

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

BETWEEN:

T [REDACTED] K [REDACTED]

-and-

**REGISTRAR, CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

APPEARANCES:

For the Applicant:	Self-represented
For the Registrar:	Lara Kinkartz, Counsel
Heard:	November 30, 2021
Decision and Order effective:	November 30, 2021
Release of written reasons:	December 24, 2021

REASONS FOR THE DECISION MADE NOVEMBER 30, 2021

I. BACKGROUND AND FACTS

[1] This hearing was held by videoconference to determine whether the Applicant, T [REDACTED] K [REDACTED] (the “Applicant”) was of good character at the time of the hearing and thereby met the requirements for registration as a student in the Chartered Professional Accountants of Ontario (“CPA Ontario”). The Applicant’s good character was put into issue as a result of [REDACTED] criminal conviction dated August 16, 2016 for driving under the influence. The

application was referred by the Registrar to the Admission and Registration Committee (“ARC”).

The Applicant’s Application to CPA Ontario

- [2] The Applicant applied to be registered as a student with CPA Ontario on August 29, 2019. In ■■■ application, the Applicant answered affirmatively that ■■■ had been convicted of a criminal or similar offence for which a pardon had not been granted. As part of ■■■ application, the Applicant completed a questionnaire. There, ■■■ explained that in 2016, ■■■ was found guilty of an offence under section 253(1)(b) of the *Criminal Code*. ■■■ wrote that ■■■ conviction related to an offence that took place on August 2, 2016. The Applicant described the circumstances surrounding the offence, including mitigating factors, as follows:

I was 19 years old and drank half a 14 ounce bottle of liquor when my friend, who was visibly more intoxicated than me, decided to drive to get a pack of cigarettes. Instead, I offered to go, which a concerned neighbour overheard. This led to a traffic stop and me failing the breathalyzer test.

- [3] In a letter to CPA Ontario dated May 2, 2020 entitled “Reflective Piece,” the Applicant wrote that ■■■ had made a terrible decision in August 2016 when ■■■ chose to drive while under the influence of alcohol. ■■■ explained that ■■■ would carry that decision with ■■■ for the rest of ■■■ life. The Applicant explained that ■■■ appreciated that ■■■ was fortunate that ■■■ did not injure anyone, and ■■■ recognized the serious consequences of ■■■ actions. In conclusion, the Applicant wrote that ■■■ found that the justice system was extremely fair with ■■■ sentencing.
- [4] The Applicant also provided CPA Ontario with five reference letters.

Events Leading to the Applicant’s 2016 Conviction

- [5] In 2016, the Applicant worked as an administrative assistant at a law firm and attended university.
- [6] In ■■■ evidence at the hearing, the Applicant explained that on the evening of August 2, 2016, ■■■ had been drinking with a friend when they decided to go and get cigarettes at a convenience store. Although the store was only ten minutes away and they could have

walked, the Applicant said that the alcohol ■ had consumed gave ■ confidence that ■ could drive ■ friend and ■ self to the store.

- [7] At the Applicant's criminal hearing on August 16, 2016, the Crown attorney read out the following facts, which were not disputed by the Applicant:
- (a) The police received a call from a concerned citizen about a possible impaired driver;
 - (b) When they arrived at the convenience store, the police saw a minivan in the parking lot of the store;
 - (c) The Applicant left the driver's side of the van and walked towards the store; and
 - (d) When ■ was stopped, the police noted a strong smell of alcohol on the Applicant's breathe and administered a breathalyzer test.

The Criminal Charges and Conviction

- [8] The Applicant was arrested and charged with operating a vehicle after consuming alcohol contrary to section 253(1)(b) of the *Criminal Code*. When ■ was tested at the site where ■ was arrested, the Applicant was found to have more than 80 milligrams of alcohol in 100 millilitres of blood.
- [9] The Applicant appeared in Court before on August 16, 2016 and plead guilty. ■ was sentenced to the following:
- (a) a twelve-month driving prohibition (to be reduced to three months if the Applicant qualified for the Interlock Program);
 - (b) a \$1,000.00 fine; and
 - (c) a victim fine surcharge (\$300.00).

