Ban

- [4] At the outset of the hearing, the Panel noted that the Joint Book of Documents contained two transcripts from the Ontario Court of Justice that bore the following stamps: “*Contents cannot be published or broadcasted pursuant to an Order made by Justice M. Hoffman, pursuant to sections 486.4(1) and 486.4(3) of the Criminal Code of Canada.*” The Panel asked the parties for submissions about the impact of this prohibition, if any, on this hearing.

- [5] The Applicant told the Panel that ■ believed that there was a separate Order made by Justice Hoffman with more details about the publication ban. After a short recess, the Applicant's counsel, Brandon Crawford, advised that they were unable to locate this Order or any information about the Order.
- [6] The parties then jointly submitted that the Panel could rely upon the Court transcripts during this hearing. They argued that the purpose of subsections 486.4(1) and (3) of the *Criminal Code* was to require that trial judges make non-publication orders about information that could identify the victim or a witness in proceedings involving, amongst other things, child pornography. Furthermore, under section 163.1 of the *Criminal Code*, where a witness is under the age of 18 years or where any person is the subject of written material or a recording that constitutes child pornography, the trial judge must order a publication ban. The parties assured the Panel that there were no persons under the age of 18 years whose interests needed to be protected by the publication ban.
- [7] The parties also argued that pursuant to section 486(4) of the *Criminal Code*, the publication ban did not apply to the disclosure of information made in the course of the administration of justice when the purpose of the disclosure was not to make the information known in the community. They argued that this hearing was part of the administration of justice. Furthermore, they submitted that because the hearing was closed to the public, this protected the interests of those who were intended to be safeguarded by the publication ban. In *CBC v Canada (Attorney General)*, 2016 FC 933 at para. [64], the Supreme Court of Canada endorsed closed hearings and exclusion orders as a means of ensuring that the public will not have access to the banned information.
- [8] The Panel agreed with this analysis but remained concerned that there was little information before it about the publication ban. The Panel recognized that the information contained in the Court transcripts was relevant and necessary to this hearing. The Panel ordered that the information in the Court transcripts could be used during the hearing. To ensure that the information contained in the Court

transcripts was protected pursuant to the Order of Justice Hoffman, the Panel ordered as follows:

- (a) The hearing would continue to be heard in the absence of the public;
- (b) All participants in the hearing were prohibited from publishing or broadcasting any information respecting the Court transcripts except in the administration of their regulatory obligation;
- (c) No person would be permitted to attend the hearing without the permission of the Panel;
- (d) The Tribunal would mark the Joint Book of Documents (at pages 23-99) as being subject to an order prohibiting publication; and
- (e) Witnesses (other than the Applicant) would be excluded from the hearing.

III. BACKGROUND AND FACTS

Applicant's Background

- [9] The Applicant testified that ■ was born in 1992 outside Canada. ■ came to Canada in 2001 with ■ family. ■ described ■ parents and older siblings as being very accomplished. ■ said there was pressure on ■ to succeed.
- [10] At an early age, the Applicant was diagnosed with ADHD and Tourette Syndrome. ■ testified that when ■ was younger, ■ symptoms of Tourette Syndrome, such as motor and vocal tics, made ■ the subject of bullying in school. The Applicant said that the bullying had a profound effect on ■ mental health.
- [11] The Applicant finished high school overseas in 2010. ■ returned to Canada and attended university in the Fall of 2011. ■ Bachelor of Arts program started with a concentration in Business Law and was changed to the Commerce program in the Fall of 2012. In March of 2014, when ■ was in ■ third year of university, ■ was arrested for Possession of Child Pornography.

Applicant's Arrest and Conviction for Possession of Child Pornography – March 2014 to May 2017

- [12] On March 22, 2014, the Applicant brought [REDACTED] password-protected laptop in for repairs at an Apple store. When [REDACTED] dropped [REDACTED] computer off, the Applicant was reluctant to provide [REDACTED] password to the Apple store technician. [REDACTED] only did so after being reassured by the technician for several minutes that [REDACTED] personal files would not be accessed.
- [13] The Apple store technician who serviced the Applicant's computer saw thumbnails on the home screen that had names that suggested child pornography. The technician opened one image and saw a photograph of what appeared to be a seven- to nine-year-old girl, completely naked, exposing her vagina to the camera. When the technician saw this image, they called the police.
- [14] The Applicant was arrested on March 31, 2014 and charged with one count of Possession of Child Pornography in the form of movies and/or pictures and another count of Possession of Child Pornography in the form of videos. [REDACTED] spent a short period of time in jail and was released on bail.
- [15] The police conducted an extensive forensic review of the Applicant's computer and found that the Applicant had used Tor Browser, which was popular (but not exclusive to) the child pornography community. The Applicant's computer had six different anti-forensic software programs on it, which raised a "red flag" that the Applicant was trying to hide what [REDACTED] was accessing and viewing. Child pornography was stored on the Applicant's laptop in multiple locations and within multiple unrelated programs.
- [16] The forensic review revealed many images and videos on the Applicant's computer that met the definition of child pornography under section 163.1 of the *Criminal Code*.

- [17] The Applicant's criminal trial was delayed for almost three years due largely to the failure of the defence to provide timely notice that expert evidence would be required and their failure to provide notice of third-party suspects to the Crown.
- [18] At the Applicant's criminal trial before Justice Hoffman, the Applicant was represented by counsel. The trial took place for more than 11 days, not including written arguments and dates for oral arguments. The Applicant pleaded not guilty and ■ testified that ■ did not download or know about the child pornography on ■ laptop. During ■ testimony, as discussed below, the Applicant suggested that ■ best friend or members of ■ study group had downloaded the child pornography onto ■ laptop.
- [19] On May 17, 2017, Justice Hoffman explained why he did not accept the Applicant's evidence and position. He found that the Applicant was the only user of the laptop and the Applicant's testimony was that ■ had not shared ■ password with anyone else. The forensic evidence clearly established that the Applicant had downloaded child pornography and viewed it many times. Although there was a partial Agreed Statement of Facts provided to the Court near the end of the trial identifying 23 images and 14 videos, Justice Hoffman noted that there were thousands of files suggestive of child pornography found on the Applicant's computer.
- [20] On August 22, 2017, Justice Hoffman accepted the joint submission on sentencing of the Crown and the Applicant's counsel. He wrote that while it is clear that the Applicant did not directly victimize the children involved in the videos and pictures, they were victims of the original perpetrator and of every person who viewed them. He also took into account the recommendation of Dr. Gray of the Sexual Behaviours Clinic dated July 25, 2017, that the Applicant was at very low risk of future sexual offence against children and that ■ had otherwise lived a pro-social life.
- [21] Justice Hoffman sentenced the Applicant to 18 months imprisonment, followed by a two-year term of probation. He also made several ancillary orders, including:

- (a) The Applicant would be included in the Sex Offender Information Registration Act registry for a 10-year period (until May 2027);
- (b) ■ was prohibited from working with or communicating with children or attending public places where persons under the age of 16 were expected to be present;
- (c) ■ was required to attend and actively participate in assessments, counselling or rehabilitative programs as directed by ■ probation officer; and
- (d) ■ was prohibited from using the internet or other digital network, except for the purpose of employment or school.

