

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
ADMISSION AND REGISTRATION COMMITTEE

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

V [REDACTED] V [REDACTED], Applicant

NOTICE OF REFERRAL FOR A HEARING

Pursuant to section 14 of Regulation 7-1, 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 for membership with CPA Ontario on February 4, 2020. Having reviewed the application for membership, I am not satisfied that the Applicant has provided evidence of good character as required in s. 3.4 of Regulation 7.1.

The particulars are as follows:

- a. In [REDACTED] application for admission to membership, the Applicant disclosed that [REDACTED] had been found guilty of a criminal offence or other similar offence for which a pardon had not been granted.
- b. The Applicant provided materials outlining additional information about the charge in question. Those materials indicated that [REDACTED] had been arrested and charged with a DWI (1st offence) on April 7, 2013 in the state of New York. On November 13, 2013, [REDACTED] was given a disposition that included a one-year conditional discharge, a \$500 fine, and attendance at a victim impact panel. The information submitted by the Applicant indicates that [REDACTED] satisfied all of these requirements, and that [REDACTED] was formally discharged on November 13, 2014.
- c. The New York court also granted the Applicant a Certificate of Relief from Disabilities (“Certificate”) on November 13, 2013. The Certificate states that it relieves the Applicant of “all forfeitures and bars to employment, excluding the right to retain or to be eligible for public office.” The summary of the relevant law that accompanies the Certificate indicates that that it does not preclude a judicial, administrative, licensing or other body, board or authority from relying on the conviction as the basis for the

exercise of its discretionary power to suspend, revoke, refuse to issue or renew any license, permit, or other authority or privilege.

2. I have determined that the Applicant otherwise meets all the criteria for admission to membership.

January 11, 2021

Date



Heidi Franken, Registrar (Signature)

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 V [REDACTED] V [REDACTED], an applicant for membership with the Chartered Professional Accountants of Ontario pursuant to Regulation 7-1: Membership, Obligations and Standing, Section 14: Good Character on Admission, as amended.

TO: V [REDACTED] V [REDACTED]

AND TO: Registrar, CPA Ontario

DECISION AND ORDER MADE MARCH 8, 2021

DECISION

Having heard and seen the evidence and submissions of the parties, the Tribunal is satisfied that the applicant is of good character as required under Regulation 7-1: Membership, Obligations and Standing, Section 14: Good Character on Admission.

ORDER

The Tribunal, having been advised by the Registrar the applicant otherwise meets all the requirements of admission, directs the Registrar to admit V [REDACTED] V [REDACTED] as a member of CPA Ontario.

DATED at Toronto this 8th day of March 2021.



John Blanken, CPA, CA, LPA - Chair
Admission and Registration Committee

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

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: A good character hearing into V [REDACTED] V [REDACTED],
an Applicant membership in the Chartered Professional Accountants
of Ontario, pursuant to Regulation 7-1: Admission to Membership,
Obligations, and Standing, as amended

BETWEEN:

V [REDACTED] V [REDACTED]

-and-

**REGISTRAR, CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

APPEARANCES:

For the Applicant [REDACTED] V [REDACTED]: Present and self-represented

For the Registrar: Lara Kinkartz, Counsel

Heard: March 8, 2021

Decision and Order effective: March 8, 2021

Release of written reasons: April 5, 2021

REASONS FOR THE DECISION MADE MARCH 8, 2021

I. BACKGROUND AND FACTS

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

that ■ had been found guilty of a criminal offence in April 2013. ■ application was referred by the Registrar to the Admission and Registration Committee (“ARC”).

The Applicant’s Application to CPA Ontario

[2] The Applicant applied for admission to CPA Ontario on February 4, 2020. In response to one of the questions on the application for admission, the Applicant advised that ■ had previously “been found guilty of a criminal offence or other similar offence for which a pardon had not been granted.” At the same time that ■ submitted ■ application, the Applicant wrote to CPA Ontario and fully disclosed ■ criminal charges from April 7, 2013 and the disposition of those charges on November 13, 2013. The Applicant described the offence of Driving While Impaired (“DWI”) as a “highly regrettable incident,” adding that this was an isolated incident and not a crime of moral turpitude or dishonesty.

