

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 N [REDACTED] A [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:

N [REDACTED] A [REDACTED]

-and-

**REGISTRAR, CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

APPEARANCES:

For the Applicant, N [REDACTED] A [REDACTED]:	Self-represented
For the Registrar:	Shannon Paine, Counsel
Heard:	September 13, 2022
Decision and Order effective:	September 13, 2022
Release of written reasons:	October 5, 2022

REASONS FOR THE DECISION MADE SEPTEMBER 13, 2022

I. INTRODUCTION

[1] This hearing was held by videoconference to determine whether the applicant, N [REDACTED] A [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”). The Applicant’s character was put into question as a result of a

criminal conviction on February 15, 2018 for having care and control of a motor vehicle while his ability to operate the vehicle was impaired by alcohol contrary to s. 253(1)(b) of the *Criminal Code of Canada*. The conviction was disclosed in the Applicant's application for membership in CPA Ontario dated July 9, 2020. The Applicant's application for membership was referred by the Registrar to the Admission and Registration Committee ("ARC").

II. FACTS

The Applicant's Misconduct

- [2] On April 2, 2017, the Applicant, who was then 26 years of age, was charged with having care and control of a motor vehicle when his ability to operate the vehicle was impaired by alcohol and having care and control of a motor vehicle while his blood alcohol concentration exceeded 80 milligrams of alcohol in 100 milliliters of blood, contrary to the *Criminal Code* ("the charges").
- [3] The charges were laid after the police found the Applicant lying in the middle of the roadway, on a poorly lit highway, at 4:00 AM. When the officer stopped his vehicle, the Applicant got up from the roadway, returned to the driver seat of his vehicle and closed the door.
- [4] The officer observed that the Applicant's vehicle was running, and the lights were on. His eyeglasses and cell phone were on the roadway and there was a puddle of what appeared to be urine beside the Applicant's vehicle. The officer also observed that the Applicant had red and watery eyes and that his breath smelled like alcohol.
- [5] The officer observed the Applicant's hand on the gear shift and told him to shut off the car, which he did. The officer asked the Applicant to get out of the car and observed that he was unsteady on his feet. The officer then arrested the Applicant.

The Court Proceedings and Sentence

- [6] The Applicant pleaded not guilty to the charges and commenced his trial on February 14, 2018. He was found guilty of the charges the following day.

- [7] The Applicant was sentenced to a fine of \$1,500 and a one-year driving prohibition. A victim fine surcharge was also imposed. In sentencing the Applicant, the trial judge stated that he was satisfied that the Applicant was someone who could be fully rehabilitated and that his comments to the court reflected a level of maturity and insight into his offence and his willingness to learn from his mistake. Further, he was satisfied that he was someone that would use the event as a learning experience to change.

Events Following the Conviction

- [8] The Applicant paid his fine and victim fine surcharge. He also completed the “Back on Track” program, Ontario’s remedial measures program. In doing so, the Applicant completed an assessment, an eight-hour education program and all of the follow-up requirements.
- [9] The Applicant testified that the Back on Track program provided in-depth education about the consequences of drinking and driving. He learned about different levels of tolerance for alcohol which corrected a number of myths that he believed with respect to the effects of alcohol and the number of drinks one can consume before driving. He explained that whereas he used to believe that one can consume a certain number of drinks and still drive or that the consumption of food could impact one’s impairment level, he learned that any amount of alcohol affects one’s ability to drive. Finally, after completing the program, he realized that he was lucky that he did not injure anyone, including himself, nor cause any permanent damage. He stated that he learned that drinking and driving simply should not mix.
- [10] Although the court ordered that the Applicant’s driver’s licence be suspended for one year, the Applicant was able to participate in a reduced suspension program by installing an ignition device in his vehicle. Installation of this device allowed the Applicant to have his licence reinstated after six months. This device required the Applicant to blow into a breathalyzer installed in his car before the car would start. Any trace of alcohol on the Applicant’s breath would not allow the car to start. It also performed random spot checks while the Applicant was driving to ensure that he did not consume alcohol after the car was started. He successfully completed this program and now has no conditions on his driver’s licence.