Finding that Applicant Lied Under Oath – May 2017

[22] During ■ criminal trial, the Applicant testified under oath that others at ■ university, including ■ study group and ■ best friend, may have downloaded the child pornography on ■ computer. The Applicant testified that ■ best friend lived with ■ in ■ dorm for the entire school year, spent most nights in their room and had access to ■ computer. ■ also testified that another long-time friend visited ■ on New Year's Eve 2013; this was a date where the forensic evidence indicated that there were multiple downloads of child pornography on the Applicant's computer.

[23] Justice Hoffman heard and accepted the evidence of the Applicant's best friend that he did not live in the residence and that the Applicant could not have lived with or visited him there. At some point in the trial, the Applicant admitted that ■ had lied under oath. Justice Hoffman also heard and accepted the evidence of the Applicant's other close friend denying that he spent New Year's Eve 2013 with the Applicant.

[24] Justice Hoffman found that the explanation that the Applicant gave to the Court about why ■ lied about ■ best friend was nonsensical: *"It was "I don't want to involve [friend's name]."* Justice Hoffman commented that the Applicant's evidence

about the living arrangements of ■ best friend was not something that the Applicant could have been mistaken about. Justice Hoffman concluded that the Applicant gave this evidence to falsely set up third party suspects.

Completion of the Applicant's Criminal Sentence – August 2017 to January 2021

- [25] Following ■ sentencing in August 2017, the Applicant was incarcerated at a Detention Centre until February 2018. ■ applied for and was granted a Temporary Absence from jail which allowed ■ to serve ■ remaining time in the community under strict monitoring. The Applicant testified that ■ was required to wear an ankle bracelet and that ■ was subject to a curfew. ■ was required to continue to attend counselling for ■ sexual behaviour as directed by ■ probation officer.
- [26] The Applicant obtained full parole on August 24, 2018 after ■ successfully completed the terms of the Temporary Absence Program.
- [27] The Applicant was on probation until February 21, 2021. In April 2018, ■ applied for a variation of ■ probation conditions so that ■ could have greater access to the internet for university, to assist with ■ mental health and to contact ■ family who were overseas. The variation was granted on April 27, 2018. The Applicant was prohibited from accessing social media sites such as Facebook, Twitter, Tinder, and Instagram, or from going onto chat rooms sites except ones hosted by a university course website or as required for educational purposes. The Applicant testified that ■ considered this to be a big accomplishment, as ■ could now use the internet “*normally*”, provided that ■ did not communicate with anyone under the age of 16.
- [28] The Applicant completed the reporting condition that ■ attend the Sexual Behaviour Clinic and attend one-on-one sessions with a psychiatrist, Dr. Federoff, on September 30, 2020. ■ probation was completed on February 21, 2021.

Three Findings of Academic misconduct in University Accounting Program - 2019 to 2020

[29] In May 2019, the Applicant enrolled in the School of Management at an Ontario university. While enrolled at the School of Management, the Applicant was found to have committed academic misconduct on three separate occasions. In each instance, the Applicant appeared before the Committee of Inquiry and it appears that ■ was accorded due process; in particular, ■ said ■ had counsel, Mr. Crawford, assisting ■ in various degrees in the first hearing and representing ■ at the second and third hearings. There was an appeal process available to the Applicant, however, the Applicant did not appeal any of the decisions.

[30] Prior to the hearing, the Applicant provided CPA Ontario with information about the third time ■ was found to have committed academic dishonesty by the Committee of Inquiry. As discussed below, the Applicant provided no particulars about the first two findings that ■ had cheated during ■ examinations prior to the hearing. In fact, except for a single comment at the end of the University's Committee of Inquiry Report dealing with the third instance of academic misconduct, that stated "*Considering the present case is the third instance where an allegation of academic fraud has been deemed founded for the student...*", there was no disclosure at all of the first two instances prior to the hearing.

First Finding of Academic misconduct -Unauthorized Use of a Test Bank – March 2019

[31] The Applicant testified that during this period, ■ was under immense pressure because ■ program was prestigious and very competitive. ■ said that the first allegation of cheating involved ■ use of a test bank, which are compilations of a professor's test questions and answers from past semesters. The Applicant explained that ■ thought that it was normal for students to use the test banks; throughout ■ time at university, ■ said that ■ had seen students sharing examinations and test banks. ■ also explained that ■ was trying to save money on text books.

- [32] In ■■■ direct testimony, the Applicant acknowledged that ■■■ crossed a line in using the test bank as it was in contravention of the academic dishonesty rules. ■■■ said that the Committee of Inquiry required that ■■■ repeat the course and take another course that was not part of the faculty.
- [33] On cross-examination, the Applicant agreed that ■■■ answers on this examination were “spot on” with the test bank answers. Ms. Kinkartz pointed out that the Committee of Inquiry also found that the Applicant’s answers were similar to those of another student, including the same typographical errors. ■■■ admitted that this was their finding but challenged it because the other student was not identified to ■■■
- [34] When Ms. Kinkartz asked the Applicant why ■■■ had not disclosed this finding when ■■■ gave ■■■ evidence earlier in the hearing, the Applicant complained about the Committee of Inquiry process and said that ■■■ did not have a lawyer at this hearing (although ■■■ later said that Mr. Crawford had assisted ■■■ on all three academic charges). The Applicant justified ■■■ use of the test bank by stating that many people have gone on to great careers who have used test banks.

Second Finding of Academic misconduct- Unauthorized Use of USB Key – Summer 2019

- [35] The Applicant testified that because of ■■■ mental health diagnosis, ■■■ was granted permission to use a computer to write ■■■ examination. After ■■■ wrote ■■■ examination, the proctor observing the examination complained that the Applicant had plugged a USB key into ■■■ computer. ■■■ produced a screenshot of the Applicant’s computer that was suggestive of cheating. The Applicant testified that because of the previous finding of academic dishonesty, ■■■ reputation was diminished and ■■■ was unable to defend ■■■self. Again, ■■■ had to repeat this course.
- [36] Ms. Kinkartz pointed out to the Applicant that the decision of the Committee of Inquiry was based on concrete evidence - a screenshot taken of the examination. The Applicant agreed that it was ■■■ word against the evidence at the time.

