

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

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: Allegations against M [REDACTED] K [REDACTED], under Regulation 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Registration, as amended

TO: M [REDACTED] K [REDACTED]
[REDACTED]
[REDACTED]

AND TO: The Admission and Registration Committee

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 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 CPA Ontario on November 12, 2018. 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:
 - a. On January 27, 2010, the Applicant declared bankruptcy under the *Bankruptcy and Insolvency Act*;
 - b. On October 28, 2010, the Applicant was automatically discharged from bankruptcy pursuant to section 168.1(1)(a)(i) of the *Bankruptcy and Insolvency Act*;
 - c. The Applicant was charged with impaired driving under section 253(1)(a) of the *Criminal Code*;
 - d. On November 21, 2014, the Applicant plead guilty to the above-referenced charge, and was sentenced to a fine totaling \$2080, a driving prohibition of 18 months, and 18 months’ probation.

3. I have determined that the Applicant otherwise meets all the criteria to be registered as a student.

Date: November 25, 2019

A handwritten signature in blue ink that reads "Heidi Franken". The signature is written in a cursive style with a horizontal line underneath it.

Heidi Franken
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 M [REDACTED] M [REDACTED] [REDACTED]
[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.

TO: M [REDACTED] M [REDACTED]

AND TO: Registrar, CPA Ontario

DECISION AND ORDER MADE JUNE 22, 2020

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 and Section 13: Good Character on Registration.

ORDER

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

DATED at Toronto this 22ND day of June 2020.



John Blanken, CPA, CA, LPA
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 M [REDACTED] M [REDACTED] [REDACTED]
[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:

M [REDACTED] M [REDACTED] [REDACTED]

-and-

**REGISTRAR, CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

APPEARANCES:

For the Applicant M [REDACTED] M [REDACTED]: Present and Self-Represented

For the Registrar: Katie Archibald, Counsel

Heard: June 22, 2020

Decision and Order effective: June 22, 2020

Release of written reasons: July 22, 2020

REASONS FOR THE DECISION MADE JUNE 22, 2020

I. BACKGROUND AND FACTS

- [1] This hearing was held to determine whether the Applicant, M [REDACTED] M [REDACTED] [REDACTED] [REDACTED] (the "Applicant") was of good character at the time of the hearing and thereby met the requirements for registration as a student of the Chartered Professional Accountants of Ontario ("CPA Ontario"). The Applicant's good character was put into issue as a result of [REDACTED] bankruptcy on January 27, 2010 and [REDACTED] criminal conviction for impaired driving on November 21, 2014. [REDACTED] application was referred by the Registrar to the Admission and Registration Committee ("ARC").
- [2] On November 12, 2018, the Applicant applied to be registered as a student with CPA Ontario. On April 29, 2019, the Applicant provided supplementary forms ("Questionnaires") in connection with [REDACTED] discharged bankruptcy and [REDACTED] prior criminal conviction, which are discussed below.
- [3] During [REDACTED] evidence, the Applicant explained that [REDACTED] dropped out of high school before completing Grade 10 due to depression and personal issues. Over the next few years, [REDACTED] tried to complete [REDACTED] high school education, however [REDACTED] found it challenging to attend school and work part-time to support [REDACTED]. By late 2009, the Applicant had incurred credit card debt of approximately \$10,000.
- [4] On January 27, 2010, the Applicant declared bankruptcy under the *Bankruptcy and Insolvency Act*. [REDACTED] testified that [REDACTED] was 22 years old at that time and pregnant. [REDACTED] considered a proposal in bankruptcy, however [REDACTED] could not pay the debt back with a minimum wage waitressing job and an upcoming maternity leave.
- [5] On October 28, 2010, the Applicant was automatically discharged from bankruptcy pursuant to section 168.1(1)(a)(i) of the *Bankruptcy and Insolvency Act*.