The Applicant's Application to CPA Ontario

[11] At the time of the offence, the Applicant was a student registered with CPA Ontario. After being charged, but prior to his conviction, the Applicant emailed CPA Ontario about the charges and asked if it would impact his application for membership. A representative of CPA Ontario replied and provided an overview of the application process, the documents about the charges that would need to be submitted and advised that the file would need to be reviewed.

[12] The Applicant did not disclose his conviction when it occurred on February 15, 2018. He did, however, disclose the conviction and related details when he applied for membership with CPA Ontario on July 9, 2020.

[13] The Applicant submitted a supplementary form to CPA Ontario regarding his conviction where he wrote:

“I was going through a stressful time in my life, with both my personal health and relationship with my partner, not in an ideal place. To cope with the stress, I went to drink and made the inappropriate decision to drink and drive. Truly, the most embarrassing situation I dealt with but it allowed me to learn.”

[14] In addition to the supplemental form, the Applicant provided CPA Ontario with a Letter of Reflection entitled “Reflection Piece” in which he, amongst other things, provided the circumstances surrounding the offence. In it, the Applicant stated as follows:

“On the night, when I was charged with the offence, I was in the middle of ending my 3-year relationship with my partner at that time. Immaturely, I resorted to having alcoholic beverages at a bar in Mississauga, thinking that this would help me release some of the stress that I had been facing.

At the end of the night, feeling exhausted and not realizing, incorrectly, that I was over the legal drinking limit, I proceeded to drive my car towards my house. While on the way, I realized that I had made a wrong turn and in order to get my bearings right, I parked the car on the side of an empty road and proceeded to enter the address on my phone's GPS. At this point, a police cruiser approached my car and noticed my condition and proceeded with charging me for my actions. In that moment, I realized that I had made a big mistake which would have long lasting consequences for both my personal and professional life.”

[15] The Registrar referred the Applicant's application to ARC and advised that the Applicant otherwise met all criteria for registration as a student.

The Applicant's Evidence

- [16] The Applicant testified that the charges were a life changing event and described it as the “biggest mistake of my life”. He stated that it was something he wished he was wise enough not to have done and that he is committed to ensuring that this same mistake is never repeated. He now realizes that what he had done could have had long lasting consequences and wants to use the incident as a learning opportunity to make sure that he does not make the same mistake in the future. He also wants to educate others to ensure that they do not make the same mistake that he made.
- [17] The Applicant was asked in cross-examination and by the Panel about inconsistencies between the Agreed Statement of Facts as well as the Court transcripts and the version of events the Applicant set out in his Letter of Reflection with respect to the circumstances surrounding his arrest. The Applicant acknowledged the inconsistencies but stated it was not done in an effort to mislead. Rather, he stated that he believed the Letter of Reflection was about what he had learned from the event and what he will do moving forward. He did not believe the surrounding details were of significance but what mattered most was advising CPA Ontario that he had been convicted of drinking and driving offences and how he has learned from the incident.
- [18] The Applicant testified that he disclosed the charges to CPA Ontario in May 2017 because he was looking for guidance. He acknowledged that he did not notify CPA Ontario after the conviction occurred but explained that he did not do so because he had been told that there would be a separate process to address the issue when he applied for membership. He explained that he has tried to be forthcoming with CPA Ontario at every opportunity, including in May 2017 and notifying CPA Ontario in his application when he applied for membership. He stated that he was not aware that students were required to disclose a conviction. Instead, he believed it would be done when he applied for membership. He explained that he was never trying to conceal and knew that he would have to disclose when he applied for membership.
- [19] The Applicant stated that since the incident, he has been vocal with friends and acquaintances about the risks associated with drinking and driving. He has tried to use his experience to teach them about the dangers of drinking and driving and to dispel any myths that you can drink a minimum number of drinks and nevertheless be in a position to drive.