Third Finding of Academic misconduct – Unauthorized Use of Cell Phone During Examination - December 2019 to March 2020

- [37] The following information was set out in the Agreed Statement of Facts. The Applicant was granted an accommodation to facilitate writing the final examination: ■ was allowed the use of a scribe, and ■ was given a private room for the examination. Upon entering the examination on December 8, 2019, the Applicant signed a document that stated that ■ did not have a cell phone with ■. In the examination room, the Applicant told the scribe to leave because he was not needed.
- [38] The day after the examination, the proctor reviewed video footage from the examination and saw that the Applicant was using a cell phone throughout the examination. The proctor reported the incident to the Applicant's professor and he made a complaint to the School of Management on January 21, 2020.
- [39] The matter was referred to the Committee of Inquiry and they held a hearing on March 25, 2020. The Committee viewed 12 videos of the Applicant during the final examination which showed the Applicant using an electronic device with a screen that lit up. The Applicant had placed the device on the chair between ■ legs. The Committee noted that the video footage showed the Applicant scrolling on the device, not pushing any buttons.
- [40] At the hearing, where the Applicant was represented by Mr. Crawford, the Applicant denied using an unauthorized device and stated that ■ often brought more than one calculator to an examination in case one malfunctioned. ■ asserted that the device in the video was a Casio Fx-CG500 calculator; which had a touch screen that could be used to access past calculations. The Applicant produced 4 photos and a video of ■ Casio calculator for comparison.
- [41] The Committee of Inquiry noted that the device shown in the video footage had a screen that appeared to make up the entirety of the device, whereas the screen on the Casio calculator took up only a portion of the device. The Applicant's response was that ■ had several calculators and that it was possible that ■

brought a different calculator to the examination. ■ also argued that it might appear to be a cell phone in the video footage because the lighting in the examination room was different from the lighting in the photos ■ had taken of ■ Casio calculator.

[42] After hearing the Applicant's oral submissions and reviewing the evidence, the Committee of Inquiry found that:

(a) The electronic device in the video footage did not match the size and format of the Casio Calculator the Applicant claimed that ■ had used;

(b) The electronic device in the video footage looked and behaved like a phone; and

(c) During the examination, the Applicant brought the electronic device with ■ when ■ temporarily left the room, instead of putting it on the desk.

[43] In light of these findings, the Committee of Inquiry found that the Applicant cheated on ■ final examination. In their reasons, the Committee noted that this was the third instance where there was a finding that an allegation of academic misconduct against the Applicant was found. The Applicant was given a grade of "F" on the course and a permanent notation was added to ■ transcript indicating that the Applicant received a sanction pursuant to a contravention of the University regulation on fraud.

[44] During ■ evidence at this hearing, the Applicant denied that ■ had used a cell phone during the examination, however ■ admitted that ■ had used a calculator that had the capacity to store functions. ■ admitted that this calculator was not authorized and that having it was in violation of the statement ■ signed at the beginning of the examination that the only thing that ■ brought into the examination room was a pencil and an authorized calculator.

[45] On cross-examination, the Applicant maintained that ■ had a calculator that lit up and could be scrolled through in a similar manner to a cell phone. ■ complained

about the University hearing process and argued that the University was biased against ■ because of the two other findings of academic misconduct.

- [46] The Applicant claimed that the Committee of Inquiry members for all three academic hearings were biased against ■. ■ said that ■ made a complaint to the University's Ombudsperson.

Applicant's Representations to CPA Ontario Prior to the Hearing

Application to CPA Ontario

- [47] The Applicant applied for registration as a student with CPA Ontario on January 24, 2021. In ■ application form, the Applicant answered affirmatively that ■ had been convicted of a criminal offence and provided the following details: "*1 count possession of child pornography.*"

- [48] The Applicant also answered affirmatively to being the subject of an investigation, disciplinary or settlement and wrote:

"[A]llegation of academic fraud on an exam for a student with a disability. I had to simply repeat the course and there was a mark on the transcript regarding this incident."

- [49] In ■ application, the Applicant did not disclose the University's findings from March 2019 (unauthorized use of test bank and copying another student) or the summer of 2019 (use of USB key). ■ was questioned at length by Ms. Kinkartz about this issue and over the course of ■ evidence, ■ provided the following explanations:

- (a) When ■ was filling out the application to CPA Ontario, ■ only had a copy of the third academic misconduct finding;
- (b) Page 3 of the Committee of Inquiry's Report dated January 21, 2020 stated that the decision was made "*considering the present case is the third instance where an allegation of academic fraud has been deemed founded for this*

student” and thus referred to the fact that there had been two other findings of academic misconduct;

- (c) ■ provided ■ School of Management transcripts which showed the F’s (the transcripts for the 2019 Winter Term showed an “F” for Taxation II and “repeated course” and the transcript for the 2019 Spring/Summer Term showed an “F” for Cost Accounting and “repeated course” (but neither transcript stated that the “F”s were due to a finding of academic misconduct);
- (d) ■ was not given enough space on the application form to fill out this additional information; and
- (e) ■ knew that ■ would have a good character hearing and would reveal this information in that process.

Questionnaire dated February 14, 2021

[50] Because ■ checked off boxes on the application form indicating that ■ had been convicted of a criminal offence, ■ was required to fill out a Questionnaire.

[51] In the Questionnaire related to ■ criminal conviction dated February 14, 2021, the Applicant wrote as follows:

“The issue [■ possession of child pornography] began when I was much younger, below 18. The issue came to the attention of the authority when I was 21. Laptop was presented to a repair shop. Material was discovered in the shop at the time. Mitigating factors had to do with this being my first offence, had strong family support and ties. I recommended to the court that I wanted to seek treatment for the issue before the judge and for issues I have been having with my mental health.....”

[52] The Panel was not provided with a separate Questionnaire prepared by the Applicant related to the findings of academic misconduct (if any existed). The Questionnaire that was provided in the Joint Book of Documents did not refer to the academic misconduct.

