

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

BETWEEN:

A [REDACTED] K [REDACTED]

-and-

**REGISTRAR, CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

APPEARANCES:

For the Applicant, A [REDACTED] K [REDACTED]:	Self-represented
For the Registrar:	Teagan Markin, Counsel
Heard:	March 16, 2023
Decision and Order effective:	March 16, 2023
Release of written reasons:	April 17, 2023

REASONS FOR THE DECISION MADE MARCH 16, 2023

I. INTRODUCTION

[1] This hearing was held to determine whether the Applicant, A [REDACTED] K [REDACTED] (the “Applicant”), was of good character at the time of the hearing and thereby met the requirements for admission to membership in the Chartered Professional Accountants of Ontario (“CPA Ontario”).

- [2] The Applicant's good character was put into issue as a result of the judicial finding of October 21, 2020 that he was guilty of assault under the *Criminal Code*, and the Applicant's failure to promptly notify CPA Ontario of this finding of guilt. The application was referred by the Registrar to the Admission and Registration Committee ("ARC").
- [3] The Parties prepared an Agreed Statement of Facts (Exhibit 1), which included a CPA Ontario Questionnaire filled out by the Applicant (Exhibit 2). The parties also prepared a Joint Book of Documents (Exhibit 3). In addition, the Applicant provided testimony at the hearing, and tendered a statement from a witness (Exhibit 4).
- [4] The Registrar took a neutral position at the hearing.
- [5] For the reasons that follow, the Panel found that the Applicant provided satisfactory evidence that, on a balance of probabilities, he was a person of good character at the time of the hearing. Upon being advised that the Applicant met all other requirements for admission to membership, the Panel ordered that the Registrar admit the Applicant to membership of CPA Ontario after successfully completing at least seven and a half hours of CPA-recognized courses related to the ethical obligations of a Chartered Professional Accountant.

II. BACKGROUND AND FACTS

The Applicant's Background and Events Leading to the Misconduct

- [6] The Applicant attended Ryerson University (now known as Toronto Metropolitan University) and obtained an accounting and economics degree. He was a successful student and had obtained employment with an accounting firm at the time of the misconduct.
- [7] On June 15, 2019, the Applicant was out with friends at a bar. They were drinking, and a dispute developed between the Applicant and another individual at the bar. The Applicant grabbed the victim by the throat, and punched him once to the left side of his face. The victim was bleeding from his nose and left eye, and went to the hospital. At the hospital it was determined that the victim had sustained a fractured left orbital bone, which caused his eye to collapse in the sinus cavity.

Criminal Charge and Guilty Plea

- [8] The Applicant was charged with aggravated assault. Through his counsel he negotiated a resolution with the Crown by which he would plead guilty to a reduced charge of simple assault under section 266 of the *Criminal Code*, and receive a conditional discharge.
- [9] On October 21, 2020 the Applicant pled guilty to the charge of simple assault, and confirmed that the Agreed Statement of Facts (ASF) read into the record by the Crown was correct. The presiding judge accepted the joint submission of the Crown and the Defence that the Applicant receive a conditional discharge, and be subject to a five-month period of probation during which he would keep the peace and be of good character, avoid any contact with the victim, not be within 100 metres of the victim's residence or place of employment, and not possess any weapons. The resolution included an order that the Applicant's DNA be added to the national database.
- [10] The Applicant also voluntarily paid restitution to the victim in the amount of \$4700, which was intended to address the victim's lost income incurred as a result of his injuries.

Disclosure of Finding of Guilt to CPA Ontario

- [11] The Applicant was a student with CPA Ontario when he committed the assault and pled guilty to the assault, but he did not disclose the finding of guilt to CPA Ontario at the time.
- [12] The Applicant applied for membership with CPA Ontario on September 20, 2021, and answered "yes" to the question asking whether he had ever been found guilty of a criminal offence. In the follow-up questionnaire, the Applicant provided information to CPA Ontario about the guilty plea, conditional discharge, and probation.

The Applicant's Evidence about his Misconduct

- [13] The Applicant testified at the hearing about the circumstances leading up to the assault and the assault itself. He testified that while he had agreed to the ASF as part of his guilty plea to the criminal charge of assault, there were some facts which he took issue with, including that his date had been flirting with the victim. The Applicant also testified about additional facts not included in that ASF relating to the context of the assault. Specifically,

the Applicant testified that prior to his assault on the victim, he had learned that his date that evening had been assaulted by the victim.