[3] The Registrar asked the Applicant to submit a supplementary form regarding this answer on the application and ■ replied on August 12, 2020. The Applicant provided documentation respecting the good character issues.

The Criminal Charges and Consequences

[4] The Applicant testified that in the Spring of 2013, ■ was suffering from a herniated disc and ■ was also helping a family member with a distressing personal issue. The Applicant said that one afternoon, ■ decided to go out with a friend. The friend picked up the Applicant at ■ home and they had dinner and consumed alcohol. On the drive back to the Applicant’s home, for reasons unknown, the Applicant was driving ■ friend in ■ friend’s car. As ■ made a turn at a T-junction, the Applicant lost control of the vehicle and hit a parked car. The Appellant and/or ■ friend called the police and remained at the accident. No one was injured. The police took a reading of the Applicant’s blood-alcohol level and it read 0.17.

[5] The Certificate of Disposition dated February 26, 2014 stated that the Applicant was arrested and charged with DWI, DWI 08 of 1PCT, Imprudent Speed and Red Light Violation (“Criminal Charges”).

- [6] The Applicant did not contest the Criminal Charges, although during [redacted] evidence [redacted] was unclear about the technical legal plea that [redacted] had entered at that time. [redacted] believed that [redacted] pleaded guilty. On November 13, 2013, the Applicant agreed to the following Disposition in Court:
- a. a one-year conditional discharge;
 - b. a \$500 fine;
 - c. [redacted] license was suspended for six months;
 - d. attend a victim impact panel;
 - e. complete a "Drinking Driver Program" offered by the Department of Motor Vehicles; and
 - f. attend an alcohol counseling program.
- [7] The Applicant advised that the victim impact panel that [redacted] attended consisted of a one-day program that included testimonials from the friends and families of the victims of drunk drivers. [redacted] testified that [redacted] was moved by their stories and the pain that they had suffered. [redacted] realized the mistake that [redacted] had made when [redacted] drove under the influence of alcohol and was thankful that [redacted] had not caused any injuries in [redacted] car accident.
- [8] The Applicant also described the two other programs that [redacted] was required to take under the Disposition. [redacted] testified that these programs included a mixture of group discussions and education, videos and one-on-one counselling. [redacted] recalled that one of the programs that [redacted] completed was approximately three months long and the other was a couple of weeks.
- [9] The Applicant provided CPA Ontario with a letter from the court-ordered alcohol counselling program that [redacted] took at the Lexington Center for Recovery. The author of the letter indicated that the Applicant was conscientious about [redacted] attendance and participation in treatment, and that [redacted] seemed sincere when expressing regret and remorse over [redacted] decision to drink and drive. The author added that it appeared that this incident was an isolated event in the Applicant's life. The Applicant successfully completed the program on July 30, 2013. During the program, the Applicant's toxicology tests were reportedly all negative.

- [10] The New York Court granted the Applicant a Certificate of Relief from Disabilities (“Certificate”) on November 13, 2013. The Certificate relieved the Applicant of “all forfeitures, and of all disabilities and bars to employment, excluding the right to retain or to be eligible for public office.” The summary of the relevant law that accompanied the Certificate indicated that it did not preclude a judicial, administrative, licensing or other body, board or authority from relying on the conviction as the basis for the exercise of their discretionary power to suspend, revoke, refuse to issue or renew any license, permit, or other authority or privilege.
- [11] On January 11, 2021, the Government of Canada approved the Applicant’s application for criminal rehabilitation under the *Immigration and Refugee Protection Act*. As a result, the Applicant’s conviction no longer provided grounds of criminal inadmissibility into Canada. The Applicant testified that ■ did not intend to emigrate to Canada, however ■ might want to visit family and friends in Canada.
- [12] During the hearing, the Applicant expressed unqualified regret for having driven when under the influence of alcohol. ■ did not minimize or provide excuses. ■ described ■ actions as “stupid” and “a terrible mistake” and “a blatant error in judgment.” The Applicant told the panel that ■ deeply regretted the poor decision ■ made on April 7, 2013 when ■ decided to drive while under the influence.