Reflective Pieces dated February 14, 2021

[53] The Applicant was also asked to provide CPA Ontario with two Reflective Pieces about the misconduct that ■ had reported in ■ application. In the Reflective Piece about ■ criminal conviction, the Applicant wrote:

“A horrendous mistake has occurred in 2014 when I was charged with one count of possession of Child Pornography [In fact, the Applicant was charged with two counts, however one count was ultimately withdrawn]. To this day, even as years have gone by since the incident, I live in constant fear and reminders of my past but have grown strong as a result. I [sic] can be difficult, even painful, to relate emotionally charged memories that involved trauma when explaining what has occurred. I am disgusted with my actions of 2014 and have since moved on. Nonetheless, a strong component of what has occurred 7 years ago has a lot in part with my mental health issues that I have been facing for the past 20 years of my life.”

[54] In the Applicant’s Reflective Piece on ■ criminal conviction, the Applicant discussed how difficult ■ life had been after the criminal conviction. ■ wrote at length about ■ accomplishments since that time. The only expression of remorse or regret for ■ actions in the Reflective Piece was the following statement: *“I cannot change the past, I cannot change the decisions I have made, and I cannot constantly live in fear, or depression, or sadness for the horrible mistakes that I have done.”*

[55] The Applicant also wrote a Reflective Piece related to what ■ described as ■ *“issue with the Academic Allegation investigation which took place in the Fall of 2019, but with a meeting with the Committee of Inquiry that occurred on March 25, 2020.”* There ■ explained that the “issue” took place when ■ was writing ■ final examination. ■ challenged the Committee of Inquiry’s decision in the third matter for the following reasons:

(a) ■ was not advised of the issues at the time of the examination and the allegations of academic misconduct were made many months after the fact;

- (b) ■ told the Committee that ■ was using a Casio calculator with a touch screen;
- (c) The inquiry was over the phone because of the COVID-19 pandemic and ■ did not have a proper opportunity to present evidence in its entirety;
- (d) ■ was not given an opportunity to recreate the events that took place in the examination room;
- (e) The process was governed by the “balance of probabilities” which meant that it was an extremely difficult battle to fight; and
- (f) ■ should have had different inquiry members.

[56] In the Reflective Piece about the academic dishonesty, the Applicant concluded that ■ needed follow-up treatment in order to ensure that ■ Tourette Syndrome and ADHD did not interfere with ■ life, which ■ strongly believed that it had. As will be discussed below, this Reflective Piece did not refer to ■ two previous findings of academic dishonesty. Also, although the Applicant admitted during ■ evidence at this hearing that ■ broke the rules in ■ third instance of academic dishonesty by using a calculator that ■ should not have used, this was not mentioned in the Reflective Piece.

Applicant’s Evidence of Remorse

Remorse Re: Possession of Child Pornography and Lying under Oath

- [57] The Applicant gave testimony about the insights that ■ had developed with the assistance of the Sexual Behaviours Clinic. ■ knew that ■ use of child pornography, which had started about three years before ■ arrest, was unhealthy behaviour that “*victimized someone in perpetuity*”. ■ understood that ■ actions were “*grave*” and ■ was adamant that ■ would never engage in this behaviour again. The Panel was impressed by ■ insight into the impact of ■ misconduct.
- [58] Ms. Kinkartz asked the Applicant about the volume of pornography that was found on ■ computer, and the Applicant’s response was to criticize Justice Hoffman as being “*not a technical judge*.” The Applicant had difficulty answering Ms. Kinkartz’s

questions about [REDACTED] acquisition of child pornography and its extent. Eventually, the Applicant said that [REDACTED] was not sure of the definition of child pornography and [REDACTED] just listened to the evidence at [REDACTED] trial and that [REDACTED] had no say in it.

[59] The Applicant testified that [REDACTED] was not proud that in [REDACTED] sworn evidence at trial, [REDACTED] had suggested that [REDACTED] friend may have been responsible for the child pornography on [REDACTED] computer. When asked why [REDACTED] had lied under oath, the Applicant said that [REDACTED] was scared.

[60] During her cross-examination of the Applicant, Ms. Kinkartz thoroughly reviewed [REDACTED] Reflective Pieces, which were drafted about a year before the hearing. She noted several deficiencies. For example, in the Reflective Piece on [REDACTED] criminal conviction, the Applicant referred to [REDACTED] acquisition and possession of child pornography for many years as “*a horrible mistake*.” The Applicant answered that it was beyond a “*horrible mistake*” and said that [REDACTED] wished that [REDACTED] had worded the Reflective Piece differently. She then asked [REDACTED] if [REDACTED] knew [REDACTED] was breaking the law in the years that [REDACTED] had downloaded this material and the Applicant answered that [REDACTED] was not sure if [REDACTED] knew it was against the law but that [REDACTED] should have known.

[61] Ms. Kinkartz pointed out that the Applicant did not mention the harm to the victims in [REDACTED] Reflective Piece, but rather spoke about [REDACTED] own fear and trauma. [REDACTED] replied that [REDACTED] wished that [REDACTED] could have written more, but someone at CPA Ontario told [REDACTED] that [REDACTED] could only write so much. When asked who had told [REDACTED] this, the Applicant corrected [REDACTED] answer and explained that it was [REDACTED] impression that [REDACTED] couldn't write a long letter.

[62] The Applicant was then asked why [REDACTED] had implied in [REDACTED] Reflective Piece that [REDACTED] mental health, in particular the bullying that [REDACTED] had endured, was responsible for [REDACTED] criminal behaviour. The Applicant explained that [REDACTED] had learned from Dr. Gray that sometimes persons who are abused abuse others. Ms. Kinkartz asked the Applicant if [REDACTED] had been sexually or physically abused as a child, and the Applicant was only able to give examples of bullying [REDACTED] experienced at school.

[63] Finally, when asked again about ■ failure to address the harm to victims in ■ Reflective Piece, the Applicant said that there was a limit to what ■ could write. ■ could not say where this limit came from.

Remorse Re: Academic misconduct

[64] During ■ evidence, the Applicant denied much of the academic dishonesty, but to the extent that ■ admitted that ■ had used the test bank and an unauthorized calculator on ■ final examination, the Applicant spoke eloquently about why academic dishonesty is wrong. ■ described a fellow classmate who worked hard to excel in her studies despite young family responsibilities and how ■ cheating was unfair to her. ■ also appreciated the harm to the reputation of the School of Management and the integrity of their program when students engage in academic dishonesty. The Applicant said that ■ felt bad about succumbing to the pressure to succeed at school.

