

# Criminal Record Act

R.S.C 1985, c. 12(1st Supp.), s. 1.

## Table of Contents

1. What is a pardon?.....	1
2. What are the practical effects of a pardon?.....	1
3. Who may apply for a pardon?.....	2
4. Who decides if you will receive a pardon?.....	3
5. How do you apply for a pardon?.....	3
6. Can a verdict of “Not Criminally Responsible on Account of Mental Disorder”, received for another offence, affect whether a pardon is given? .....	4
7. What happens if the Board does not grant a pardon? .....	5
8. Can a pardon be cancelled once it is given? .....	5
9. Disclaimer – PLEASE READ! .....	7

## 1. What is a pardon?

- 1.1. A pardon means that a past conviction should no longer reflect badly on the person who received the conviction. (s. 5(a)(ii))

## 2. What are the practical effects of a pardon?

- 2.1. A pardon does not erase a criminal conviction. If you receive a pardon, you still have a criminal record. However, you do not have to admit that you were convicted of the pardoned offence on application forms for federal employment. You will have to admit to having been convicted of the pardoned offence on all other application forms.
- 2.2. The record of a pardoned conviction kept in a federal agency or department, such as the RCMP, is kept separate from records of offences that were not pardoned. (s. 5(b)).
- 2.3. No one will be told about the pardoned conviction without your permission, unless the Solicitor General of Canada thinks someone must be told in order to keep Canada safe (ss. 6(2), 6(3))

2.3.1. However, your name, date of birth, and last known address may be given to a police force if your fingerprint is found at the scene of a crime (s. 6.2(a))

2.4. If you apply to work or volunteer at a place where there are children under the age of 18 or vulnerable persons, the employer can ask the police if you have received a pardon for a sexual offence. (s. 6.3(3)). Vulnerable persons will usually have a disability or be elderly. (s. 6.3(1)).

2.4.1. The police will only tell the employer whether you have received a pardon for a sexual offence if you tell the police in writing that it is OK for them to tell the employer. (s. 6.3(3)(b))

2.4.2. The employer can only use the information to decide whether they want to hire you. The employer cannot tell anyone else that you were pardoned for a sexual offence. (s. 6.3(8))

2.5. Sometimes an Act will say that a person with a conviction is not allowed to do something. This does not apply to a person whose conviction has been pardoned. In other words, if you have been pardoned, you can do something even if an Act says a person with a conviction cannot do that thing. (s. 5(b))

2.5.1. However, when your sentence for the pardoned offence had the requirement that you do not possess a weapon, that you stay away from places where there are children, or that you do not operate a motor vehicle, you must still follow this part of the sentence. (s. 5(b)).

### **3. Who may apply for a pardon?**

3.1. Anyone convicted of an offence under an Act of Parliament may apply for a pardon. (s. 3(1))

3.1.1. An Act of Parliament is an act that was passed by the federal government. An important example of an Act passed by the federal

government is the *Criminal Code*. A person convicted under a Provincial Act may not apply for a pardon for that offence.

#### **4. Who decides if you will receive a pardon?**

4.1. The National Parole Board decides whether you will be granted a pardon. Only one member of the board makes the decision, unless the Chairman of the Board decides more than one member should make the decision. (ss. 2.1; 2.2)

#### **5. How do you apply for a pardon?**

5.1. Below is the procedure the *Criminal Records Act* lays out. Since the Act only provides the basics, you may want to visit the following government website for more practical information: [www.npb-cnrc.gc.ca/pardons/pardon\\_e.htm](http://www.npb-cnrc.gc.ca/pardons/pardon_e.htm).

5.1.1. This website has detailed procedure as well as all the forms you need to apply for a pardon. You can also get the forms you need from police offices and court offices.

5.1.2. There is a 50 dollar fee to apply to the Board for a pardon, a 25 dollar fee to get the required copy of your criminal record from the RCMP, plus the costs of obtaining a set of fingerprints.

5.2. The procedure to be followed to obtain a pardon depends on the type of offence being pardoned. There are 3 types of offences in the *Criminal Code*. They are:

5.2.1. **Indictable Offences:** These are the most serious offences

5.2.2. **Summary Conviction Offences:** These are the least serious offences

5.2.3. **Hybrid Offences:** these are offences that have not been labeled. The Crown decides, based on the circumstances of the case, whether the offence should be an indictable offence or a summary conviction offence.

5.3. You can determine the type of offence to be pardoned by looking at the documents used in your case.

#### **5.4. Procedure for pardon of an Indictable Offence**

5.4.1. An application for a pardon will not be considered until FIVE (5) years after any sentence has expired. (s. 4(a)(i))

5.4.2. Your sentence has expired when you have completed all the years of imprisonment and parole, and have paid any fines related to your sentence.