Events Following the Conviction

- [10] The Applicant paid ■ fine and victim fine surcharge immediately after the trial.
- [11] The Applicant started a "Back on Track" program in May of 2017. The Applicant testified that this was a two-day seminar that focussed on the dangers of substance abuse and

impaired driving. As part of the program, the Applicant was required to set personal goals, which were assessed by a social worker after a six-month period. ■■■ goals were to limit ■■■ drinking to four drinks a week and to change ■■■ social circles, so that the people with whom ■■■ associated would likely be more studious and motivated to succeed in university. After six months, the Applicant met these goals and successfully completed the “Back on Track” program.

- [12] Although ■■■ would have been able to reduce the length the driving prohibition, the Applicant testified that ■■■ chose to take a break from driving and therefore did not apply to the Interlock Program. This decision was also affected by the high insurance premiums that resulted from ■■■ conviction. During ■■■ evidence, the Applicant described the lengthy commute to school and work, and the embarrassment caused by having to ask others for rides.
- [13] The Applicant graduated from university in 2019 with a Bachelor’s Degree in Management Economics and Finance. ■■■ then went to work for a firm of chartered professional accountants in July 2019, and ■■■ has worked there since that time. The Applicant was hired as a junior accountant and was subsequently promoted to intermediate accountant.
- [14] The Applicant testified that since 2016, ■■■ had only rarely attended social functions where drinking alcohol was the main activity. ■■■ said that ■■■ spent much of ■■■ spare time at home with ■■■ family.
- [15] As part of this application, the Applicant wrote a letter to CPA Ontario where ■■■ repeatedly stated that ■■■ had made a terrible decision to drive while under the influence. ■■■ expressed gratitude to the neighbour who had called the police and acknowledged that ■■■ actions had the potential of seriously harming ■■■ friend, others on the street or ■■■self.

Character Evidence

- [16] The Applicant provided five reference letters as part of ■■■ application to CPA Ontario, all of which attested to ■■■ intelligence and strong work ethic. None of these letters referred to the Applicant’s criminal conviction.
- [17] For the hearing, the Applicant provided the Panel with six reference letters. Three of the authors of these letters testified at the hearing. The following is a brief summary of the evidence from each of these references:

- (a) AA was the stepfather of the Applicant and testified at the hearing. In a letter to CPA Ontario dated October 15, 2021, AA explained that the criminal actions of the Applicant were out of character and a one-time event. He said that the Applicant felt that ■ actions had brought shame to ■ self and to ■ family, and that ■ deeply regretted ■ actions. AA testified that in the days following the incident, the Applicant was extremely distraught. During his evidence, it was apparent that AA had great respect for the Applicant's determination and hard work over the years. He described the good works of the Applicant, such as shoveling snow and cutting grass for their neighbours. AA testified that since the summer of 2016, the Applicant had not attended social gatherings where alcohol was served "heavily."
- (b) RS, a lawyer, submitted a letter dated October 26, 2021 to CPA Ontario in support of the Applicant. He wrote that the Applicant was a hard worker and a fine young ■
- (c) IS, who was a CPA and partner at the firm where the Applicant worked, wrote a letter dated October 28, 2021 explaining that the Applicant had been remorseful when ■ told them about ■ criminal conviction at the age of 19. IS described the events leading to the criminal conviction as a lapse in judgment, and wrote that a person's true character is defined by how they make amends after an error has been made. He described the Applicant as a person of strong morals and character.
- (d) RB wrote a reference letter dated October 28, 2021 in support of the Applicant and he gave evidence by phone (he had technical difficulties with the videoconferencing). RB explained that he had known the Applicant for over 20 years, and that the Applicant and his son were friends. In the reference letter, RB wrote that the Applicant was remorseful about the mistake that ■ had made and that ■ educated ■ peers about this mistake and the risks of drinking and driving. During his evidence, RB elaborated on this, saying that he had witnessed the Applicant stopping others from driving under the influence of alcohol after a party. The Applicant had called for an Uber or a cab rather than let ■ friends drive when intoxicated. He concluded that the conviction had forced the Applicant to grow up quickly. RB also testified that the Applicant had been a positive influence on his son who was a few years younger than the Applicant. RB said that he spoke to the

Applicant when ■ was participating in the “Back on Track” program and the Applicant was devoted to attending the course. The Applicant, he testified, had learned that driving under the influence was a “dumb move.”