Applicant's Evidence of Rehabilitation

[65] After ■ release from custody in December 2017, the Applicant attended a Sexual Behaviours Clinic on a regular basis; ■ testified that ■ went to this program for three and a half years, twice a week for group sessions (for a total of 300 sessions) and one-on-one counselling with a psychiatrist, Dr. Federoff. ■ continued to receive counselling from that program under the terms of ■ probation until ■ counsellor and parole officer concluded that ■ had completed the necessary counselling.

[66] The Applicant testified that at the Sexual Behaviours Clinic, ■ learned that ■ actions in downloading images of children and possessing child pornography were not victimless crimes. ■ received therapy from Drs. Federoff and Gray and counselling from a social worker. The Applicant kept attending the clinic after ■ was required to do so by ■ parole officer.

[67] The Applicant also explained that ■ had graduated magnum cum laude with an Honours Bachelors in Commerce on October 17, 2020.

[68] The Applicant had been in a committed relationship for the past few years and had recently purchased a home. ■ worked as a senior accountant and financial analyst and was doing well in ■ employment.

Evidence of Character Witnesses

[69] The Applicant did not call any character witnesses to testify at the hearing, however, ■ provided eleven letters of reference to CPA Ontario. Three of the letters of reference were from university professors who taught the Applicant; they all described ■ as an excellent student. Two letters of reference were from the Applicant's clients, who were very happy with ■ accounting services. Two letters were from individuals at the Applicant's place of work, who were also impressed by the Applicant's diligence, skill and work ethic. Three friends, including ■ best friend who the Applicant implicated at ■ criminal trial, also wrote reference letters on behalf of the Applicant and they described the Applicant as hardworking and a good friend.

[70] The Panel noted that none of these letters referred to the Applicant's criminal record other than the letters from two of ■ friends: one friend referred only to the Applicant's "record" and the other wrote that the "small blip on ■ criminal record" did not relate to accounting and it was in the process of being expunged (which was not the case). None of the letters referred to the findings of academic misconduct made by the Committee of Inquiry in 2019/2020. (On cross-examination, the Applicant said that ■ did not think that any of the references knew about ■ academic misconduct.)

[71] A social worker with whom the Applicant worked when ■ was a patient at the Sexual Behaviour Clinic wrote a letter in early 2021 confirming the Applicant's involvement in personal therapy and later with the adult interest group. She did not refer to the findings of academic misconduct in her letter.

Evidence of Dr. Bourgon

- [72] The Applicant called the evidence of Dr. Guy Bourgon, a clinical psychologist, for two purposes: to provide expert evidence about the risk that the Applicant would re-offend; and to testify about his treatment of the Applicant since December 2021.
- [73] The Applicant's counsel sought to have Dr. Bourgon qualified as an expert in correctional psychology, and specifically in the area of assessment of the risk that a person convicted of a crime will re-offend or engage in rule-violating behaviour (Dr. Bourgon used the terms "rule-violating" and "rule-breaking" behaviour interchangeably during his testimony).
- [74] Ms. Kinkartz questioned Dr. Bourgon about his qualifications and he readily admitted that the risk assessment that he performed was different from the assessment of good character, which he had no expertise in determining. In response to a question from the Panel, Dr. Bourgon was unable to identify any academic writing that he had done in the field of the risk of rule-violating behaviour (as opposed to his extensive credentials in the area of criminal re-offending).
- [75] Ms. Kinkartz did not challenge Dr. Bourgon's expertise in the area of criminal recidivism, however she objected to the evidence of Dr. Bourgon respecting the risk that the Applicant would re-engage in rule-violating behaviour. She argued that she was only provided with a brief willsay statement about Dr. Bourgon's anticipated evidence and that she was not given any treatment notes or test results from Dr. Bourgon prior to the hearing.
- [76] The Panel deliberated and decided to hear all of Dr. Bourgon's direct evidence. If requested, the Chair advised Ms. Kinkartz that she could request an adjournment after the completion of Dr. Bourgon's evidence. The Panel accepted that Dr. Bourgon was qualified to provide expert evidence in the area of the likelihood of reoffence. He had an impressive amount of experience in assessing this issue and he had written and studied extensively in this area. Dr. Bourgon clearly described the well-recognized tests that have been developed to determine the statistical probability that a person convicted of a crime would commit another crime.

- [77] The Panel reserved its decision on Dr. Bourgon's qualifications as related to rule-breaking behaviour. The Chair invited the parties to make submissions on the weight that should be given to this evidence in their closing submissions.
- [78] Dr. Bourgon testified that the tools that were used to determine the likelihood that someone convicted of Possession of Child Pornography would reoffend have only recently been developed. He said that since December 2021, he had met with the Applicant four or five times for at least an hour on each occasion. The Applicant took a Level of Service/Case Management Inventory (LS/CMI test), which considered ■ criminal history (and the length of time since the criminal behaviour), education and employment, family/marital support, leisure/recreation, friends and substance abuse issues. The Applicant scored very low in the test and Dr. Bourgon concluded that there was an "incredibly low risk" that the Applicant would reoffend after ■ criminal conviction.
- [79] Dr. Bourgon was aware of the findings that the Applicant had committed academic misconduct, but he did not consider this to be serious; he said that 75-98% of university students commit academic dishonesty and that it is common for students to use every resource to focus on their grades. When asked by Mr. Crawford about whether he was concerned that the Applicant had been caught three times, Dr. Bourgon testified that as soon as someone is caught once, it is more likely that they will be caught again because the scrutiny is higher. He felt that the Applicant was doing what most of ■ peers were doing, only ■ got caught. He attributed the Applicant's cheating to ■ stress and ■ perfectionism.
- [80] In terms of his treatment of the Applicant, during the few sessions they had had, the Applicant and Dr. Bourgon discussed handling stress in a respectful way and focusing on the Applicant's future.
- [81] On cross-examination, Dr. Bourgon testified that the fact that the Applicant had lied at ■ criminal trial to implicate ■ best friend had not been factored into his risk assessment. He agreed with Ms. Kinkartz that lying under oath in Court was rule-breaking behaviour.

- [82] Dr. Bourgon also indicated that the academic misconduct committed by the Applicant would not be considered to be rule-breaking behaviour within the context of the risk assessment. Dr. Bourgon clarified his earlier evidence and explained that he had not been saying that cheating was acceptable, but merely that once the Applicant was caught cheating, it was more likely that they would be caught again.
- [83] Dr. Bourgon admitted that his assessment was not able to predict the likelihood of future unethical conduct, in particular, whether someone would abide by the Rules of Professional Conduct of their profession.
- [84] Ms. Kinkartz explained to Dr. Bourgon that the Applicant had not told CPA Ontario about the two earlier instances of academic misconduct. He said that the Applicant had told him that ■ made full disclosure to CPA Ontario, and that he had advised the Applicant to ensure that ■ told CPA Ontario everything.
- [85] Finally, Ms. Kinkartz asked Dr. Bourgon if the Applicant had talked during their meetings about the harm that ■ actions had caused. Dr. Bourgon said that their discussions did not focus on the harm caused by the Applicant's actions. Rather, the focus had been on how to move forward and deal with the fact that ■ had been convicted and how to handle stress.

