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

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: Allegations against T. S. P. under Regulation 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Registration, as amended

TO: T. S. P.

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 September 23, 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 November 16, 2013, the Applicant was charged with failure to remain at the scene of an accident;

    b. The Applicant plead guilty to the aforementioned charge; and

    c. On January 30, 2015, the Applicant was sentenced to four months' imprisonment, a two-year driving prohibition, and probation of two years.

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

Date: Jan 24, 2020

Heidi Franken
Registrar

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

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: A referral by the Registrar respecting T███████ S█████ P███████, under regulation 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Registration, as amended.

TO: T████ S████ P████

AND TO: Registrar, CPA Ontario

DECISION AND ORDER MADE MAY 22, 2020

DECISION

Having read the evidence and having heard the submissions of the parties, the Tribunal is not satisfied that the applicant has provided evidence of good character as required under Regulation 9-1: Student Registration, Obligations and Standing and Section 13: Good Character on Registration.

ORDER

1. The application of T████ S████ P████ to be registered as a student with CPA Ontario is denied.

DATED at Toronto this 22nd day of May, 2020.

Elaine Sequeira, FCPA, FCA
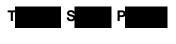Admission and Registration Committee – Chair

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: A referral by the Registrar respecting **T███ S███ P████**, under regulation 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Registration, as amended.

BETWEEN:

T███ S███ P████

-and-

REGISTRAR, CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

Heard:	May 22, 2020
Release of written decision and reasons:	June 25, 2020

REASONS FOR THE DECISION MADE MAY 22, 2020

I.   BACKGROUND AND FACTS

[1]   This hearing was held to determine whether the Applicant, T███ S███ P████ (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 ██ criminal conviction on January 30, 2015 for failing to remain at the scene of a fatal car accident. ██ application was referred by the Registrar to the Admission and Registration Committee ("ARC").

[2]   On September 23, 2018, the Applicant applied to be registered as a student with CPA Ontario. The Applicant disclosed in ██ application that ██ had been convicted of a criminal offence. In the supplementary form dated February 4, 2019, the Applicant disclosed that

■ was convicted on January 30, 2015 under section 252.1.3 of the *Criminal Code of Canada* and sentenced to 4 months' imprisonment, 2 years' probation and 2 years' prohibited driving. The Applicant attached the agreed statement of facts filed with the criminal court with ■ supplementary form.

[3]   At ■ good character hearing, the Applicant testified that in 2013, ■ was an 18 year old student at Wilfred Laurier University. ■ described ■ as academically inclined and hard-working.

[4]   On the evening of Saturday, October 19, 2013, the Applicant attended several parties with family and friends in the Waterloo area. According to the Agreed Statement of Facts entered into between the Applicant and the Registrar (the "ASF"), the Applicant had consumed one or two alcoholic drinks over the course of four hours, and alcohol was not an issue in the events that followed.

[5]   Sometime after 3:00 a.m. on the morning of October 20, 2013, the Applicant was driving ■ cousin's Jeep near ■ residence. The Applicant approached an intersection where ■ had the right of way while speeding slightly (■ was travelling at least 61 km/hour in the 50 km/hour zone). A pedestrian, JG, stepped into the roadway to cross the street and the Applicant's vehicle struck him. JG suffered massive trauma and died virtually instantaneous.

[6]   When ■ hit JG, the Applicant did not stop the car to provide assistance to JG. ■ did not call 911. On cross-examination, the Applicant was asked about ■ failure to help the victim in any way. ■ replied that ■ was young and ■ instincts and adrenaline kicked in.

[7]   One of the Applicant's cousins was apparently sleeping in the front passenger's seat of the Jeep when the Applicant struck JG. When the Applicant's cousin opened ■ eyes, ■ saw that the windshield was cracked. The Applicant told ■ cousin that ■ had hit a pylon. ■ then asked ■ cousin to take over the driving and ■ cousin dropped ■ off at the home of the Applicant's girlfriend's.

[8] When the Applicant arrived at █ ██████'s apartment, █ woke █ up and initially told █ that █ had hit a pylon and wrecked the car. █ soon admitted to █ that █ had struck a person.

[9] At 5:33 a.m. on the morning of October 20th, the Applicant and █ ██████ took a cab to go back to █ residence. The road was closed off due to the accident. To get to █ residence, the Applicant and █ ██████ had to lift the caution tape protecting the scene and entered the scene where the accident had taken place. At this point, the Applicant was confronted by a police officer. According to the ASF, the Applicant asked the police officer if the victim was going to be okay, and then became emotional. (During the hearing, the Applicant described the scene of the accident and said that █ saw the victim's body covered by a tarp.) The officer did not provide any information to the Applicant and directed █ to continue on █ way.