5.4.3. The Board may grant a pardon if it is satisfied that you have been of good conduct AND have not been convicted of an offence under an Act of Parliament during the five years after the sentence expired. (s. 4.1(1))

5.4.3.1. The Board will ask people questions to determine if you have been of good conduct. (s. 4.2(1))

#### **5.5. Procedure for pardon of a Summary Conviction Offence**

**5.5.1.** An application for a pardon will not be considered until THREE (3) years after any sentence has expired. (s. 4(b)(i))

**5.5.2.** The Board may grant a pardon if it is satisfied that you have not been convicted of an offence under an Act of Parliament during the three years after the sentence expired. (s. 4.1(2))

### **6. Can a verdict of “Not Criminally Responsible on Account of Mental Disorder”, received for another offence, affect whether a pardon is given?**

6.1. Yes. When the Board is deciding whether it should give a person a pardon, it is allowed to consider whether the person received a verdict of “Not Criminally

Responsible on Account of Mental Disorder” in another offence. (s. 672.35(c) of the *Criminal Code*)

## **7. What happens if the Board does not grant a pardon?**

7.1. If the Board decides it might not grant the pardon, it must write you to tell you that the pardon may not be granted (s. 4.2(2)).

7.2. The letter must also tell you that you may tell the Board anything that might be relevant to the Board’s decision. (s. 4.2(2))

7.2.1. You can write a letter to the Board, or have someone else write a letter for you. (s. 4(2))

7.2.2. The Board may also allow you to appear before the Board in person. You may have someone appear before the Board for you if the Board grants permission. (s. 4.2(2))

7.2.3. You must write to the Board, or appear before it in person, within a reasonable time after receiving the notice that the Board may not grant your pardon. (s.4.2(3))

7.3. The Board must consider all the information before it when making its decision. (s. 4.2(3))

7.4. If the Board refuses to grant the pardon, you may not reapply to the Board until ONE (1) year after the date of the refusal. (s.4.2(4))

## **8. Can a pardon be cancelled once it is given?**

8.1. Yes, there are two ways a pardon may be cancelled.

8.1.1. A pardon may be cancelled by the Board if one of the following happens:

8.1.1.1. You are convicted of a summary conviction offence under an Act of Parliament. (s. 7(a))

8.1.1.2. The Board is satisfied by the evidence before it that you are no longer “of good conduct”. (s. 7(b))

8.1.1.3. The Board is satisfied by the evidence before it that you lied in your statement or hid important information when you applied for the pardon. (s. 7(c))

8.2. If the Board thinks that it is going to cancel a pardon, it must write to you to tell you that the pardon may be cancelled. (s. 7.1(1))

8.2.1. The letter must tell you that you have the right to tell the Board anything that might affect its decision. (s. 7.1(1))

8.2.2. You can respond to the Board yourself, or have someone respond for you. (s. 7.1(1))

8.2.3. The Board may allow you to appear before it in person. You may have someone appear before the Board for you if the Board grants permission. (s. 7.1(1))

8.2.4. You must respond to the Board or appear before it within a reasonable time after receiving the letter. (s. 7.1(2))

8.2.5. The Board must consider all the evidence before it when making its decision. (s. 7.1(2))

8.3. A pardon will automatically stop having an effect if one of the following happens:

8.3.1. You are convicted of a federal indictable offence (s. 7.2(a)(i))

8.3.2. You are convicted of a summary conviction or indictable offence under the *Criminal Code* (except for the offence of impaired driving), the *Controlled Drugs and Substances Act*, the *Firearms Act*, parts III of

IV of the *Food and Drugs Act*, or parts III of IV of the *Narcotic Control Act*. (s. 7.2(b))

8.3.3. The Board is convinced by new information that you did not meet the conditions for the pardon at the time it was granted (s. 7.2(b))

## 9. Disclaimer – PLEASE READ!

The law is described here in plain language to make it more accessible for persons with disabilities. We provide this service to help our consumers begin to understand the law as it applies to them and alert themselves to legal issues as a first step of advocating for themselves and their peers. reachAbility does not present this information as an accurate statement of the law and it should not be taken as such. More authoritative statements of the law can be found at <http://www.gov.ns.ca/legislature/legc/> and <http://laws.justice.gc.ca/en/>.

If you think your rights under the law presented above have been infringed, you should seek licensed legal counsel to discuss that problem. Legal referrals can be made through any of the following:

<b><u>Organization</u></b>	<b><u>Website</u></b>	<b><u>Phone</u></b>
reachAbility	<a href="http://www.reachability.org">http://www.reachability.org</a>	<b>429-5878</b>
Legal Information Society of Nova Scotia	<a href="http://www.legalinfo.org/referral.html">http://www.legalinfo.org/referral.html</a>	<b>455-3135 (Metro) 1-800-665-9779 (toll free in NS)</b>