



NOVA SCOTIA BARRISTERS' SOCIETY

POLICY ON READMISSION FOLLOWING DISBARMENT

1.1 Striking from the Roll

1.1.1 A member is struck from the Roll of Lawyers when the Nova Scotia Barristers' Society (the "Society") finds that that person was guilty of such grave professional misconduct, conduct unbecoming a barrister, or incompetence, that that person is deemed not fit to remain on the Rolls of the Society. It is the extreme penalty.

Application for Readmission

1.1.2 Pursuant to Regulation 5.10.1, a person who has been disbarred may apply to be readmitted to the Society.

Restoration Exceptional

1.1.3 It is the position of the Society that disbarment is to be regarded as essentially permanent in nature, and that restoration will only be recommended in exceptional circumstances and upon special grounds, where a former member has shown by a long course of conduct that he/she is a person to be trusted and in every way a fit and proper person to be a member of the Society.

Burden of Proof and Evidential Standard

1.1.4 The applicant bears the burden of proof and must satisfy the Credentials Committee (the "Committee") on clear, cogent and convincing evidence that:

- a) special circumstances exist that justify readmission, and
- b) there is no reasonable probability of the former member offending in the future.

Matters for Consideration

1.1.5 Unless the former member makes out a case of very special circumstances and shows that she/he has entirely purged her/his guilt, and has in all other respects fulfilled the requirements for readmission, the Committee will be reluctant to recommend that former member's restoration to the rolls. When assessing the application, the following considerations are relevant:

- a) Character of Charges – the character of the charges upon which the former member was disbarred;
- b) Circumstances of the Offence – the circumstances under which the offence was committed, including but not limited to the applicant's age at the time of the misconduct, the frequency of the misconduct and any factors underlying the misconduct;
- c) Monetary Restitution – In cases where the offence was that the former member had misappropriated or converted money or property, it will be made a prime prerequisite to readmission that complete restitution be made;
- d) Period of Time since Disbarment – whether a sufficient period has elapsed from disbarment to the time when the disbarred member makes an application for readmission as the former member must demonstrate by a long course of conduct that he or she is trustworthy;
- e) Absence from Practice – evidence that the former member has strictly refrained from engaging in the practice of law since disbarment
- f) Character Evidence – The former member must establish that his/her conduct and character are unimpeached and unimpeachable, which can be established to a degree by the evidence of trustworthy persons, especially members of the profession and persons with whom the former member has been associated during that person's disbarment, and may include evidence of the applicant's positive social contributions since the offence;
- g) Evidence that the former member has:
 - a. expressed both a sincere admission of guilt and genuine remorse, or

- b. if the former member sincerely believes he or she was not guilty, shown that the issue of his or her guilt is sufficiently removed from his or her current circumstances so as to be nearly moot¹;
- h) Evidence of Rehabilitation;
- i) Evidence that it is extremely unlikely the former member will commit misconduct if readmitted; and
- j) Evidence that the former member has remained current in the law through participating in continuing professional development, or has a plan acceptable to the society that will permit the former member to be sufficiently current in the law prior to readmission.
- k) c.

2.1 Procedure for Application

2.1.1 A written application for readmission should be directed to the Executive Director together with the non-refundable application fee.

Content of the Application

2.1.2 The content of the application is prescribed by subregulation 5.10.2:

Content of Application

5.10.2 An application under this regulation shall be in the prescribed form, accompanied by the prescribed fee, and shall provide

- a) contact information,
- b) professional history,
- c) information confirming good character,
- d) information confirming fitness,
- e) information confirming competence to practise law,
- f) if the member is or has been a member of a law society in a foreign jurisdiction, certificates of standing from each jurisdiction,
- g) provide the Executive Director with a criminal record check in a manner prescribed by the Executive Director;
- h) such other information that may be required by the Executive Director.

Additional Required Information

2.1.3 To meet the requirements of subregulations 5.10.2(c) and (h), the application must be accompanied by:

- a) A statutory declaration addressing the following:
 - i. the character, conduct, habits of life, particulars of employment and means of livelihood of the applicant since she/he was struck from the Roll;
 - ii. the applicant's present financial position;
 - iii. that restitution of property and payment of all money, if any has been misappropriated or converted by the applicant, has been made, or the reason why such restitution or payment has not been made;
 - iv. that the applicant has paid to the Society any money paid out of the Lawyers' Fund for Client Compensation in respect of any misappropriation or conversion by the applicant;
 - v. the source from which and manner in which money was obtained to make payment;
 - vi. particulars of all other matters, if any, which to the applicant's knowledge might be the subject matter of a current complaint to the Society, if the applicant were a member;
 - vii. that the applicant has not, since disbarment, offended against any provisions of the *Legal Profession Act*.
- b) Written statements by at least two persons who have had direct personal association with the applicant in her/his business or employment during the period since she/he was struck from the Roll and expressing their opinion that the applicant is a fit and proper person to engage in the practice of law, and an outline of the basis for that opinion; and

¹ Bates v. Law Society of Upper Canada, 2007 ONLSP 124

- c) An acknowledgement by the applicant that the applicant understands that the Committee will consider the applicant's character and fitness, along with the applicant's competence in light of the length of absence from practice, and that if readmitted, terms and conditions may apply.