[10] A couple of days after the accident, the Applicant's roommates told █ that police were canvassing the area and asking people about the accident. The Applicant told █ roommates that █ was going to tell police that █ was in bed and that █ knew nothing about the accident. █ suggested to █ roommates that they do the same. In mid-November, after consulting a lawyer, the Applicant approached █ roommates again and told them not to lie to the police.

[11] The Applicant testified that █ told █ parents what had happened a few days after the accident. █ father advised █ to be honest and not hide what happened. The Applicant also testified that it was a turning point for █ when █ saw the victim's family on the news pleading for someone to come forward to explain what had happened to JG.

[12] The Applicant testified that █ was advised by █ lawyer not to report ██████ to police immediately. The records filed in the Court indicated that on November 7, 2013, the police found the damaged Jeep in the garage of the house owned by the Applicant's uncle. The Jeep was subjected to forensic testing that found JG's blood and clothing fibers on the grill and windshield of the Jeep. According to █ letter entitled "Letter to the Friends and Family of JG," discussed below, the Applicant received a call from █ lawyer on a Saturday night "about the police findings" and the lawyer told the Applicant that █ should turn ██████ in.

[13]   On November 16, 2013, the Applicant turned ███ into the police and was arrested. ██ was released the following day on a Recognizance.

[14]   Approximately a year later, on or about November 7, 2014, the Applicant pleaded guilty to failure to remain at the scene of an accident contrary to the *Criminal Code of Canada*.

[15]   At ██ sentencing hearing on January 30, 2015, the Applicant submitted a number of character letters, discussed below, and ██ lawyer read "Letter to Friends and Family of JG" to the Court. In that letter, the Applicant indicated that ██ had wanted to apologize since the night of the accident but ██ did not have the strength to do so. ██ acknowledged ██ cowardly conduct in not coming forward immediately after the accident and said there was no explanation for that conduct. The Applicant described watching the appeals of the victim's family on the news but said that ██ couldn't bring ████ to watch TV and face what ██ had done. The Applicant said ██ took the advice of ██ "family and lawyers" not to come forward but eventually ██ lawyer indicated that the police were advancing their investigation and this forced ██ to self-report.

[16]   The Applicant was sentenced to four months' imprisonment, two years' probation and a two-year driving prohibition.

[17]   The Applicant testified that ██ was not required to serve ██ entire jail term or ██ full probation. ██ returned to Court and asked the judge for an early release so that ██ could apply for a pardon. The Applicant could not recall how much ██ sentence reduction was but ██ believed that ██ probation was reduced by 4 or 5 months.

[18]   At the request of ██ probation officer, the Applicant attended one or two counselling sessions, the purpose of which was to ensure that ██ was ready to be integrated back into the community after serving time. The Applicant did not seek out or receive any other counselling or therapy.

[19]   In 2015, the Applicant returned to university to complete ██ degree. ██ then started work at a bank and ██ later worked at an accounting firm.

[20]   A letter to the Court dated January 4, 2015 stated that the Applicant did some volunteer work for a Mission Centre in Brampton, visiting the Centre "off and on" to distribute food to the congregants and working in the annual parade. The Appellant also testified that ▇ was involved briefly in a charity drive called One Match to assist a friend's brother who had leukemia and needed a bone marrow transplant. The Appellant advised that ▇ was not currently doing any volunteer or community work.

[21]   The Applicant testified that ▇ was engaged to be married next year. ▇ gave the following example of ▇ honesty: ▇ fiancé did not want to tell ▇ parents about ▇ conviction, however ▇ insisted that they know. The Applicant also advised that ▇ told ▇ employer about ▇ conviction.

[22]   In ▇ direct evidence at the hearing, the Applicant testified that ▇ made a "very poor and cowardly decision" which ▇ described as the worst decision of ▇ life. The Applicant testified that ▇ actions in 2013 should not define the person that ▇ is now.

Character Letters

[23]   The Applicant submitted 20 letters of reference. Counsel for the Registrar advised that while she consented to the letters being marked as exhibits for the hearing, the Registrar did not admit the truth of their contents. The Registrar submitted that the Panel should place limited weight on these letters as there was no opportunity to test their reliability through cross-examination.