IV. ISSUES IN THIS HEARING

- [86] The issue in this application was whether the evidence provided by the Applicant demonstrated, on a balance of probabilities, that ■ was of good character at the time of the hearing and could be registered as a student with CPA Ontario.
- [87] Although the Notice of Referral for Hearing refers to section 14 of Regulation 9-1, which states that the Registrar shall refer a matter to the ARC if the application requires an assessment of the Applicant's credibility, counsel for the Registrar did not raise this as an issue in her closing submissions. The Panel therefore did not make any finding related to the Applicant's general credibility.

V. DECISION

[88] The Panel found that the Applicant failed to establish on a balance of probabilities that [REDACTED] was of good character at the time of the hearing. For reasons set out below, the Panel ordered that the application be refused.

VI. REASONS FOR DECISION

Good Character Requirement in Regulations

[89] Applicants for registration as students are required to provide the Registrar with satisfactory evidence of their good character (section 3.3 of Regulation 9-1). Where the Registrar is not satisfied with the evidence provided by the applicant about their good character or issues of credibility are raised by the application, the Registrar must refer the matter to an oral hearing before the ARC (sections 13 and 14 of Regulation 9-1).

[90] At the ARC hearing, 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.” This means that the applicant must establish that it is “more likely than not” that they are a person of good character.

[91] The ARC must assess the applicant’s character as of the time of the hearing. In other words, while there is evidence that the applicant historically made poor ethical choices or exercised poor judgment, the issue for the ARC’s determination is whether the applicant is currently a person who possesses good character. (*GB v. Registrar, Chartered Accountants of Ontario (November 26, 2019)*).

[92] If the ARC determines that an applicant meets all of the qualifications for registration, in particular, that they meet the good character requirement, they must make an order registering the applicant as a student (section 21 of Regulation 9-1).

[93] If the ARC determines that an applicant is not of good character, it must refuse the application for registration (section 19 of Regulation 9-1).

What is Good Character?

[94] “Good character” is not defined in the CPA Ontario Regulations. The following definition of good character made in a Law Society of Ontario decision, *Law Society of Upper Canada v Preya*, 2000 CanLII 14383, has been adopted by the Panels of the ARC:

“[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.”

[95] In an often-cited article about good character, Madam Justice Southin of the British Columbia Court of Appeal, wrote about what constitutes good character and stated:

“[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.*

[96] The purpose of the good character requirement is threefold:

- (a) to protect members of the public who retain accounting professionals;
- (b) to ensure that the accounting profession maintains a reputation for high professional and ethical standards; and
- (c) to demonstrate that CPA Ontario is able to effectively regulate chartered professional accountants.

Factors Determining Good Character

[97] It is well established that in reviewing the evidence about an applicant's character, the Panel must consider the following factors:

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

[98] The determination 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. The test for good character is not perfection. While the Panel must consider the seriousness of the past misconduct, this must be balanced against other evidence that shows how the Applicant has conducted themselves since the misconduct. The question for the panel is whether the applicant demonstrated that since the historic misconduct, they are now ready to take on the high ethical standards and responsibilities of a Chartered Professional Accountant.

Application of Good Character Factors to Evidence

Nature and Duration of Misconduct

- [99] The Applicant was found to have acquired and viewed a large number of movies, videos and images depicting the sexual exploitation of children. As stated in *LSO v Davidovic*, 2017 ONLSTH 47, at para 52, “*The underage victims [of the child pornography viewed by the applicant] were nameless, vulnerable and perhaps distant from the computer screen, but they suffered exploitation and incalculable harm to satisfy the sexual urges of viewers such as the applicant. ...[T]he applicant’s offence constituted a breach of trust.*” The Applicant’s misconduct that resulted in ■■■ 2017 criminal conviction for Possession of Child Pornography was serious and morally reprehensible. The Panel agreed that the Applicant’s acquisition and use of child pornography constituted a breach of trust.
- [100] The Applicant admitted that ■■■ had engaged in this behaviour for over three years prior to ■■■ arrest. This was not an isolated incident but rather a habitual pattern of criminal and immoral behaviour. As a result of ■■■ conviction, the Applicant will remain on the Sex Offenders Registry until 2027. Furthermore, the offence for which the Applicant was convicted is a Schedule 1 Offence under the Criminal Records Act and ■■■ will not be eligible for a record suspension at any time. This continuing status as a registered sex offender and the fact that ■■■ is ineligible for record suspension reflect society’s condemnation of and concern about persons who participate in the exploitation of vulnerable victims.
- [101] In addition to the misconduct that resulted in ■■■ criminal conviction, the Applicant lied to the Court under oath at ■■■ criminal trial in 2017. This was serious misconduct and demonstrated a lack of respect for the administration of justice and disregard for the importance of ■■■ oath. The Panel found that the circumstances of the Applicant’s lies were concerning; the Applicant provided false evidence to the Court in order to implicate ■■■ best friend in a reprehensible criminal offence. Absolute reliance on the word or oath of a Chartered Professional Accountant is fundamental to the profession; CPA Ontario has an obligation to ensure that its members are credible and trustworthy.

- [102] Approximately two years after ■■■ lied to the Court, the Applicant was found by the University to have committed academic misconduct. This finding was made two more times by the University and in each case ■■■ was given an opportunity to participate fully in the Committee of Inquiry hearings and ■■■ had the representation of counsel. The Applicant did not appeal the findings of the Committee. The Panel was not prepared to second guess the findings of the Committee of Inquiry, despite the evidence of the Applicant. The Panel relied on *CUPE v City of Toronto*, 2003 SCC 63 for the principle that it should not re-litigate the finding of another administrative tribunal unless there are compelling reasons to do so, such as evidence of fraud. Here, the appellant had the ability to appeal each of the decisions and ■■■ chose not to pursue this option.
- [103] In each of the situations where the Applicant was found to have cheated when ■■■ wrote ■■■ examinations, ■■■ breached the rules of the University for writing examinations and gave himself an unfair advantage over students who followed the rules. This showed a lack of respect for the rules of the University but also for ■■■ fellow students, who worked hard to write their examinations without cheating.
- [104] The Panel also noted that the Applicant was caught cheating on three separate occasions. This reflected a pattern of behaviour as opposed to a single error of judgment. On the third occasion, the Applicant admitted that ■■■ signed an undertaking falsely identifying the tools that ■■■ brought into the examination. The Panel did not accept the Applicant's explanation that the Committee of Inquiry was biased against ■■■ or treated ■■■ unfairly. The Applicant participated in three hearings where ■■■ had the assistance of counsel. In the decision of the Committee of Inquiry on the third occasion (which is the only Committee of Inquiry decision provided by the Applicant to CPA Ontario), the Committee carefully reviewed the evidence and clearly explained the basis of their decision.
- [105] The Panel respectfully disagreed with Dr. Bourgon's unsupported evidence that most students at university cheat. Dr. Bourgon was not an expert in this area and had no evidentiary support for this view. Furthermore, even if cheating at university