- [6] The Applicant testified that [REDACTED] learned from this experience and [REDACTED] has a current credit score of 828.
- [7] The Applicant testified that in January 2011, [REDACTED] completed [REDACTED] high school education and was in the top 2% of Ontario graduates. [REDACTED] then started a three-year course at Durham College and received an award for having the highest GPA of a student in [REDACTED] second year of College. When a university degree became the educational requirement for CPA Ontario student, the Applicant abridged [REDACTED] college program and went into [REDACTED] third year of a B. Commerce program at University of Ontario Institute of Technology ("UOIT"). [REDACTED] was selected to be a Teaching Assistance at UOIT after only one semester and continued for four semesters, eventually becoming the lead Teaching Assistant for the Managerial Accounting course.
- [8] In the summer between [REDACTED] second and third year at UOIT, the Applicant was involved in a car accident that resulted in a criminal conviction for driving while impaired.
- [9] The Applicant testified that on August 18, 2014, after [REDACTED] completed running some errands, [REDACTED] and [REDACTED] daughter spent the remainder of the day at the home of a good friend. [REDACTED] had "more than a few" beers and [REDACTED] admitted that [REDACTED] was intoxicated. The Applicant's home was only a couple of blocks from [REDACTED] friend's home and despite [REDACTED] intoxicated condition, the Applicant rationalized that [REDACTED] was fit to drive home rather than walk.
- [10] At a set of lights, the Applicant took [REDACTED] foot off the brake when the light turned green and bumped into the car ahead of [REDACTED] causing an accident. [REDACTED] testified that there was no damage to either vehicle (no insurance claims were made) and no one was injured, however police officers were contacted.
- [11] The police officers arrived at the scene of the accident at about 9:25 p.m. Upon their arrival, one officer observed the Applicant's four-year old daughter in the Applicant's vehicle. The officer could smell a strong odour of alcohol on the

Applicant and ■ confirmed that ■ had consumed some alcoholic beverages. When asked by the officer how many, ■ said that ■ had consumed three beers in the three hours prior to the accident. (■ testified at the hearing that ■ had more than three drinks that day.)

- [12] The Applicant was subsequently arrested and transported to the police station for breath testing. Two tests were taken: the first reading was 330 milligrams of alcohol in 100 milliliters of blood; and the second reading was 328 milligrams of alcohol in 100 milliliters of blood. The Applicant was charged with impaired driving under section 253(1)(a) of the *Criminal Code of Canada*.
- [13] On September 16, 2014, the Crown elected to proceed summarily.
- [14] On November 21, 2014, the Applicant appeared before the Honourable Justice S. C. Maclean and pleaded guilty to impaired driving under section 253(1)(a) of the *Criminal Code of Canada*.
- [15] Justice Maclean indicated that ■ rarely saw anyone whose blood-alcohol reading was over 300 and ■ was concerned that there might be an underlying drinking problem. As a result of that concern, Justice Maclean added a lengthier probation term to the sentence agreed upon by the Crown and the Applicant's counsel, which the Applicant did not oppose. The Applicant's probation order included a requirement that ■ attend and actively participate in all assessment, counselling or rehabilitative programs for alcohol abuse as directed by the probation officer and complete the programs to the satisfaction of the probation officer.
- [16] The Court sentenced the Appellant to a fine totaling \$2,080 (which ■ paid that day), a driving prohibition of 18 months, and 18 months' probation.
- [17] The Applicant applied to the Back on Track program and completed the workshop part of the program in or about February 2015. ■ described the Back on Track program in detail during ■ testimony and it had a positive impact on ■ After the initial screening process, the Applicant spent a full day learning about the dire consequences of driving under the influence, and then spent another full day

learning about the tools one can use to prevent a recurrence of the misconduct. ■■■ testified that ■■■ found this program to be very helpful; ■■■ was “eternally grateful” that nothing terrible or catastrophic had happened as a result of ■■■ actions, and while ■■■ continued to be ashamed of ■■■ poor choices, ■■■ realized that this one terrible mistake as a parent and a citizen did not define ■■■. When the program was completed, the Applicant attended a follow-up interview.

- [18] The Applicant testified that ■■■ was anxious to be able to drive again because as a single mother, ■■■ needed the car to get to school, attend ■■■ part-time job and to deliver ■■■ daughter to and from daycare. ■■■ testified that ■■■ had to take the bus every day, which required a 20 minute walk each day to the bus stop. During these walks to the bus stop, the Applicant testified that ■■■ reflected on ■■■ poor choices and how fortunate ■■■ was that no one was hurt as a result of ■■■ choices.
- [19] After completing the Back on Track program, the Applicant had an interlock device installed on ■■■ car that enabled ■■■ to drive while being monitored during the period of ■■■ court ordered driving prohibition.
- [20] During ■■■ 18 months of probation, the Applicant had two meetings with ■■■ probation officer and was then told that further visits were unnecessary as ■■■ did not pose any risks. The probation officially ended in September 2016.
- [21] The Applicant will be eligible to be pardoned in May 2021 and ■■■ has taken steps to obtain a pardon.
- [22] In 2015, the Applicant started work in the accounting department of a recycling company as an intern student. The Applicant testified that ■■■ took the initiative at the first interview to tell ■■■ interviewer about ■■■ conviction. ■■■ was hired full-time in May of 2017 as a cost analyst. The Applicant testified that in September 2019, ■■■ was promoted to oversee the Accounts Payable department which was being centralized at that time.