[24]   The letters of reference submitted by the Applicant fell into two categories: 14 letters were submitted to the Court as part of ▇ sentencing hearing; and 6 letters were written for use in this hearing.

[25]   The letters submitted to the Court were from the Applicant's personal and family friends, and ▇ teachers (although two of ▇ high school teachers did not address their letters to the Court and there was no mention in the letters to the criminal matters). The letters described the Applicant as intelligent and hard-working; ▇ teachers described the Applicant as an outstanding student and a person who strived for excellence. The reference letters also spoke to the Applicant's strong friendships.

[26] Three of the letters produced by the Applicant for this hearing were authored by individuals who had recently worked with ██. They described the Applicant as reliable and honest, as well as articulate and professional.

[27] The Applicant's fiancé, who met ██ while they worked at the bank, wrote a letter (undated) that described the Applicant as very hard-working, professional and helpful. ██ also commented on the Applicant being very family-oriented.

II. ISSUES IN THIS HEARING

[28] 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

[29] The Panel found that the Applicant failed to establish on a balance of probabilities that ██ was of good character at the time of the hearing and refused ██ application for registration to CPA Ontario.

IV. REASONS FOR DECISION

Good Character Requirement in Regulations

[30] 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).

[31] It is the Applicant's responsibility to ensure that their application is complete and accurate (subsection 7.2 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 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, 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 Preya*, 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 McKenzie, in ██ 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 ██ ████ 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 must 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 *B███ v Registrar, Chartered Professional Accountants of Ontario* ("*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 Registrar advised that their position was that the good character issue before the Panel was the Applicant's 2015 conviction. The underlying misconduct of concern to the Registrar was not the accident itself but rather the Applicant's behaviour after the accident as outlined above.

[42]   The Panel found that the Applicant's misconduct was serious. The Applicant failed to stop ▮ vehicle and offer help to the victim or to call 911. ▮ lied to ▮ cousin and ▮ ▮▮▮ about hitting a pylon rather than admitting that ▮ had killed another human being. The Applicant had an opportunity to report the accident to the police officer when ▮ attended the scene later that morning, but ▮ remained silent. The Applicant counselled ▮ roommates to lie to the police, which would have had the effect of protecting ▮▮▮.

[43]   The Applicant only reported ▮▮▮ to police when it appeared that the police investigation was going to reveal ▮ involvement. The Panel found that the repeated acts of dishonesty and self-protection in the face of the victim's family's pleas on the news for information, constituted serious misconduct.

[44]   Furthermore, the misconduct occurred from the time of the accident in the early hours of October 20, 2013 and ended on November 16, 2013 when the Applicant's lawyer forced ▮ to report ▮▮▮ to the police. This was not a momentary lapse in judgment, but rather a series of poor ethical choices over several weeks.

Whether Applicant is Remorseful

[45]   In *B*██, the Panel commented that it is important to consider whether the applicant has expressed genuine remorse respecting their past misconduct. At paragraph [23], the Panel stated:

> "Remorse not only provides evidence as to whether the applicant has come to terms with the previous misconduct, it can demonstrate empathy and insight of the applicant. There are also important elements of good character."

[46]   Throughout ██ testimony at the hearing, the Applicant referred to ██ bad "decision." The Panel noted that over the course of the weeks following the accident, the Applicant lied to several people about what had happened. Even more concerning, the Applicant encouraged ██ roommates to lie to the police. If ██ advice had been followed, the Applicant would have exposed ██ friends to obstruction of justice charges and possible perjury. When asked by a Panel member why ██ referred to ██ conduct as a "decision" rather than "decisions", the Applicant replied that ██ meant ██ decision to be dishonest, but acknowledged that here were several acts of dishonesty.

[47]   The Panel acknowledged that in ██ letter "To the Friends and Family of J████ G██," the Applicant apologized for ██ actions. Nowhere in that letter, however, does the Applicant mention that ██ lied to several people about what happened or that ██ encouraged ██ friends to lie to the police. ██ blames ██ family and ██ lawyer for the delay in reporting rather than take ownership of that decision.

[48]   In the letter to CPA Ontario entitled "Personal Reflection", the Applicant referred to ██ "lapse of judgment at the time of the incident" and the impact it had on ██ loved ones and ████████ The Applicant referred to what happened as a "single wrong choice" and does not refer to ██ dishonesty or attempts to cover up ██ actions with the support of ██ roommates. The Applicant expressed little remorse for the pain and suffering caused to the victim's family and the extended agony they experienced from not knowing how the victim had died that night.