The Applicant’s Life Since the Conviction

- [13] Prior to the incident in 2013, the Applicant had obtained membership as a CPA in New Jersey in 2006 and as a CPA in New York in 2011. ■ obtained ■ Chartered Global Management Accountant (CGMA) designation the same year as the accident (2013). The Applicant is also an Australian CPA, a Notary Public in the state of New Jersey, and a Certified Acceptance Agent for the Internal Revenue Service (IRS).
- [14] The Applicant started ■ own firm in New York in 2014 and opened a second firm in New Jersey in 2016. ■ firms provided audit consulting and tax services. The Applicant advised that the firms specialized in cross-border matters, and therefore ■ had acquired ■ CPA in Australia in 2019. As discussed below, about six years ago, the Applicant partnered with another accountant, LN, who was winding down ■ accounting practice. At the time of the hearing, the Applicant employed ten people.

[15] In addition to ■ work, the Applicant testified that ■ did pro bono accounting work for many clients. Starting in 2013, the Applicant and ■ family were actively involved in a charity that provided food and support to orphanages in India, but also helped others who were going through hard times. The Applicant was a Trustee and the Treasurer for the charity.

[16] In ■ personal life, the Applicant indicated that ■ is not a social drinker and ■ now knows that there are other transportation options such as Uber or Lyft when one has been drinking.

Character Evidence

[17] LN provided a letter of reference for the Applicant and he also testified at the hearing. LN was an attorney and has been a CPA Ontario member in good standing since 1986. LN had known the Applicant for 25 years and had known ■ family for 40 years. When LN decided to retire, he suggested that the Applicant take over his accounting practice and they worked for the past six years in the same office space.

[18] LN testified that he was aware of the good character issues in this matter as he was consulted by the Applicant and ■ family immediately after the car accident in 2013. He referred the Applicant to a criminal lawyer. LN told the panel that the Applicant expressed deep regret at that time about driving under the influence. LN's advice to the Applicant was that ■ should tell others what had happened and warn them of the serious consequences of drinking and driving.

[19] LN testified that he had never seen the Applicant under the influence of alcohol. He also testified about the pro bono and charitable work done by the Applicant, as discussed above.

II. ISSUES IN THIS HEARING

[20] 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 admitted to CPA Ontario.

III. DECISION

- [21] 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 admission to CPA Ontario.

IV. REASONS FOR DECISION

Good Character Requirement in Regulations

- [22] Under subsection 3.4 of Regulation 7-1, the Registrar shall admit to CPA Ontario any individual who, having satisfied all the other requirements of section 3, 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 (section 7 of Regulation 7-1).
- [23] 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 14 and 15 of Regulation 7-1). 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.
- [24] If the ARC determines that an applicant is not of good character, they shall make an order refusing the applicant's membership and may impose restrictions and conditions for reapplication if appropriate (section 20 of Regulation 7-1). If the ARC determines that the applicant has met the good character requirements, it shall make an order admitting the applicant on such terms and restrictions as the Committee considers appropriate (section 22).

What is Good Character?

- [25] "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.”

[26] 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.

[27] 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.”

[28] Section 7 of Regulation 7-1 sets out similar objectives: the Registrar shall not admit an applicant to membership without being satisfied that the admission 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?

[29] Under subsection 3.4 of Regulation 7-1, an applicant must provide satisfactory evidence to establish their good character. Here, the onus was on the Applicant to convince the Panel that, despite ■■■ previous misconduct, ■■■ was a person of good character at the time of the hearing.

[30] 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

[31] When determining the good character of applicants to CPA Ontario, panels will consider the following five factors:

- a. The nature and duration of the misconduct;
- b. Whether the applicant is remorseful;
- c. What rehabilitative efforts, if any, have 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.

[32] The calculation of whether a person is of good character is not a mathematic formula; however, the Panel must review and weigh these factors to determine whether the Applicant has satisfied them on a balance of probabilities that they are a person of good character as of the date of the hearing.

Analysis

Nature and Duration of Misconduct

[33] The Panel found that the Applicant's misconduct was serious and that ■■■ was fortunate that ■■■ did not injure ■■■ or others when ■■■ made the decision to drive ■■■ friend's

car while under the influence. As stated in *GB v Registrar, Chartered Professional Accountants of Ontario* (November 26, 2019), the criminal offence of driving while drinking reflects society's condemnation of this activity and the serious dangers that it creates.