(e) RG, a CPA and partner in the firm where the Applicant currently works, testified at the hearing and provided a reference letter dated November 2, 2021. RG was a partner who hired the Applicant on behalf of his firm in July 2019. He said that the Applicant told him about ■ conviction in October of 2021 and had been very nervous and upset during this meeting. He said that during this meeting, the Applicant took full responsibility and made no excuses for ■ actions. On cross-examination, RG was asked what the Applicant had learned from ■ conviction, and RG said that the Applicant had learned that ■ actions have repercussions and ■ had moved on in a positive way from this mistake by educating others about the dangers of drinking and driving.

(f) BF, a lawyer, wrote a reference letter dated November 3, 2021. He indicated that he had known the Applicant since 2011 when the Applicant worked at his law firm. He said that the Applicant was very remorseful about ■ actions that lead to ■ conviction, and that ■ regretted ■ actions.

II. ISSUES IN THIS HEARING

[18] The issue in this application was whether the evidence demonstrated on a balance of probabilities (that it was “more likely than not”) 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

[19] The Panel found that the Applicant had established that ■ was of good character at the time of the hearing. The Panel granted ■ application for registration as a student with CPA Ontario.

IV. REASONS FOR DECISION

Good Character Requirement in Regulations

- [20] An important requirement for registration as a student with CPA Ontario is the requirement that the applicant provide evidence to the Registrar that they are a person of good character (section 3.3 of Regulation 9-1). Sections 6.1 and 6.2 of Regulation 9-1 state that the Registrar shall not register an individual as a student if the registration puts the public at risk or brings the reputation of the profession into disrepute.
- [21] When the Registrar is not satisfied with the evidence provided to them by a student applicant about their good character, or when the evaluation of the student's application requires an assessment of their credibility, the Registrar shall refer the matter to an oral hearing before the ARC (sections 13 and 14 of Regulation 9-1). To be clear, in referring consideration of the applicant's good character to the ARC, the Registrar is not making a decision about the applicant's good character; rather, they have concluded that the evidence they received from the student applicant is insufficient and/or requires testing for credibility.
- [22] If the panel of the ARC conducts a review of the applicant's good character and determines that the applicant has met the good character requirements, the panel shall make an order registering the applicant on such terms and restrictions as the Committee considers appropriate.
- [23] At the hearing before the ARC about the applicant's good character, the applicant bears the onus of establishing that they meet the registration requirement of good character. They must prove that they possess good character on a "balance of probabilities"; in other words, the applicant must establish that it is more likely than not that they are a person of good character.
- [24] The panel must make their assessment of the applicant's good character as of the time of the hearing. For example, while a criminal conviction may *prima facie* establish that the applicant historically made a poor ethical choice or exercised poor judgment, the issue for the Panel's determination is whether the applicant is currently a person of good character. This recognizes that an ethical mistake in the past does not necessarily define a person's character.

What is Good Character?

[25] “Good character” is not defined in the CPA Ontario Regulations, however the following definition from a Law Society decision, *Law Society of Upper Canada v Preya*, 2000 CanLII 14383, has been adopted by 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.”

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

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

- 1. An appreciation of the difference between right and wrong; and*
- 2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;*
- 3. A belief that the law at least in so far as it forbids things which are malum in se must be upheld and the courage to see that it is upheld.*

[27] The purpose of the good character requirement for various professions, including the accounting profession, is to protect members of the public. The review of an applicant’s good character by CPA Ontario ensures the public that CPA Ontario is committed to maintaining a reputation for high professional and ethical standards. Gavin McKenzie, 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.”

[28] As mentioned above, section 6 of Regulation 9-1 sets out similar objectives, and states that 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.

Factors Determining Good Character

[29] It is well established that ARC panels conducting a hearing to review an applicant's good character must consider evidence and submissions relating to the following factors:

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

[30] The calculation of whether a person is of good character is not a mathematical formula but rather is based upon a combination of these factors. The issues under review in this category are often overlapping and inter-related.

