



## INFORMATION FOR MEMBERS APPLYING FOR A PARDON

Law Society Rule 5-101.1 (attached) sets out the criteria and process for granting a pardon.

A member who was issued a formal caution or convicted of professional misconduct, conduct unbecoming or incompetence, may apply to the Discipline Committee for a pardon of the caution or conviction in the following situations:

1. Ten years have passed since the date of the caution or conviction;
2. The penalty imposed for the conviction was a reprimand or fine (with or without an order of costs) and no other order, action or penalty was imposed on the member as a result of the conviction. A pardon is not available when the penalty imposed was a suspension, disbarment, resignation or included conditions or restrictions on the member's practise of law;
3. Since the date of the caution or conviction the member has not accepted any other formal cautions and has not been found guilty of any other charges of professional misconduct, conduct unbecoming a lawyer or incompetence;
4. There are no charges currently pending against the member;
5. There are no complaints about the member currently under investigation;
6. The member has paid the Society all money owing to the Society; and
7. A Discipline Panel has not granted any previous application for a pardon.

A member must complete a pardon application form and the completed application, together with information on the member's history with the Law Society, will be provided to the Chair of the Discipline Committee. If the Chair is satisfied that the applicant has met the criteria set out under the Rules, he or she will select three members of the Discipline Committee to hear the application and decide whether or not to grant a pardon. The member will be notified in writing when the application has been included on the Law Society's Set-Down List and a mutually agreeable time will be arranged for the hearing of the matter. The member is entitled to appear before the Panel with or without counsel

The role of the Discipline Panel is to determine whether:

- (a) the member has met all the criteria for a pardon set out in the Rules; and
- (b) whether, under all the circumstances, a pardon is appropriate.

Following the hearing a copy of the decision of the Discipline Panel will be provided to the member.

When a Discipline Panel grants a pardon, this does not set aside the caution or conviction or relieve the Society of its obligations to disclose the caution or conviction under *The Legal Profession Act* or the Law Society Rules. However, any disclosure of a caution or conviction that has been pardoned must also disclose that the member has received a pardon and that the Society no longer considers the censure or conviction to reflect adversely on the member's character. If a discipline conviction was reported to the members of the profession by way of a Discipline Case Digest that is currently posted on the Law Society's website, the member's name will be removed from the digest with a notation that a pardon was granted.

Completed pardon applications should be sent to:

Leah Kosokowsky  
Director of Regulation  
The Law Society of Manitoba  
200 – 260 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 0M6

## *Law Society Rules*

### **Application for a pardon**

**5-101.1(1)** Subject to subsection (2), in circumstances where:

- (a) a member's conduct was censured by the Complaints Investigation Committee and the member accepted a formal caution; or
- (b) a discipline panel found a member guilty of professional misconduct or conduct unbecoming a lawyer or student or incompetence and imposed a reprimand or fine, with or without an order of costs, and no other order, action or penalty was imposed on the member by the discipline panel as a result of that conviction,

the member may apply to the discipline committee for a pardon.

(ENACTED 03/05)

### **Definition of pardon**

**5-101.1(2)** A pardon is evidence of the fact that the Society no longer considers the censure or conviction to reflect adversely on the member's character. (ENACTED 03/05)

### **Application criteria**

**5-101.1(3)** At the time a member makes an application under subsection (1), the following criteria must be satisfied:

- (a) ten years have passed since the date of the censure or conviction;
- (b) since the date of the censure or conviction the member has not accepted any other formal cautions and has not been found guilty of any other charges of professional misconduct, conduct unbecoming a lawyer or student or incompetence;
- (c) there are no charges pending against the member;
- (d) there are no complaints about the member under investigation;

### **Demande de réhabilitation**

**5-101.1(1)** Sous réserve du paragraphe (2), un membre peut demander sa réhabilitation au comité de discipline dans les cas suivants :

- (a) sa conduite a été blâmée par le comité d'enquête sur les plaintes et le membre a accepté un avertissement formel;
- (b) un sous-comité disciplinaire a déclaré le membre coupable d'une faute professionnelle, d'une conduite répréhensible ou d'incompétence et lui a infligé une réprimande ou une amende, accompagnée ou non d'une ordonnance de paiement des frais, sans rendre une autre ordonnance, prendre une autre mesure ou infliger une autre peine à l'égard de cette déclaration de culpabilité.