[14] In his testimony, the Applicant confirmed all of the details of his assault on the victim as set out in the ASF, and emphasized that he took full responsibility for his assault on the victim and the harm caused to the victim by his assault. The Applicant also testified about his remorse for the assault, his rehabilitation efforts, and the actions he has taken in the time since the assault, which will be addressed below.

[15] With respect to the disclosure of the finding of guilt to CPA Ontario, the Applicant testified that, at the time, he was not aware of an obligation to make disclosure prior to applying for membership to CPA Ontario.

Witness Statement

[16] The Applicant sought to tender as an exhibit a statement from the individual who was his date on the night of the assault. This statement set out her evidence about the events which led up to the assault, which was consistent with the Applicant's testimony at the hearing. The Registrar opposed the admission of this statement, on the basis that it was unsigned, unsworn hearsay evidence about events which were the subject of a judicial finding based on an ASF in the criminal proceedings. The Panel decided to admit the statement based on its potential relevance to the underlying misconduct.

[17] However, in considering all of the evidence before it, the Panel placed no weight on this statement in coming to its conclusion that the Applicant is presently of good character. Furthermore, to the extent that the statement is inconsistent with the findings of Justice Silverstein as set out in the court transcript of October 21, 2020, the Panel accepted the findings of Justice Silverstein as proof of the facts relating to the assault, pursuant to Rule 19.07 of the *Rules of Practice and Procedure*.

Character Evidence

[18] The Applicant provided four letters of reference addressing his character. One of the letters was provided to the Applicant by a friend for the purpose of the criminal proceeding. The other three letters were provided to the Applicant for use in this proceeding. Each of the letters, including one from a current CPA Ontario member, spoke highly of the Applicant's

character, making reference to his integrity, positivity, work ethic, supportive nature, kindness, and respect for others.

[19] The Panel placed little weight on this evidence, as none of the letters addressed the Applicant's criminal conduct, and the Applicant called none of the authors of the letters to provide evidence at the hearing. As a result, the Panel was unable to determine whether the authors' opinions of the Applicant's character would have been different if they had known of his criminal conduct.

III. ISSUES IN THIS HEARING

[20] 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 admitted as a member of CPA Ontario.

IV. DECISION

[21] The Panel found that the Applicant had established on a balance of probabilities that he was of good character at the time of the hearing. The Panel ordered that the Applicant be admitted as a member of CPA Ontario, subject to the condition that he complete not less than a total of seven and a half hours of a CPA-recognized course or courses that related to the ethical obligations of a Chartered Professional Accountant.

V. REASONS FOR DECISION

The Good Character Requirement in CPA Ontario's Regulations

[22] Once applicants have completed the other qualifications for admission to membership in CPA Ontario, they are required to provide evidence satisfactory to the Registrar that they are a person of good character (subsection 3.4 of Regulation 7.1). Where the Registrar is not satisfied with the evidence provided by an applicant about their good character, the Registrar shall refer the matter to an oral hearing before the ARC (section 14 of Regulation 7-1).

[23] The ARC must make their assessment of the applicant's good character as of the time of the hearing. While, for example, there may be evidence of an applicant's poor ethical

choices in the past, the issue for the ARC is whether the applicant is currently a person of good character.

[24] If the ARC determines that the applicant meets the good character requirement and the Registrar confirms that all other requirements for admission have been met, the ARC shall make an order registering the applicant on such terms and conditions that they consider appropriate (section 22 of Regulation 7-1).

[25] It is well established that when a matter has been referred to the ARC for a good character hearing, the onus is on the applicant to establish their good character. The standard of proof is a balance of probabilities, which means that the applicant must establish that it is “more likely than not” that they are a person of good character. The ARC must assess the applicant’s character as of the time of the hearing.

What is Good Character?

[26] “Good character” is not defined in the CPA Ontario Regulations. However, the following definition made in 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.”

[27] In an often-cited article about good character, Madam Justice Southin of the British Columbia Court of Appeal elaborated on the meaning of good character 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.*

[28] 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."

Factors Determining Good Character

[29] It is well established that ARC Panels conducting good character hearings in respect of admission to membership must review the evidence relating to the good character of an applicant as framed by 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 weight to be attached to each of these factors is dependent upon the circumstances of the particular application. A determination of whether a person is of good character is not a mathematical formula but rather is based upon a combination of these factors, which are often overlapping and inter-related.

