

Schedule A
Review Board
Rules of Procedure

General Principle

1. These Rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every matter before the Review Board.

2. Definitions

“**adjournment**” refers to a situation where the presiding Chairperson orders that a hearing is to continue on another date.

“**annual hearing**” refers to a review of an accused’s Disposition as set out in s. 672.81 of the *Criminal Code*.

“**hearing**” includes “initial hearings”, “annual hearings”, and any other hearing held pursuant to the provisions of Part XX.1 of the *Criminal Code of Canada*.

“**hospital**” refers, in addition to the definition of “hospital” in section 672.1 of the *Criminal Code*, to a single designated facility in which the accused is detained or to which the accused is required to report from time to time as a term in a Disposition.

“**initial hearing**” refers to an accused’s first hearing before the Review Board.

“**Registrar**” refers to the individual, appointed by the Chairperson, who is responsible for the production and distribution of all Dispositions and Reasons.

“**re-schedule**” refers to the process of, on the consent of all parties and with the Chairperson’s approval, setting a new date for a hearing without the necessity of an application being made to a *quorum* of the Review Board.

Matters Not Provided for in these Rules

3. Where any matter of procedure is not provided for by these Rules, the Chairperson of the Review Board or the presiding Alternate Chairperson shall determine the procedure to be followed.

Practice Directions

4. A practice direction, notice or guide for proceedings before the Review Board shall be signed by the Chairperson of the Review Board and published in the Ontario Reports.

Effect of Non-Compliance

5. A failure to comply with these Rules is an irregularity and does not render a hearing, or a step, document or order in a hearing a nullity, or the Review Board,
 - (1) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; and
 - (2) only where and as necessary in the interests of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part.

Language

6. All procedures are to be in French and/or English.
 - 6.1 Subject to this Rule, evidence or submissions may be presented in English and/or French.
 - 6.2 The Board may conduct a hearing or a part of it in French where a request is made:
 - (a) by the accused;
 - (b) by any other party; or
 - (1) by a person seeking party status at the time the application for party status is made.
 - 6.3 Where a hearing or a part of it is to be conducted in French, the Notice of Hearing shall specify in English and French that the hearing is to be so conducted.
 - 6.4 Where a written submission or written evidence is provided in either English or French, the Review Board may order any person presenting such written submission or written evidence to provide it in the other language if the Review Board considers it necessary for the fair disposition of the matter.
 - 6.5 A party requesting that a hearing be conducted in French shall notify the Review Board within seven days of the issuance of the Notice of Hearing.

Time

- 7.** In the computation of time under these Rules or an order, except where a contrary intention appears,
- (1) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
 - (2) where a period of less than seven days is prescribed, statutory holidays shall not be counted;
 - (3) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and
 - (4) service of a document, other than an originating process, made after 4 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.
- 7.1** Where a time of day is mentioned in these Rules or in any document in a proceeding, the time referred to shall be taken as the time observed locally.
- 7.2** The Chairperson of the Review Board or the presiding Alternate Chairperson may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.
- 7.3** A motion for an order extending time may be made before or after the expiration of the time prescribed.

Motions

- 8.** Any matter which arises either prior to or at a hearing which requires a decision or order of the Review Board, other than a Disposition, shall be brought before the Review Board by Notice of Motion.
- 8.1** A Notice of Motion shall be in writing and shall
- (a) contain the decision or order sought, the grounds upon which the motion is made, and an indication of any oral or other evidence sought to be presented;

- (b) be accompanied by an affidavit setting out a clear and concise statement of the relevant facts, and the documents which will be relied upon and may be made exhibits;
 - (c) be accompanied by any other relevant documents that may support the motion; and
 - (d) indicate that the date for the hearing of the motion will be fixed by the Review Board.
- 8.2** The party bringing the motion shall file a copy of the Notice of Motion with the Review Board and serve it on all other parties to the proceeding.
- 8.3** If the Review Board decides that the motion will be heard, the Review Board shall issue a Notice of Hearing of Motion to all other parties to the hearing at least five days before the motion is scheduled to be heard.
- 8.4** A person who wishes to respond to the Notice of Motion, or to reply to a response, may file and serve, at any time before the motion is scheduled to be heard, a written response or reply, an indication of any oral evidence sought to be presented, and any document which may support the response or reply.
- 8.5** The Review Board, in hearing a motion, may permit oral or other evidence in addition to the supporting documents accompanying the notice, response or reply.
- 8.6** Despite this Rule, a Notice of Motion may be given orally at a hearing and shall be disposed of in accordance with such procedures as the Chairperson or Alternate Chairperson may order.

Response to Notice

- 9.** Where a party, other than the accused, receives Notice of Hearing or motion and does not intend to attend, that party shall give the Review Board written notice not less than three days prior to the date on which that hearing was scheduled or return date of hearing.

Time and Place of Hearing

- 10.** The Chairperson of the Review Board shall determine the date, time and place of all hearings and/or motions.