- [20] The Applicant testified that he had stopped drinking for a few months after he had been charged. With time, however, he realized that it was okay to drink, but just not to drink and drive. Accordingly, if he knows that he will be consuming alcohol, he will not drive. He now ensures that he arranges for a ride and if those arrangements cannot be made, he will not drink.
- [21] Since that incident, the Applicant has made efforts to continue with his accounting profession. He has worked at [XXX] since January 2018 and is currently a senior analyst. The Applicant acknowledged that he did not disclose his conviction to his employer because the conviction occurred after he was hired. In hindsight, he stated that he should have but he did not think it was necessary at the time.
- [22] In addition to working as a senior analyst, the Applicant has, since March 2020, run his own practice. He explained that when he first started his practice, he worked on clients' personal tax returns. However, he now provides corporate taxes as a service. The Applicant stated that he works with other CPAs but not under the supervision of a CPA. He explained that he manages the clients throughout the year but that when it comes to filing their taxes, he gets one of the CPAs to assist. The Firm is not registered with CPA Ontario.
- [23] The Applicant was asked in cross-examination whether he was aware of Rule 204 of the Student Code that a student could not offer or provide any services that CPA Ontario requires to be offered or provided through a Firm except through a Firm and under the supervision of a member of CPA Ontario. He stated that he was not aware of the rule but explained that his understanding was that an accountant was not required to file personal taxes or corporate taxes. He stated that he was not signing the returns as a CPA and did not hold himself out to be a CPA.
- [24] During the course of submissions, counsel for the Registrar stated that in light of the evidence with respect to the Applicant's practice, the Registrar wanted an opportunity to review and consider whether the Applicant was in compliance with Rule 204. As such, counsel for the Registrar requested that if the Panel concluded that the Applicant had met his onus of establishing his good character that the Panel direct that the Registrar not register the Applicant for membership until the Applicant confirms to the satisfaction of the Registrar that he is in compliance with Rule 204 of the Student Code. The Applicant believed he was in compliance with Rule 204 but consented to this direction being made.

Character Evidence

[25] The Applicant provided the Panel with four reference letters. The letters, however, did not indicate whether the authors were aware that the Applicant had been convicted of the charges. In cross-examination, the Applicant indicated that no one at CPA Ontario had told him that these letters needed to address the conviction but that, in any event, three of the four individuals were aware of the conviction. The following is a brief summary of these letters.

(a) MA has known the Applicant for approximately 17 years. In a letter dated November 30, 2020, he described that the Applicant had performed volunteer work at his organization between 2013 and 2016. He described the Applicant as intelligent, competent and possessing a positive attitude which inspires others.

(b) In a letter dated August 5, 2020, DC, one of the Applicant's undergraduate instructors, wrote that the Applicant was a solid student. Further, he provided his unreserved recommendation that the Applicant be awarded the CPA professional designation.

(c) In a letter dated July 29, 2020, AC, the Applicant's co-worker, stated that the Applicant was courteous, professional and always displaying a strong moral character.

(d) MI, the Applicant's business colleague and friend, described the Applicant as trustworthy, a visionary and extremely competent. He stated that the Applicant is a trusted friend with high integrity.

[26] In addition to these letters the Applicant called his close friend, MJ, to provide *viva voce* character evidence. MJ testified that this incident shook the Applicant to the core. He is more humble and more cognizant on how his actions can have a direct impact on others. He recalled that shortly after the incident, the Applicant stated that he had made a terrible mistake but was relieved that no one was seriously hurt by his actions. Further, he confirmed that the Applicant imparted a lot of what he learned in the remedial courses to their friend group and took on the responsibility of teaching others to learn from his mistakes. MJ also confirmed that the Applicant does not drive if he has been drinking. He has personally acted as designated driver for the Applicant. At other times, the Applicant had been the group's designated driver. In those circumstances, he refrained from consuming any alcohol.