- [34] The Panel noted that this was an isolated and one-time event and did not appear to be part of a pattern of reckless behaviour. The evidence of the Applicant made it clear that this was a gross error in judgment rather than a malicious or dishonest act.

Whether Applicant is Remorseful

- [35] Throughout the hearing, the Applicant indicated that ■ was remorseful about the events that led to the offence and ■ accepted full responsibility for ■ actions. This remorse was corroborated by LN and it appeared that ■ regretted ■ actions immediately. The Lexington Centre for Recovery also noted that Applicant's sincerity when expressing remorse and regret over ■ decision to drink and drive.
- [36] The Panel also noted that the Applicant did not contest ■ criminal conduct and fulfilled the Court's conditions in ■ sentence by paying the fine and attending the various programs mandated by the Court.
- [37] The Applicant also cooperated with CPA Ontario's review of this matter by making full disclosure of the issues in ■ Application and providing CPA Ontario with all of the documentation that was requested. After the Notice of Referral for a Hearing was issued on January 21, 2021, the Applicant signed an Agreed Statement of Facts on March 1, 2021.
- [38] During ■ testimony, the Panel was impressed by the Applicant's descriptions of the lessons ■ learned when ■ took the mandatory drinking and driving programs in New York. At no time in ■ testimony did the Applicant minimize the issues or attempt to blame others. ■ appreciated the gravity of the offence and expressed genuine remorse for ■ actions.

Rehabilitation Efforts and the Success of Such Efforts

- [39] As mentioned above, the Applicant paid the fine required by the New York court and completed the mandatory programs. The Applicant's testimony about the lessons ■ had learned from these programs was compelling.
- [40] While the Applicant took no further counselling, ■ and LN testified that ■ did not have a substance abuse issue that might have warranted counselling or therapy. The Applicant testified that ■ had never driven after having consumed alcohol since the incident in 2013.
- [41] The panel also noted that LN spoke highly of the Applicant's integrity both on a personal and professional level. LN has known the Applicant and ■ family for many years and for the past few years has worked in the same office space. He had an excellent opportunity to observe the Applicant's interaction with staff and clients, ■ values at work and ■ decision-making. LN testified that he had never observed any issues and in fact the opposite, he had great respect for the Applicant's conduct and integrity.

Applicant's Conduct Since the Misconduct

- [42] The Panel found that since the misconduct the Applicant had achieved considerable professional success. There was no evidence of any misconduct since the events leading to ■ criminal prosecution in 2013.

The Passage of Time Since the Misconduct

- [43] The Panel found that the fact that this incident occurred almost eight years ago was a compelling factor in the consideration of the Applicant's current good character. While each case must be determined on its own merits, the Panel observed that in the *GB* Reasons for Decision, the panel commented that applicant's criminal offence had occurred only 19 months before the hearing and ■ conviction was eight months prior to the hearing. The panel in that matter advised that they would have preferred a longer period of time passing between the offence and the hearing, however they were satisfied that given the unique factors in that case, sufficient time had passed.
- [44] The Panel found that the Applicant's offences were isolated and occurred many years ago without any repetition, and it was satisfied that sufficient time had passed.

Conclusion

[45] The Panel concluded that the Applicant's misconduct was from a momentary lapse in judgment that occurred many years ago. The Applicant had since established [REDACTED] as a responsible citizen and businessperson, and [REDACTED] expressed genuine remorse for [REDACTED] misconduct in 2013. In all of these circumstances, the Panel found that the Applicant was a person of good character as of the date of the hearing and, the Registrar having determined [REDACTED] otherwise meets all the criteria for admission to membership, directs the Registrar to admit the Applicant to CPA Ontario.

Dated this 5th day of April, 2021

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
Admission and Registration Committee –Chair

Members of the Panel

Naresh Agarwal, Public Representative
Greg Hocking, CPA, CA, IFA
Margot Howard, Public Representative
Seemant Thakkar, CPA, CMA, CGA, LPA

Independent Legal Counsel

Susan J. Heakes