Analysis

(a) The Nature and Duration of the Misconduct

[31] The Panel considered the criminal conduct of the Applicant in June of 2019, and the fact that the Applicant did not advise CPA Ontario of the finding of guilt made by Justice Silverstein in October 2020 until he applied for membership in September 2021.

[32] The Panel takes seriously the commission of a criminal offence, particularly one of violence which, as in this case, caused significant injury to the victim. The criminal conduct reflects a failure to uphold the law, which reflects badly on the Applicant's character. The Panel found the misconduct constituted an impulsive, singular, one-time event. It does not reflect a pattern of misconduct.

[33] The CPA Ontario Student Code of Conduct, at section 105.1, provides that:

“Students shall promptly notify CPA Ontario after, in any jurisdiction, having been:

(a) found guilty of an offence of fraud, theft, forgery, money-laundering, extortion, counterfeiting, criminal organization activities, charging criminal interest rates, financing terrorism or similar offences related to financial matters or found guilty of an offence of conspiring or attempting to commit such offences;

(b) found guilty of any other serious criminal offence that is not related to financial matters but which involves conduct that is of such a nature that it diminishes the good reputation of the profession or fails to serve the public interest;

(c) ... ”.

[34] The Registrar took the position that the offence for which the Applicant was found guilty is an offence which diminishes the good reputation of the profession pursuant to subsection 105.1(b) of the CPA Ontario Student Code of Conduct, and therefore had to be promptly reported to CPA Ontario. The Panel agrees with this submission. Paragraph 2 of the Commentary to section 105.1 specifically lists “offences involving violence or threats of violence” as examples of conduct which may diminish the good reputation of the profession. The Commentary goes on to note that “[t]he Student should evaluate the

breach against their ethical responsibilities in making a determination whether to report such matters.”

[35] The Panel finds that in light of this Commentary, the Applicant should have promptly reported his criminal misconduct to CPA Ontario pursuant to section 105.1 of the CPA Ontario Student Code of Conduct. The Panel accepts the Applicant’s evidence that his failure to promptly disclose the criminal conduct was not an intentional violation of the Student Code of Conduct but arose from his unfamiliarity with section 105.1. The Panel found that the Applicant’s disclosure of the criminal conduct the following year when he applied for membership in CPA Ontario demonstrated good faith in meeting his obligation to disclose his criminal conduct to his regulator.

(b) Whether the Applicant is Remorseful

[36] The Panel notes that the trial judge found the Applicant’s voluntary act of restitution, providing the victim with \$4700 towards his loss of income, to be a “strong demonstration of remorse.”

[37] In his testimony before the Panel, the Applicant expressed remorse for his actions. He characterized his assault on the victim as impulsive, wrong, and something he regrets every day. He spoke of the injuries he caused to the victim, and vowed that, were the situation ever to arise again, he would never respond violently. He accepted that, regardless of the circumstances or the motivation, it was wrong of him to respond to the situation with violence. The Panel found the Applicant’s expressions of remorse to be genuine and heart-felt.

(c) Rehabilitation Efforts

[38] After being charged, but prior to the guilty plea, the Applicant successfully completed a seven-hour alcohol and drug awareness program, as well as an eight-hour anger management program. The Applicant testified that he attended these programs in recognition of the role that alcohol and anger played in his criminal conduct. The Applicant testified that he now rarely drinks alcohol and does not drink to the point of intoxication. The Applicant testified that through the anger management program he learned various approaches for controlling anger, including calming techniques which he has been able to integrate into his life.

[39] The Applicant has also contributed to the community through volunteer activities, including assisting low-income community members to file their income tax returns so that they would be eligible for various government credits, and providing assistance to Ukrainian refugees and those internally displaced by the war.

(d) The Applicant's Conduct Since the Misconduct

[40] The Panel found that there was no misconduct on the part of the Applicant since the criminal misconduct. The Panel accepts the Applicant's evidence that he has been focused on his professional growth, having completed the In-Depth Tax Program of the Chartered Professional Accountants of Canada in 2020, and having recently received a promotion at his place of work.