were rampant, it is not acceptable for those applying to be trained as CPAs. CPA Ontario considers academic dishonesty and fraud to be serious misconduct. In *ET v Registrar, Chartered Professional Accountants of Ontario (June 3, 2021)*, the panel noted that the applicant's plagiarism was an ethical lapse that demonstrated a disregard for other students and the integrity of the educational programs provided by CPA Ontario. The panel refused the applicant's application for membership in CPA Ontario.

[106] Finally, the Panel considered the seriousness of the Applicant's failure to disclose the first two findings of academic misconduct to CPA Ontario during the application process. The Panel did not accept the Applicant's argument that ■ did not make this disclosure because ■ knew that ■ would have a good character hearing in the future. The Panel also rejected the Applicant's evidence that there was a limitation on the amount of information that ■ could write in the Reflective Piece. There was simply no evidence to support this; the Reflective Piece was a separate typed document and it was not part of a form. While the Applicant was correct that the Committee decision in the third matter made a passing reference to the two other matters, this did not constitute disclosure. Ms. Kinkartz advised that she had received the Committee of Inquiry information from Mr. Crawford and it appeared that it was not provided at the time of the application. Regardless of the timing of the disclosure, CPA Ontario should not be expected to search for this information on its own; the Applicant had an obligation to provide full disclosure to CPA Ontario when ■ applied for registration as a student.

[107] Non-disclosure or misrepresentation about past misconduct by persons applying to CPA Ontario is considered to be a serious transgression by CPA Ontario. In fact, section 5 of Regulation 9-1 provides that the Registrar shall not register an applicant as a student if they provide information or a document to CPA Ontario that is false or misleading. In *AAJ v Registrar, Chartered Professional Accountants of Ontario (July 22, 2020)*, the panel found that an applicant who had failed to advise CPA Ontario about his deportation from the United States until mid-way through the good character hearing, had failed to establish that they were of good

character. The Panel found that as a result of this non-disclosure, the applicant lacked candour, which is the hallmark of good accountants, who are regularly faced with ethical decisions that require good judgment and candid exchanges of information.

[108] Overall, in the evidence at this hearing, the Panel noted a disturbing pattern of dishonesty: lying under oath, committing academic dishonesty on three separate occasions and failing to disclose misconduct to CPA Ontario.

[109] Counsel for the Registrar suggested that the Applicant had breached the terms of ■■■ probation by using social media for purposes other than school and employment. The Panel considered this evidence but found that there was insufficient evidence at the hearing that the Applicant violated ■■■ probationary terms. It was unclear what social media the Applicant used, when ■■■ used it or for what purposes the social media was used. In conclusion, the Panel did not find that the Applicant's use of social media constituted misconduct.

[110] The Panel concluded that the Applicant's historic misconduct was extremely serious. This did not mean that it was impossible for the Applicant to establish on a balance of probabilities that ■■■ was a person of good character at the time of the hearing. Rather, it meant that ■■■ was required to provide clear and convincing evidence that ■■■ had rehabilitated ■■■ character over a sufficiently lengthy period of time.

Whether Applicant is Remorseful

[111] The Applicant eloquently and emotionally expressed regret for ■■■ misconduct during the hearing. ■■■ clearly identified the harm that was done when ■■■ engaged in the acquisition of child pornography and did not minimize the seriousness of the offence. ■■■ understood that ■■■ acquisition of child pornography, even though ■■■ had not directly exploited children, was responsible for their sexual exploitation.

[112] The Applicant testified that ■■■ regretted the perjured evidence ■■■ gave to the Court in 2017 that suggested that ■■■ best friend had downloaded child pornography onto

■■ computer. While the Applicant's evidence about whether ■■ committed academic misconduct was equivocal at the hearing, ■■ stated that ■■ appreciated the harm to other students and to the School of Management that resulted from academic dishonesty.

[113] Counsel for the Registrar urged the Panel to consider whether the Applicant's remorse was genuine or whether ■■ regretted being caught. She argued that while during ■■ evidence at the hearing, the Applicant expressed remorse and empathy for the victims of ■■ criminal and academic misconduct, this was the first time that ■■ gave this explanation and was apologetic. She suggested that this late-in-the-day evidence brought to question the genuineness of ■■ insight and remorse.

[114] The Panel agreed that there was limited if any evidence of the Applicant's remorse prior to the hearing. In the Reflective Pieces, written approximately one year prior to the hearing, the Applicant suggested that ■■ was a victim of circumstances and insinuated that ■■ mental disability was responsible for ■■ actions. In the case of the University sanctions, ■■ suggested that ■■ was the victim of persecution due to ■■ disabilities and perhaps because they knew about ■■ criminal conviction (there was no evidence to support this). When challenged by counsel for the Registrar about why ■■ had not expressed remorse in ■■ Reflective Pieces, the Applicant first claimed that someone had told ■■ not to write too much and then when ■■ could not provide any support for that claim, ■■ explained that ■■ did not have enough room on the page to add comments about ■■ remorse in the forms. This was not true.

[115] Counsel for the Registrar referred to the analysis of the issue of remorse in *Davidovic v Law Society of Ontario*, 2017 ONLSTH 47. In that case, the applicant had been convicted of receiving material containing the visual depiction of minors engaging in sexually explicit conduct. Mr. Davidovic made repeated statements of his remorse to others in writing and orally starting on the day the police seized his computer, which occurred over 12 years prior to the hearing. The challenge for the panel in that matter was to determine whether Mr. Davidovic's remorse was just

words or whether he understood what he had done. The majority of the panel found that given the challenges in assessing credibility based on appearance and demeanor, where possible they should rely on more objective evidence. They accepted the evidence of the character witnesses.