III. ISSUES IN THIS HEARING

[27] The Panel identified the following issues arising from this application:

- (a) 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 as a member of CPA Ontario; and
- (b) If the Applicant was determined to be of good character, whether, in light of the concerns expressed with respect to Rule 204 of the Student Code, his admission to membership should be subject to any conditions.

IV. DECISION

[28] The Panel found that the Applicant established on a balance of probabilities that he was of good character at the time of the hearing. However, having regard to the concerns expressed by counsel for the Registrar and with the Applicant's consent, the Panel directed that the Registrar not register the Applicant for membership until he confirms to the satisfaction of the Registrar that he is in compliance with Rule 204 of the Student Code.

V. REASONS FOR DECISION

Statutory Framework for "Good Character" Requirement

[29] Being of good character is a prerequisite for admission into CPA Ontario. Subsection 3.4 of Regulation 7-1 makes it clear that in order to be admitted to membership in CPA Ontario, all applicants are required to provide evidence of good character to the satisfaction of the Registrar. Sections 7.1 and 7.2 also require the Registrar to be satisfied that the admission of an applicant would not put the public at risk or bring the reputation of the profession into disrepute.

[30] It is implicit in this requirement that the onus is on the Applicant to establish their good character (See *GB v. Registrar, Chartered Accountants of Ontario (November 26, 2019)*).

[31] Section 14 of Regulation 7-1 provides that "where an applicant does not provide evidence of good character satisfactory to the Registrar, the Registrar shall refer the matter to an

oral hearing before the Admission and Registration Committee”. In referring the matter to the ARC, the Registrar is not making a decision about the applicant’s good character. Rather, they are finding that they have not been given sufficient evidence by an applicant to make a decision about good character or that the evidence provided on its face requires testing for credibility.

[32] If the ARC determines that an applicant is not of good character, they shall make an order refusing the applicant’s admission for membership. If, however, the ARC determines that the applicant has met the good character requirements, the panel shall make an order admitting the applicant for membership on such terms and restrictions as the committee considers appropriate.

[33] The Panel adopts the standard applied in previous good character decisions from CPA Ontario which have consistently held that when a matter is referred to the ARC for a good character hearing, the Panel’s assessment of an applicant’s good character must be at the time of the hearing. In other words, although a criminal conviction may establish that an applicant had previously engaged in conduct that could reflect negatively on their character, the issue for the panel’s determination is whether at the time of the hearing the applicant is a person who possesses good character.

Definition of “Good Character” and Factors to be Considered

[34] Although “good character” is not defined in the CPA Ontario Regulations, the following definition set out by the Law Society of Ontario in *Law Society of Upper Canada v. Preyra*, 2000 CanLII 14383 has been adopted by the 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, candor, empathy and honesty.”

[35] Good character embodies qualities that are relevant to the profession and connotes moral strength. Madam Justice Mary Southin of the British Columbia Court of Appeal also elaborated on the term (in the article “What is ‘Good Character’” (1987), 35 *The Advocate* 129, at p.129):

“[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] The character of an applicant is of central significance in deciding whether someone is entitled to admission to CPA Ontario. The good character requirement is intended to protect the public and maintain high ethical standards in the profession by ensuring that those who are admitted as chartered professional accountants conduct themselves with honesty and integrity and maintain a reputation for high professional and ethical standards. In *ND v. Registrar, Chartered Accountants of Ontario* it was held that that the good character requirement is threefold:

- (a) to protect members of the public who retain accounting professionals;
- (b) to ensure that the accounting profession maintains a reputation for high professional and ethical standards; and
- (c) to demonstrate that CPA Ontario is able to effectively regulate chartered professional accountants.