(ADOPTÉ 03/05)

### **Définition de réhabilitation**

**5-101.1(2)** La réhabilitation fait foi du fait que la Société ne considère plus que le blâme ou la déclaration de culpabilité portent atteinte à la réputation du membre. (ADOPTÉ 03/05)

### **Critères**

**5-101.1(3)** Les conditions qui suivent doivent être réunies au moment où un membre présente sa demande de réhabilitation :

- (a) dix ans se sont écoulés depuis le blâme ou la déclaration de culpabilité;
- (b) depuis le blâme ou la déclaration de culpabilité, aucun autre avertissement formel n'a été prononcé contre le membre, ni aucune autre déclaration de culpabilité n'a été rendue contre lui pour faute professionnelle, conduite répréhensible ou incompétence.
- (c) aucune accusation n'est en instance contre lui;
- (d) aucune plainte ne fait l'objet d'une enquête contre lui;

- (e) the member has paid the society all money owing by the member to the society; and
  - (f) a discipline panel has not granted any previous application by the member under this rule.
- (ENACTED 03/05)

#### **Convening a hearing**

**5-101.1(4)** Where the chairperson of the discipline committee is satisfied that the applicant has met the criteria set out in subsection (3), the chairperson must establish a discipline panel to hear the application and make a determination. A hearing date must be set and notice provided to the applicant in accordance with rule 5-96(4). (ENACTED 03/05)

#### **Role of panel**

**5-101.1(5)** A panel may grant a pardon if it determines that:

- (a) the member has met all the criteria set out in subsection (3); and
- (b) under all the circumstances, a pardon is appropriate.

(ENACTED 03/05)

#### **Service of decision on applicant**

**5-101.1(6)** Following a hearing, the chief executive officer must serve a copy of the written decision of the discipline panel on the member or his or her counsel in accordance with rules 5-78(3) and 5-78(4). (ENACTED 03/05)

#### **Disclosure of pardoned censure or conviction**

**5-101.1(7)** A determination by a discipline panel to grant a pardon does not set aside the censure or conviction or relieve the society of any obligation to disclose the censure or conviction under the Act or these rules. Any disclosure of a censure or conviction that has been pardoned must also disclose that the member has received a pardon and that the Society no longer considers the censure or conviction to reflect adversely on the member's character. (ENACTED 03/05)

- (e) il a payé à la Société toutes les sommes qu'il lui doit;

- (f) un comité de discipline ne lui a pas déjà accordé une réhabilitation en vertu du présent article.

(ADOPTÉ 03/05)

#### **Audition**

**5-101.1(4)** Le président du comité de discipline constitue un sous-comité disciplinaire chargé d'entendre la demande s'il estime que le demandeur satisfait aux conditions énumérées au paragraphe (3). La date d'audition est fixée et un avis est envoyé au demandeur, en conformité avec l'article 5-96(4). (ADOPTÉ 03/05)

#### **Mandat du sous-comité**

**5-101.1(5)** Le sous-comité disciplinaire accorde la réhabilitation s'il conclut que le membre satisfait aux conditions énumérées au paragraphe (3) et que, compte tenu de toutes les circonstances, il y a lieu de la lui accorder. (ADOPTÉ 03/05)

#### **Signification de la décision au demandeur**

**5-101.1(6)** Une fois l'audition terminée, le directeur général fait signifier une copie de la décision du sous-comité disciplinaire au demandeur ou à son avocat en conformité avec les paragraphes 5-78(3) et (4). (ADOPTÉ 03/05)

#### **Communication du blâme ou de la déclaration de culpabilité visés par la réhabilitation**

**5-101.1(7)** La décision par un sous-comité disciplinaire d'accorder une réhabilitation n'annule pas le blâme ou la déclaration de culpabilité, ni ne libère la Société de l'obligation de communiquer leur existence en conformité avec la loi ou avec les présentes règles. Toutefois, lorsqu'elle les communique, elle est tenue de préciser qu'ils ont fait l'objet d'une réhabilitation et qu'elle ne considère plus qu'ils portent atteinte à la réputation du membre en cause. (ADOPTÉ 03/05)