[23] As stated above, as part of [REDACTED] application to CPA Ontario, the Applicant completed a Questionnaire respecting [REDACTED] criminal conviction. The Applicant attached a letter dated April 26, 2019 to the Questionnaire which provided details of the events leading to [REDACTED] conviction and which stated, amongst other things, as follows:

“I am deeply ashamed of the choices I made that day, especially considering that my young daughter was in the backseat. While I am very thankful and extremely lucky that nothing worse happened, there is not a day that goes by that I do not feel shame and regret for putting someone who means so much to me in such a dangerous position. I cannot change what I did but I can learn from it.... I have learned to take the opportunity presented to me after that day and turn it into something positive.”

[24] During the hearing, the Applicant emotionally testified that [REDACTED] absolutely regretted putting [REDACTED] daughter and others in danger by [REDACTED] poor choices in August 2014. The Applicant said that [REDACTED] took full responsibility for [REDACTED] misconduct from Day 1 by pleading guilty, accepting [REDACTED] sentence as ordered by Justice Maclean and obtaining counselling through the Back on Track program.

Character Witnesses

[25] The Applicant provided three letters of reference in support of [REDACTED] application. The references were from individuals who had worked closely with the Applicant over the years and they were all aware of [REDACTED] conviction.

[26] GR wrote that he had known the Applicant for 11 years and [REDACTED] was a valuable employee at his restaurant from 2009 until 2014. He described how hard [REDACTED] had worked during [REDACTED] post-secondary schooling and [REDACTED] “high degree of integrity.”

[27] One of the Applicant’s professors, FJ, wrote that he taught the Applicant for five years and he commended the Applicant on [REDACTED] focus and analytical skills. He indicated that [REDACTED] had expressed regret for [REDACTED] prior mistakes and demonstrated

that [REDACTED] had learned and developed from the experience. He also attested to the Applicant's integrity and honesty.

[28] Finally, WT, the Controller at the company where the Applicant worked at the time of the hearing, wrote that he had known [REDACTED] for five years. He indicated that they knew of [REDACTED] prior conviction before they offered [REDACTED] the job and [REDACTED] had since been an extremely valued contributor in [REDACTED] job. WT described the Applicant as a responsible and honest person.

II. ISSUES IN THIS HEARING

[29] 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 with CPA Ontario.

III. DECISION

[30] 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 to CPA Ontario.

IV. REASONS FOR DECISION

Good Character Requirement in Regulations

[31] 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).

[32] If an applicant does not provide evidence of good character satisfactory to the Registrar, or if the evaluation of their application requires an assessment of the applicant's credibility, the Registrar shall refer the matter to an oral hearing before the ARC (sections 13 and 14 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.

[33] If the ARC determines that the applicant has met the good character requirements, it shall make an order registering the applicant on such terms and restrictions as the Committee considers appropriate.

What is Good Character?

[34] "Good character" is not defined in the Regulations, however it has been considered in CPA Ontario case law as well as case law from other regulators, such as the Law Society of Ontario. *Law Society of Upper Canada v Preyra*, 2000 CanLII 14383, is often cited for its definition of good character:

"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."

[35] In *Law Society of Upper Canada v Blackburn*, 2010 ONLSHP 112, the Panel quoted from Madam Justice Southin of the British Columbia Court of Appeal:

"[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.

[36] 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.”

[37] Section 6 of Regulation 9-1 sets out similar objectives: 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 accounting profession into disrepute.

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

[38] Under section 13 of Regulation 9-1, an applicant must provide satisfactory evidence to establish his or ■■■ 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.

[39] 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 was required to satisfy the Panel that ■■■ was of good character at the time of the hearing on a balance of probabilities.

Factors Determining Good Character

[40] In *G.B. v Registrar, Chartered Professional Accountants of Ontario* (“G.B.”), the Panel adopted the five-point test developed by the Law Society of Ontario jurisprudence, namely:

- 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.

Analysis

Nature and Duration of Misconduct

[41] The Panel found that the Appellant’s conviction for driving under the influence was serious misconduct. Although there were no injuries or damage resulting from the collision, the misconduct was aggravated by the fact that the Applicant’s daughter was in the car when the incident occurred.

[42] The evidence before the Panel was that the Applicant’s misconduct was a single error of judgment that had not been repeated in the six years since the incident. In other words, there was no evidence of a pattern of misbehaviour or recklessness.