Factors Determining Good Character

[37] Past misconduct is not an automatic bar to admission. In other words, a person’s character is dynamic and not static. Further, the test for character and fitness does not require perfection or certainty (See *Mohan v. Law Society of British Columbia*, 2013 BCCA). It is well established that in reviewing the evidence about an applicant’s character, the Panel must consider the following factors:

- (a) The nature and duration of the applicant’s misconduct;
- (b) Whether the applicant is remorseful;

(c) What rehabilitative efforts, if any, the applicant has taken and the success of such efforts;

(d) The applicant's conduct since the misconduct; and

(e) The passage of time since the misconduct.

[38] The weight to be attached to each of these factors depend 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 those factors, which are often overlapping and inter-related.

Analysis

A. Nature and Duration of Misconduct

[39] There is no doubt that drinking and driving is an extremely serious offence which reflects negatively on the Applicant and the profession as a whole. The criminal conviction and sentence reflect society's condemnation of this conduct. However, the Panel accepted the Applicant's evidence, and that of MJ, that this was an isolated event and did not reflect a pattern of behaviour on his part. The Panel was mindful of the sentencing judge's comment that the Applicant was someone who can be rehabilitated in a short period of time and was satisfied that the misconduct was a result of a terrible error of judgment and immaturity rather than any malicious intent.

B. Whether the Applicant is Remorseful

[40] The Panel had concerns about the fulsomeness of the Applicant's Reflection Piece and of the particulars he provided to CPA Ontario with respect to the circumstances giving rise to his arrest. It was clear that he was not forthcoming with all of the information. The Applicant should have provided a more complete account of the event rather than just assuming that the Registrar would have eventually received the material. However, the Panel was, nonetheless, satisfied that the Applicant was genuine in his remorse and acceptance of responsibility. His evidence at the hearing, including his acceptance of the Agreed Statement of Facts, conveyed that he fully accepted his responsibility for his misconduct.

- [41] At the hearing, the Applicant repeatedly stated that he regretted his decision and that his conduct would never be repeated. He now realizes that there were other options, other than driving, available to him if he were drinking. He recognized that he got off relatively easy in the circumstances. He appreciated that the consequences could have been worse and that he was lucky that no one, including himself, was injured or killed. He was clear and unequivocal that he learned that drinking and driving should never be mixed.
- [42] Although the Applicant's misconduct was serious, the Panel was satisfied that the Applicant had accepted responsibility for his behaviour that night. He addressed the Panel directly and expressed his genuine remorse several times. He did not minimize or rationalize his misconduct. In addition, MJ also commented on how forthright the Applicant was about his misconduct and how much he regretted his actions.
- [43] In all of the circumstances, the Panel found that the Applicant had insight into his actions and has learned from them.

C. Rehabilitation Efforts

- [44] The Applicant provided evidence of his completion of a number of remedial courses following his conviction. He also told the Panel of some of the rehabilitative steps that he had taken since his conviction. He participated in the Alcolock Program, which allowed the Applicant to reduce the period for which his driver's licence was suspended from one year to six months.
- [45] The Applicant also completed the Back on Track program. He told the Panel that he had gained insight and knowledge in the program. He said that he had learned about the dangers of drinking and driving and the program helped him dispel many myths with respect to how much one can drink before driving. He also told the Panel that he had stopped drinking entirely for a period after being charged. He acknowledged that he does drink but that he will make alternative arrangements to driving if that is the case.
- [46] The Applicant indicated that he imparted his lessons to his friends and that he encouraged them not to drink and drive and to instead find other ways of getting home if they have been drinking. This evidence was corroborated by MJ who confirmed that the Applicant imparted a lot of what he learned in the remedial courses to their friend group and took on

the responsibility of teaching others to learn from his mistakes. MJ also confirmed that the Applicant does not drive if he has been drinking.