Proof of Fitness Required – Medical Evidence

2.1.4 If the striking from the Roll was attributable partly or wholly, directly or indirectly, to sickness, physical or mental disability, or substance abuse that interfered with the applicant's practice, the applicant must provide information confirming fitness in the form of a certificate of a duly qualified medical practitioner and, where appropriate, of the applicant's counsellor or psychologist, confirming that the applicant no longer suffers from such sickness or disability or has the condition under control.

3.1 Procedure Upon Submission of Application

Review by Executive Director

3.1.1 An application for readmission will be reviewed by the Executive Director who may, if it is in the public interest, obtain additional information from the applicant or any other person regarding the good character and fitness of the applicant.

Referral to Committee

3.1.2 Following review of the application and the gathering of additional information, the Executive Director will forward the application to the Credentials Committee.

Public Notice of Application

3.1.3 Pursuant to subregulation 5.10.3, the Executive Director will provide public notice of the application:

5.10.3 If an applicant under this regulation was disbarred or permitted to resign by a Hearing Panel, the Executive Director shall

- a) cause notice of the application to be published in a newspaper, or
- b) advise the members of the Society of the application, or
- c) invite submissions to the Society on the application.
- d) obtain any additional information from the applicant or any other person regarding the good character and fitness of the applicant;

Consideration by Credentials Committee

3.1.4 The Committee will consider the application along with information provided by the Executive Director. The Committee may request that the Executive Director obtain new information.

Options for the Committee

3.1.5 The options are available to the Committee following its consideration of the application are set out in subregulation 5.10.9:

Requirements for resumption of practice

5.10.9 Following consideration of the application, the Committee may

- a) approve the application without conditions,
- b) approve the application, subject to the applicant
 - i. successfully completing a period of service with a practicing lawyer, approved by the Committee,
 - ii. successfully completing all or a portion of the Bar Admission Course,
 - iii. satisfying the Committee of the applicant's fitness for admission to membership and resumption of practice;,
 - iv. completing such other requirements as may be required by the Committee.
- c) deny the application.

Status while Under Supervision

3.1.6 If the applicant is required to serve a period of time under the supervision of a practising lawyer, during the period of service, the applicant is considered a practising lawyer and is required to pay the fees of a practising lawyer.

Requirement to enroll as Articled Clerk for supervisory period if no insurance available

3.1.7 If an applicant for readmission following disbarment is required to work under supervision as a condition of readmission, but does not have professional liability insurance and defalcation coverage and cannot obtain insurance satisfactory to the Executive Director, pursuant to Regulation 5.10.9(b)(iv) the applicant will be enrolled as an articled clerk.²

Requirements of Articled Clerks

3.1.8 As the reason applicants referenced in paragraph 3.1.7 are being enrolled as articled clerks is to meet insurance requirements, if it is in the public interest, pursuant to Regulation 3.4.1, the Executive Director may vary the requirements otherwise expected of an articled clerk by waiving one or more of the requirements for admission.³

Notification of Decision and Right of Appeal

3.1.9 If the Committee approves the application with terms or denies the application, the Committee will provide the applicant with a written decision with reasons and will inform the applicant that he or she has a right to appeal to the Credentials Appeal Panel.

Application Fee Credited

3.1.10 If the applicant appeals a Committee decision, the application fee submitted by the applicant with his or her application, while nonrefundable, will be credited toward the cost of an appeal, should the Credentials Appeal Panel eventually assess costs against the applicant in favour of the Society.

4.1 Call to the Bar Required

4.1.1 Upon approval of an application for readmission, the applicant must be called to the Bar.

Approved by Credentials Committee on May 23, 2014

Approved by Council on _____, 2014

² Lawyers in Nova Scotia are insured through CLIA (Canadian Lawyers Insurance Association). It is CLIA policy that only lawyers called to the Bar in a Canadian province or articled clerks are eligible for insurance. This is CLIA policy, not the policy of the Nova Scotia Barristers' Society. To avoid erecting a barrier to licencing while regulating in the public interest, the Executive Director will enroll applicants in this situation as articled clerks. This will allow the applicants the opportunity to work and complete the supervision requirement while ensuring the availability of insurance necessary for public protection.

³ Among other requirements, articled clerks are required to article for 12 months and must complete the Bar Admission Course, including the bar exam, the Skills Course and any required seminars. By way of example, if it is felt that the public interest would be served by requiring an applicant to pass the bar examination and work under supervision for six months, pursuant to Regulation 3.4.1, the Executive Director could shorten the articling period to six months and eliminate the requirement that the applicant attend the Skills Course and seminars.