[43] As for the bankruptcy, the Panel found that this had been cured many years ago and there was no evidence that the Applicant continued to act in a financially imprudent manner since that time. In fact, the Applicant testified that ■■■ currently had a good credit rating.

Whether Applicant is Remorseful

- [44] The Panel found the Applicant to be honest and forthcoming in [REDACTED] evidence at the hearing. [REDACTED] expressed genuine remorse by demonstrating a clear understanding of the consequences of [REDACTED] decision to drive while under the influence of alcohol. The Applicant appreciated that [REDACTED] placed [REDACTED] daughter and strangers in danger when [REDACTED] made that decision. During [REDACTED] evidence, the Applicant did not exaggerate any of the events or tell them in a manner that was favourable to [REDACTED]. [REDACTED] did not attempt in any way to excuse or minimize the seriousness of [REDACTED] misconduct.
- [45] When considering the implications of [REDACTED] poor choices in August 2014, the Applicant focused on the potential impact of [REDACTED] actions on others and did not express any self pity. This was consistent with [REDACTED] historic behaviour, where [REDACTED] accepted responsibility consistently since the events occurred, including when [REDACTED] pleaded guilty at [REDACTED] criminal trial and accepted the lengthier probationary period and in [REDACTED] submissions to CPA Ontario and [REDACTED] evidence during the hearing
- [46] During [REDACTED] evidence, the Applicant explained that [REDACTED] knew that [REDACTED] would have to come before CPA Ontario and “face this day”. The Applicant showed impressive insight and bravery in facing [REDACTED] past misconduct and taking complete ownership for it despite the shame and embarrassment [REDACTED] clearly felt during [REDACTED] evidence.

Rehabilitation Efforts and the Success of Such Efforts

- [47] Since the Applicant’s conviction, [REDACTED] has completed [REDACTED] university studies and worked as a Teacher’s Assistant to instruct other students in a managerial accounting course. [REDACTED] graduated from UOIT and has worked full-time for the past five years while raising [REDACTED] daughter.
- [48] The Panel was impressed by the Applicant’s review of what [REDACTED] had taken away during the Back on Track program. [REDACTED] also installed the interlock device to [REDACTED] car at considerable cost to [REDACTED].

[49] The Panel noted that while the Applicant had not participated in any further counselling respecting substance abuse, ■■■ appeared to have that issue under control in ■■■ life. The Applicant advised that ■■■ attended counselling for other issues in ■■■ life, which showed a willingness to reach out and get help when needed. This gave the Panel some comfort that in the future, when faced with challenges, the Applicant would likely seek appropriate help.

Applicant's Conduct Since the Misconduct

[50] As noted above, since the events of 2014, the Applicant demonstrated that ■■■ was on a positive course, both personally and professionally. The Applicant advised that ■■■ was married on October 20, 2018.

[51] The Applicant's references were advised about ■■■ conviction. In 2015, ■■■ told ■■■ current employer at ■■■ interview about that conviction, which showed candour and honesty.

The Passage of Time Since the Misconduct

[52] The Applicant's misconduct that lead to ■■■ 2014 criminal conviction was six years ago and bankruptcy was 10 years ago when ■■■ was 22 years old. The Panel found that in light of the circumstances set out above, sufficient time had passed for the Applicant to demonstrate that ■■■ was a person of good character at the time of the hearing.

Conclusion

[53] The Panel concluded that the Applicant demonstrated on a balance of probabilities that ■■■ had insight into ■■■ poor choices in 2010 that resulted in bankruptcy and into the isolated events in August 2014 that resulted in a criminal conviction. Since that time, the Applicant worked hard to rehabilitate ■■■ character by successfully completing ■■■ university studies, focusing on good parenting and obtaining employment where ■■■ was reportedly highly regarded.

[54] In conclusion, for reasons set out above, the Panel found that the Applicant had established on a balance of probabilities that [REDACTED] was a person of good character as of the date of the hearing and that [REDACTED] should be registered with CPA Ontario.

Dated at Toronto, Ontario this 22nd day of July, 2020

A handwritten signature in black ink, appearing to read 'John Blanken', with a long horizontal flourish extending to the right.

John Blanken, CPA, CA, LPA

Members of the Panel

Seemant Thakkar, CPA, CMA, CGA, LPA

Dan Sceli, CPA, CGA, LPA

Mark Dimmel, CPA, CA

Gus Gillespie, Public Representative

Independent Legal Counsel

Susan J. Heakes