

MENTAL HEALTH REVIEW TRIBUNAL

Practice and Policy Guideline #6

THE CONDUCT OF HEARINGS

Practice and Policy Guidelines provide general direction and assistance to the members and secretariat of the Review Tribunal. They may be departed from or supplemented by the Review Tribunal as circumstances require. They do not constitute legal opinions.

Arrival at Venue

1. The Review Tribunal should be cautious about engaging in discussion with participants when not all participants are present¹. Discussion about the merits of the application should never occur unless all participants are present.
2. If a participant requests to speak privately with the Review Tribunal prior to the commencement of a hearing it should ask for the reasons for the request before any discussion occurs. If the Review Tribunal is uncertain as to whether or not to engage in a private discussion, the lawyer member in the absence of the other members should ascertain whether the discussion is appropriate.
3. The Review Tribunal should check that the seating arrangements are satisfactory. The seating configuration should avoid any participants feeling excluded or of secondary importance. The three members of the Review Tribunal should be seated beside one another at a table directly facing other participants.

Initial Examination²

¹ That is because, as a quasi-judicial body, it is required to observe the principles of natural justice. These principles include the avoidance of the perception of bias, and not receiving any relevant information in the absence of other participants. Behind the latter principle is the notion that all participants should know what information the Review Tribunal is receiving so that they may comment on that information if they so choose.

4. The examination of the patient should be conducted before the commencement of the hearing by the psychiatrist member of the Review Tribunal.
5. It should be conducted in private. The lawyer for the patient should always be invited to be present, and therefore it should not be conducted until after the arrival of the lawyer at the venue. Usually only the applicant and lawyer are present, but others may be permitted to be present at the discretion of the psychiatrist member.
6. The expected duration of the examination is no more than 10 minutes.
7. The purpose of the examination is to gauge the immediate condition of the patient so as to enable the Review Tribunal to conduct the hearing in a fair, safe and effective manner.
8. The examination can glean the following:
 - The immediate physical, emotional and psychological condition of the patient and how that might impact on the hearing process;
 - whether the patient understands the nature and purpose of Review Tribunal hearings;
 - whether the patient has fears or concerns with regard to the hearing process;
 - the patient's ability to communicate;
 - the patient's ability to follow what will be said in the hearing, and to last the expected duration of the hearing;
 - whether there are safety concerns;
9. The examining psychiatrist is permitted by the Act to consult with other persons as required, to ascertain the information referred to in the previous paragraph.

² Clause 1, Schedule 1 of the Act

10. At the conclusion of the examination, the psychiatrist member should convey the outcome to the other Review Tribunal members in private.

Presiding Member

11. The lawyer member present chairs the hearing.

Commencement of Hearing

12. Hearings should usually commence with the presiding member introducing each member of the panel.
13. They may however commence in a culturally appropriate way, for example with a *karakia*.
14. After the Review Panel members have been introduced, other participants are invited to introduce themselves.
15. The presiding member then explains the procedure which will be followed, as set out in the following paragraph. An explanation should then be given as to what the Review Tribunal is required to determine, and the relevant legal test. Participants should then be given an indication as to the expected duration of the hearing, and advised that breaks can be taken as required.
16. The procedure which the presiding member outlines in summary at the commence of the hearing is as follows:
 - i. the lawyer for the applicant is invited to present submissions to the Review Tribunal;
 - ii. the applicant is invited to speak and then asked questions by the Review Tribunal and their lawyer;
 - iii. the responsible clinician is invited to speak to their report and answer questions from the Review Tribunal and the lawyer for the applicant;

- iv. other clinicians or those involved professionally with the applicant are invited to speak and answer questions;
- v. the remaining persons present, other than observers, will be members of the applicant's family or whanau, or friends and supporters; they should be told that they are welcome to give evidence but are not obliged to do so;
- vi. the Applicant is invited to give evidence in reply to the evidence given by the responsible clinician or other witnesses;
- vii. The lawyer for the applicant is invited to make closing submissions;
- viii. The Review Tribunal retires for usually 5 to 10 minutes to have a private discussion as to what decision it should make;
- ix. The hearing is reconvened and the decision announced, if one has been reached;
- x. The presiding member announces that the hearing has been concluded; a culturally appropriate way of ending the hearing may also occur at this stage.

Questioning by Review Tribunal Members

17. All members of the Review Tribunal panel should have equal opportunity to question each witness. The order of questioning should be agreed between them before the hearing commences.

The decision

18. Usually the presiding member announces the decision, and makes such appropriate comments as are called for and agreed with the other members. These comments should ensure that as much as possible the applicant understands the decision, and a very short summary of the reasons for it. They should be brief and succinct, and not endanger the therapeutic alliance between the applicant and the clinical team.

19. The Review Tribunal may reserve its decision. This is usually because it needs to consider matters further. Occasionally it is for safety reasons.
20. Following the hearing, the Review Tribunal records its decision in writing. Decision writing is the subject of Practice and Policy Guideline #5.
21. The certificate is usually issued at the same time as the written decision, although can be earlier.
22. Once the written decision and certificate are issued, the Review Tribunal is *functus officio*. This means it has discharged its duties, and has neither the obligation nor the right to be further involved in the case.

Last updated August 2015

NJ Dunlop

Convener