Analysis

Nature and Duration of Misconduct

[31] The Applicant submitted that ■■■ conduct in August 2016 was serious. ■■■ admitted that ■■■ could have caused serious harm to others or to property. Counsel for the Registrar, Ms. Kinkartz, added that the mere fact of a criminal conviction reflects negatively on the character of an applicant. In particular, she commented on society's condemnation of those who decide to drive while under the influence of alcohol or drugs.

[32] Although she asked the panel to find that the Applicant's misconduct in 2016 was serious, Ms. Kinkartz urged the Panel to look behind the conviction and consider the events surrounding the conviction. She submitted that this was a one-time event, and noted that there was no evidence that the Applicant has engaged in misconduct since that time.

[33] The Panel agreed that the Applicant's behaviour was serious. The fact that ■■■ misconduct did not result in any harm to himself or others was fortunate, however this outcome did not detract from the seriousness of the Applicant's decision to drive while under the influence of alcohol. The Panel agreed that this was an isolated incident which has not been repeated.

Whether Applicant is Remorseful

[34] The Panel noted the Applicant's numerous expressions of remorse in ■■■ correspondence to CPA Ontario, as discussed above. What is noteworthy in these communications is that the Applicant did not make any excuses for ■■■ actions or minimize the seriousness of ■■■ criminal conviction. ■■■ showed insight into the dangerous consequences of driving under the influence.

[35] The Panel also found that the Applicant's testimony at the hearing was clear and convincing, and at no time did ■■■ minimize the wrong decision that ■■■ had made when ■■■ was 19 years old or attempt to blame someone else. The Applicant appeared sincere in ■■■ regret for ■■■ decision to drive while impaired. ■■■ was ashamed and embarrassed by ■■■ misconduct, but also showed insight into why ■■■ made a wrong decision and what might have occurred as a result of that decision. ■■■ evidence was unequivocal.

[36] Several of the Applicant's witnesses wrote or testified that the Applicant had expressed remorse prior to this hearing. The Panel was particularly impressed by the evidence that the Applicant had taken active steps to ensure that others would not make the same mistake. Also, the Applicant promptly pled guilty to the criminal charges.

[37] In conclusion, the Panel found that the Applicant had complete insight into ■■■ actions in 2016, and that ■■■ had expressed true remorse on several occasions since the events, both in words and deeds.

Rehabilitation Efforts and the Success of Such Efforts

[38] The Applicant completed the "Back on Track" program after ■■■ criminal conviction and it was clear from ■■■ evidence that ■■■ had gained a considerable amount of knowledge and insight from this program. In particular, the Applicant had worked hard to fulfill ■■■ two goals of reducing ■■■ alcohol intake and changing ■■■ group of friends. The Panel accepted that completion of these goals would have been particularly challenging in a university

environment and reflected on the Applicant's self-discipline and commitment to self-improvement and rehabilitation.

[39] ■ employer whom the Applicant has worked for since 2019 spoke highly about ■ diligence and reliability at work. The Applicant appeared to be contributing a great deal to the firm as an accountant, and ■ appeared to be a serious and focused individual committed to trying to become a good member of CPA Ontario.

Applicant's Conduct Since the Misconduct

[40] The Panel found that there was no evidence of any misconduct on the part of the Applicant since 2016.

The Passage of Time Since the Misconduct

[41] The Panel noted that the events underlying the conviction were over five and a half years old and occurred when the Applicant was a young ■. Since that time, the Applicant has worked hard at ensuring that this incident will not recur.

Conclusion

[42] The Panel concluded that the Applicant's misconduct related to one bad decision that occurred many years ago. Since that time, the Applicant has expressed genuine remorse and clear insight about ■ previous misconduct on numerous occasions, both at the hearing and well before the hearing. The Applicant has acknowledged ■ misconduct and moved forward with ■ life in a positive manner, both professionally and personally.

(g) For these reasons, the Panel found that the Applicant had established that ■ met the good character requirement set out in Regulation 9-1. As the Registrar stated that the Applicant had otherwise met the requirements for registration as a student, the Panel ordered that the Applicant be registered as a student with CPA Ontario.

Dated this 24th day of December, 2021



John Blanken, CPA, CA

Admission and Registration Committee – Chair

Members of the Panel

Bernard S. Schwartz, FCPA, FCA

Naresh Agarwal, Public Representative

Margot Howard, Public Representative

Independent Legal Counsel

Susan J. Heakes