- [47] In addition to the evidence of MJ, the Applicant also sought to rely on four character letters in support of his application. However, the Panel found these letters to be of limited value in that they were all written approximately two years prior to the hearing. More importantly, none of the letters mentioned that the authors were aware of the Applicant's criminal conviction, nor did they address any of the remedial efforts made by the Applicant following his conviction. In assessing the quality of this evidence, the Panel was guided by the following passage from the Law Society Hearing Panel's judgment in *Blackburn v. Law Society of Upper Canada*, 2010 ONLSHP 112, at paragraphs 51 and 52:

In assessing the reputation and character of an applicant for admission to the Law Society, the Panel must weigh both the quality and the quantity of the character testimony to assess its weight. Quantity, by itself, is not sufficient. An applicant will usually invite only those who will make laudatory comments on his character. The Panel must assess the quality of the comments, the relationship of the parties, their opportunity for meaningful evaluation of the person, and the consistency of the opinions from diverse sources.

...the evidence of "good character" must be examined critically, both in terms of source and content. The task is to take a measure of the individual and determine whether he/she has climbed out of the hold of his/her prior misdeeds.

- [48] The Applicant explained that three of the four authors were aware of the conviction but there is nothing to confirm that fact. More importantly for the purposes of this hearing, even if they were aware, the letters are silent with respect to the Applicant's rehabilitative efforts. The Applicant explained that with respect to the content of the letters, he was relying on guidance provided by CPA Ontario. To avoid these difficulties in the future, the Panel suggests that where, like here, there is an unrepresented party, CPA Ontario should consider providing more precise guidance about the nature of the criteria being considered on good character applications and what the materials provided for the hearing ought to address.
- [49] Despite the limited value of the character letters, the Panel was satisfied that the Applicant had successfully completed his rehabilitation efforts and that there is little risk that he will reoffend.

D. Applicant's Conduct Since the Misconduct

- [50] There was no evidence that the Applicant engaged in any further criminal behaviour since his conviction in February 2018. This reinforced the Panel's conclusion that this was an isolated incident rather than one that defined the Applicant's character.
- [51] The evidence before the Panel was that the Applicant was a contributing member of the community and a hard-working employee and entrepreneur whose dream is to become a member of CPA Ontario. Counsel for the Registrar suggested that his passion and ambition *might* have clouded his judgment and that his conduct while operating his practice may have put him in conflict with Rule 204 of the Student Code. There was an insufficient evidentiary basis for the Panel to make any assessment of whether or not the Applicant violated Rule 204, nor was it the Panel's task to make such a finding.

E. The Passage of Time Since the Misconduct

- [52] The underlying event occurred in April 2017, approximately five and a half years before this hearing and when the Applicant was a relatively young man who was experiencing a number of stresses in his life. He is now older, more mature and the father of a young daughter. The Panel accepted the evidence that the Applicant's life today is very different than it was five and a half years ago. Given the isolated nature of the Applicant's actions, the rehabilitative efforts he has undertaken and the mature attitude the Applicant expressed at the hearing, the Panel was satisfied that sufficient time had passed since the offence.

Conclusion

- [53] The Panel concluded that the Applicant's misconduct was an isolated event dating back to 2017. The Applicant's remorse for his misconduct was reflected in both his words and actions since that time. He has engaged in rehabilitative efforts that have resulted in a changed lifestyle and there is no evidence of any misconduct since that time.
- [54] For these reasons, the Panel found that the Applicant had established that he was of good character. The Applicant had satisfied all of the other membership requirements. However, having regard to the concerns expressed by counsel for the Registrar with respect to the Applicant's compliance with Rule 204 of the Student Code, and with the Applicant's

consent, the Panel directed that the Registrar not register the Applicant for membership until he confirms to the satisfaction of the Registrar that he is in compliance with Rule 204 of the Student Code.

Dated this 5th day of October, 2022

A handwritten signature in black ink, reading "Bernard S. Schwartz". The signature is written in a cursive, flowing style.

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

Members of the Panel

Robert Mozzon, FCPA, FCA
Incheol Baek, CPA, CMA
Donald Aronson, Public Representative

Independent Legal Counsel

Seth Weinstein