[49]   The Panel found that the Applicant minimized ██ dishonesty after ██ failed to stop at the scene of the accident and failed to take full responsibility for ██ decisions. In ██ materials filed for this hearing and ██ testimony, the Applicant demonstrated very little insight into this behaviour and failed to express remorse about the impact of ██ dishonesty on others, such as ██ cousin, ██ ███████ or ██ roommates. The Applicant's remorse was mostly

centered on how the car accident and █ subsequent conviction affected █ and █ family. In conclusion, the Panel found that the Applicant failed to express adequate remorse so as to establish that █ was a person of good character at the time of the hearing.

Rehabilitation Efforts and the Success of Such Efforts

[50]   In *B*█ the Panel observed that rehabilitative efforts "can demonstrate how an applicant's character has evolved between the past misconduct and the current hearing" (paragraph [22]). The Panel gave some non-exhaustive examples of rehabilitation: introducing stabilizing measures in the applicant's life like the support of a mentor, counselling or an emphasis on self-awareness.

[51]   The Registrar noted that none of the individuals who provided letters in support of the Applicant for █ sentencing hearing provided letters for █ good character hearing. The references who currently worked with █ did not know the Applicant in 2013. As such, none of the references could speak to the evolution of █ character since the accident and subsequent dishonesty.

[52]   In the nearly seven years since the accident, the Applicant had not sought out professional counseling to gain insight into why █ acted in a dishonest manner in 2013. The counselling session (or sessions) that the Applicant received at the request of █ probation officer enquired into █ reintegration into the community and were not to grabble with the moral dilemma that █ faced at the time or █ poor ethical choices.

[53]   An common example of rehabilitation is community service; it is a concrete way for the public to see that the person regrets their actions and wants to give back to the community in some way for their serious misconduct. For example in *B*█, █ *B*█, who had been convicted of driving over the legal limit of alcohol in █ blood, participated in programs related to the dangers of drinking and became a vocal advocate of responsible drinking. While the Applicant had done some sporadic volunteer work in the past seven years, █ had not continued with this work and it appeared that most of █ volunteer work was prior to █ sentencing.

[54]   In the seven years since █ misconduct, the Applicant simply got on with █ life, completing █ university degree and getting a job. █ did not seek counselling or therapy.

█ did not become involved in any community service or other acts that showed that █ had changed since the events that led to █ conviction. Overall, the Panel found the Applicant's evidence of rehabilitation was underwhelming.

<u>Applicant's Conduct Since the Misconduct</u>

[55]   The Panel found that there was no evidence of misconduct since the 2013.

<u>The Passage of Time Since the Misconduct</u>

[56]   The Applicant's misconduct occurred almost seven years ago. The Panel found that this could have been sufficient time for the Applicant to demonstrate that █ character had changed, however, as set out above, the Panel found that the evidence was unsatisfactory.

<u>Character Letters</u>

[57]   While the Applicant produced a great number of glowing character letters, the Panel was concerned that none of the references mentioned the Applicant's dishonesty after the fatal car accident. For example, M█ C█, who helped the Applicant obtain a job at the bank, wrote that "the charges that █ once faced did not reflect within the traits of dishonesty or a fault in moral character, but perhaps an error resulting from a lapse of judgment by a young man."

[58]   Many of the reference letters referred to a "huge mistake" or an "incident" or a "regrettable event" however there is no mention in these letters that the authors knew the full extent of facts as set out in the ASF or these Reasons.

[59]   The Panel found that given the limited knowledge that the references appeared to have about the good character issues before CPA Ontario, they should be given limited weight. Because these individuals could not be questioned about their opinions about the Applicant, the Panel could only take the letters at face value.

Conclusion

[60]   The Panel concluded that the Applicant failed to demonstrate on a balance of
        probabilities that ▮ had insight into the events that took place seven years ago or that
        ▮ had rehabilitated ▮ character since that time. The Panel found that the Applicant
        tended to minimize ▮ misconduct and blame others.

[61]   In conclusion, for reasons set out above, the Panel found that the Applicant had not
        established that ▮ was a person of good character as of the date of the hearing.

Dated at Toronto, Ontario this 25th day of June, 2020

[signature]

Elaine Sequeira, FCPA, CA
Admission and Registration Committee – Chair

Members of the Panel
Don Aronson, Public Representative
Mark Dimmell, CPA, CA
Greg Hocking, CPA, CA, IFA
Joseph Truscott, CPA, CA

Independent Legal Counsel
Susan J. Heakes