[41] The Registrar submitted that the Applicant's attempts in this proceeding to distance himself from some of the facts to which he had agreed in the criminal proceedings, and to introduce additional facts about the context of the assault which were not part of the record of the criminal proceedings, raises concerns about the Applicant's integrity. The Panel was troubled by the Applicant's changing position in respect of some of the facts to which he had agreed as part of his guilty plea. The Panel notes, however, that the Applicant did not resile from any of the facts relating to his actual physical assault or the impact of the assault on the victim, and that the Applicant did not claim that the additional facts about which he testified in any way justified the assault.

[42] The Applicant testified that he had not disclosed his criminal misconduct to his current employer, because he was concerned of the impact of that disclosure on his reputation and career development. The Panel was troubled by this non-disclosure, given that the qualities of good character include candour, and the moral fibre to do the right thing even when it is difficult.

(e) The Passage of Time Since the Misconduct

[43] The criminal conduct took place 3 years and 9 months before the hearing. The Applicant's guilty plea to the assault charge took place 2 years and 5 months before the hearing. The Panel found that there has been a sufficient amount of time for the Applicant to have rehabilitated himself and for the Panel to assess his character. In addition to the self-improvement programs he undertook immediately following the assault and his volunteer

activities, the Applicant is now married. He testified that he has moved onwards with his life and feels himself to be a different person from the one who committed the assault.

Restrictions and Conditions to the Applicant's Admission Ordered by Panel

[44] As set out above, under section 22 of Regulation 7-1, the Panel may impose appropriate restrictions and conditions on an applicant's admission to CPA Ontario. These may address, for example, concerns about public confidence in the regulation of the members of CPA Ontario arising from the prior misconduct. They can also assist the applicant by enhancing their competence. The Panel is conscious that restrictions and conditions may not be used to "water down" the burden of proof that must be met by an applicant to demonstrate good character. This warning is found in the Law Society of Ontario decision, *Levenson v LSUC*, 2009 ONLSHP 0098, which was adopted by a Panel of the ARC in *K.R. v Registrar, Chartered Professional Accountants of Ontario* (February 10, 2022):

[81] [The imposition of conditions on admission to the profession] also brings with it a danger, namely that the burden of proof upon an applicant to demonstrate good character will be effectively "watered down" by hearing Panels who might be tempted to address their concerns about good character through the imposition of terms and conditions. We cannot emphasize strongly enough that terms and conditions should never be utilized to permit applicants to be licensed who have failed to prove, on a balance of probabilities, that they are currently of good character. That would erode this precondition for licensing in an unacceptable way. Put another way, if a hearing Panel remains unsatisfied that an applicant is currently a person of good character because of residual concerns about, for example, his or her integrity or the likelihood that [they] will respond to the pressures of practice by reverting to misconduct, his or her application should be refused. By way of illustration only, terms and conditions might be imposed where the hearing Panel is satisfied that the applicant is currently of good character, but that public confidence in the regulation of lawyers and paralegals would be enhanced through such terms and conditions."

[45] The Panel found that while the Applicant established on a balance of probabilities that he was currently a person of good character, it was appropriate that he be required to take courses related to the ethical obligations of a Chartered Professional Accountant.

Conclusion

- [46] The Panel carefully reviewed the evidence, and weighed the combined effect of the above factors in determining, on a balance of probabilities, that the Applicant is currently a person of good character. The Panel is aware that the standard to be applied is not one of perfection, and further, that a person's character may change over time. The Panel found that the Applicant had taken significant steps to rehabilitate himself, and has demonstrated through his actions since the criminal conduct that the misconduct was an isolated occurrence, and not reflective of his current character.
- [47] The Panel was troubled that the Applicant attempted to distance himself from some of the ancillary judicial findings arising from the criminal proceedings to which he had previously agreed, and had not disclosed his criminal misconduct to his references or his employer.
- [48] The Panel found that in these circumstances, it was appropriate to impose a condition for admission to membership requiring that prior to his admission, the Applicant provide satisfactory proof to the Register that he has enrolled in, paid for the entirety of, and successfully completed CPA-recognized course or courses, acceptable to the Registrar, of not less than a total of seven and a half hours related to the ethical obligations of a Chartered Professional Accountant.

Dated this 17th day of April, 2023



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

Members of the Panel

Brian Mbesha, CPA, CGA
Jeremy Cole, FCPA, FCA
Alexander Metaxas-Mariatos, CPA, CMA
David Handley, Public Representative

Independent Legal Counsel

John Dent