[116] By contrast, in this hearing there was very little objective evidence that the Applicant was remorseful. When given an opportunity to reflect on ■■■ misconduct to CPA Ontario, the Applicant provided insufficient commentary on ■■■ remorse. ■■■ friends, clients and co-workers who provided reference letters did not speak of ■■■ remorse, although in fairness it appeared that none of them knew about the Applicant's misconduct. Even the social worker from the Sexual Behaviour Clinic (who was not aware of the academic misconduct) did not indicate that the Applicant was remorseful.

[117] The Panel also found that while the Applicant did not minimize the seriousness of ■■■ misconduct during ■■■ testimony, ■■■ had a number of excuses for ■■■ behaviour: ■■■ was bullied as a child; ■■■ felt pressure because of the success of ■■■ siblings; everyone used the test banks; or, the University was biased against ■■■ due to ■■■ criminal conviction and/or ■■■ disabilities. In short, the Applicant did not take full responsibility for ■■■ misconduct. Without full ownership of ■■■ actions, the Panel found that the Applicant's expressions of remorse were not entirely convincing.

Rehabilitation Efforts of the Applicant

[118] After ■■■ criminal conviction, the Applicant received counselling and support from the Sexual Behaviours Clinic. ■■■ continued with the program even after ■■■ parole officer was satisfied that ■■■ had received sufficient counselling. The Panel was impressed that the Applicant had diligently attended over 300 hours with the Clinic and much of ■■■ time was on a voluntary basis. ■■■ was clearly committed to rehabilitation respecting ■■■ use of child pornography. The Applicant testified that ■■■ wished to continue this journey of counselling with Dr. Bourgon, which was commendable.

- [119] The Applicant also furthered ■ education after ■ conviction and, despite the setbacks resulting from ■ academic dishonesty, ■ graduated magna cum laude in 2020.
- [120] The character reference letters from ■ employment and from ■ clients attested to the Applicant's skills as an accountant and the high level of service that ■ provided to ■ clients and ■ employer.
- [121] The Applicant also testified that in ■ personal life, ■ was in a supportive relationship and ■ had purchased a home.
- [122] Ms. Kinkartz acknowledged the Applicant's educational, professional and personal accomplishments, but argued that the Panel should consider the results of the rehabilitation rather than its extent.
- [123] In many of the precedent cases provided to the Panel by the parties, after their misconduct, applicants had given back to their communities in recognition that they needed to prove in a public way that they had moved past their misconduct. For example, in *Davidovic*, he had helped other inmates with their education while he was in prison and he had been on the board of a non-profit organization that helped sex offenders understand how children were victimized by sexual abuse.
- [124] It is also helpful when there is evidence from people who know the applicant well, such as friends and family, to speak about changes in the applicant's behaviours since the misconduct. In *Law Society of Ontario v Olowolade*, 2019 ONLSTH 115, the panel accepted the evidence of the applicant's mother, brother and pastor about his ownership of his mistakes in committing academic misconduct and his ethical transformation since that time. Here, there was no such evidence; Dr. Bourgon was the only witness to provide oral testimony other than the Applicant.
- [125] The Panel concluded that while the Applicant had engaged in considerable rehabilitation respecting ■ use of child pornography, and ■ was unlikely to repeat that behaviour, the rehabilitation respecting ■ dishonesty (lying in court and academic misconduct) was not at a level where it provided sufficient comfort

to the Panel that ■ had changed. The Panel was encouraged that the Applicant intended to work on this issue with Dr. Bourgon in the future.

Applicant's Conduct Since the Misconduct

- [126] After ■ criminal conviction, as predicted by Dr. Bourgon, there was no evidence that the Applicant had engaged in any criminal behaviour, in particular Possession of Child Pornography. The Panel accepted the evidence of Dr. Bourgon that the Applicant was at very low risk of reoffending in terms of criminal activity.
- [127] The Panel was unable to accept the evidence of Dr. Bourgon that the Applicant was at low risk of engaging in rule-breaking behaviour after ■ conviction because ■ committed academic misconduct on three separate occasions following ■ conviction in 2017. This was rule-violating behaviour. While the Applicant only partially agreed that ■ had been guilty of academic misconduct, ■ admitted to rule violations by using the test banks and by taking an unauthorized calculator into an examination after ■ signed off that ■ had not done so.
- [128] Furthermore, the Panel found that the issues that it was concerned about, such as non-disclosure to CPA Ontario, were not included as rule-breaking in the assessment of Dr. Bourgon. Dr. Bourgon did not include lying under oath as a consideration in his assessment of rule-violating behaviour, although he agreed that it was of concern. Dr. Bourgon minimized the seriousness of academic dishonesty in general and did not factor it into his assessment of the Applicant
- [129] The Panel noted that the Applicant told ■ employers about ■ criminal record, and appreciated that this would have been difficult. On the other hand, the Applicant did not tell ■ employer that ■ had been found to have cheated three times while in the School of Management when taking courses related to the work that ■ was performing for them. The Panel was concerned with this lack of disclosure.

The Passage of Time Since the Misconduct

[130] As stated in *GB vs. Registrar, Chartered Professional Accountants of Ontario (November 26, 2019)*, the passage of time since the misconduct is relevant because it provides time for the applicant to contemplate their misconduct, gain insight, and rehabilitate themselves. It also serves as a recognition of the seriousness of the misconduct: the more serious the misconduct, the more time that is required to demonstrate that the applicant's character is no longer defined by or reflective of their past misconduct.

[131] The Applicant engaged in the criminal offence of acquiring child pornography from approximately 2011 to 2014, which was eight years before this hearing. ■ lying under oath at the criminal trial in 2017 was approximately five years before the hearing. The most recent event of academic misconduct was when the Applicant wrote ■ final examination on December 8, 2019, two and a half years before the hearing. The Applicant's deficient application to CPA Ontario was dated January 24, 2021, a little over a year before the hearing.

[132] The Panel found that since ■ criminal conviction in 2017, there has been no extended period of time where the Applicant demonstrated consistent good behaviour or that ■ character had changed.

Conclusion

[133] After carefully reviewing the evidence, the Panel concluded that the Applicant did not establish on a balance of probabilities that ■ was currently a person of good character. Pursuant to section 19 of Regulation 9-1, the Panel made an Order refusing the Applicant's registration.

Dated this 3rd day of June, 2022



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

Members of the Panel

Margot Howard, Public Representative

Barbara Ramsay, Public Representative

Independent Legal Counsel

Susan J. Heakes