Constitutional Issues

11. Where the constitutional validity or constitutional applicability of a provision of the *Criminal Code* is being challenged by a party, that party shall provide notice of this intention to all parties, the Attorney General of Canada, the Attorney General of Ontario, and the Review Board no less than fifteen working days before an "annual" hearing and without delay before any "other" hearing. The notice shall state concisely the section which is said to be unconstitutional or *ultra vires*, a brief statement of the argument to be made, and the citation of any cases which are relied upon for support of the argument.
12. Where the constitutional rights and freedoms of an accused are alleged by any party to have been violated and a remedy is being sought, that party shall provide notice of its intention to make such argument to all parties and the Review Board no less than 15 working days before an "annual" hearing and without delay before any "other" hearing. The notice shall state concisely the nature of the alleged violation and remedy sought, a brief statement of the argument to be made, and the citation of any cases which are relied upon for support of the argument.

Transfer Requests from One Hospital to Another

13. In any hearing at which it will be submitted by any party that the accused should be transferred to another hospital, either to which the accused is to report to or be detained at, that party shall provide notice of its intention to all parties as well as the person in charge of the prospective receiving hospital no less than four weeks prior to an "annual" hearing and without delay before any "other" hearing.
14. In the case of an "initial" hearing held pursuant to subsections 672.47(1) and 672.47(3) of the *Criminal Code*, where an accused is not detained at or reporting to a hospital, and a party will be advocating that the accused report to a hospital, notice of that fact shall be sent to the Review Board and the prospective receiving hospital if one is identified.

Unfit Accused

15. Where an unfit accused appears before the Review Board two years or more after the verdict of unfit to stand trial, the Crown shall inform the Review Board as to whether or not the accused has been returned to court for a determination as to whether sufficient evidence can be adduced at the time to put the accused on trial.

Expert Evidence, Documents and Authorities to be relied upon

16. Any party intending to rely upon decisions of any court or of the Review Board or any other tribunal, shall provide to every other party any such cases or decisions regardless of whether they are reported.
17. Any party intending to introduce other documentary material before the Review Board, not referred to in Rule 16, shall provide a copy of that material to the Review Board no less than 15 working days prior to the commencement of an annual hearing or as soon as practicable following receipt of the hospital report.
18. Where a party intends to rely upon written material that is greater than 25 pages in length it shall provide 8 copies to the Review Board 15 days prior to an annual hearing and as soon as practicable prior to any other hearing.
19. Hospital reports should be received by the Review Board three weeks prior to an annual hearing and, where applicable, as soon as practicable prior to any other hearing. Where the report is, of necessity, provided within the second week prior to an annual hearing eight copies should be sent to the Review Board for distribution. Updates arising within one week prior to an annual hearing should be provided orally at the hearing.
20. Any party intending to rely upon the evidence of an expert witness, apart from the staff of the hospital or other facility at which the accused is detained or to which he or she reports, shall serve notice of this intention upon the other parties to the hearing, and to the Review Board. Notice shall be served, in the case of an annual hearing, no later than 15 working days prior to the date scheduled for the hearing or as soon practicable after receipt of the hospital report. Notice shall be served as soon as practicable prior to any other hearing.
21. Any party wishing to examine or cross-examine the author of a report or disposition information must take all available steps to ensure that the witness will be present at the hearing

Review Board Files

22. Any party or counsel for a party, may, upon application to the Chairperson, attend at the offices of the Review Board to examine an accused's file and have copies made at their expense. Where it is not practical for a party or counsel to attend the offices of the Review Board to examine an accused's file, application may be made to the Chairperson for a list of the documents contained in the file to be provided to the party and for copies to be made and sent to the party or counsel at the expense of the requesting party.

Counsel

23. For the purpose of initial hearings held pursuant to s.672.47, the Review Board shall consider counsel of record on the information or indictment to be counsel for the accused before the Review Board.
24. Counsel should, if not retained by the accused for the hearing mentioned in the Notice of Hearing, without delay, advise the Review Board of this fact, in writing. Counsel should indicate to the Review Board as soon as practicable whether s/he will seek to be appointed as counsel for the accused.
25. In the case of an accused not represented by counsel, the Notice of Hearing shall advise the accused of his or her right to apply under the Ontario Legal Aid Plan for funding to obtain counsel.
26. Where the Review Board does not receive confirmation that an accused (who is reporting to or detained in a hospital) has retained counsel, the Review Board shall notify the Area Director of the Ontario Legal Aid Plan and the Patient Advocate of the Psychiatric Patient Advocate Office at the relevant hospital four weeks prior to an "annual" hearing and seven working days prior to any "other" hearing in order to ensure that the accused is apprised of his right to counsel and Legal Aid.
27. It is mandatory that an accused be represented by counsel where the accused is unfit to stand trial or whenever interests of justice so require. Where such an accused has not been granted legal aid, counsel should notify the Review Board so that the issue of the appointment of counsel may be considered prior to the time of the hearing.

Lengthy Hearings

28. If counsel for a party has reasonable grounds to believe the hearing related to the accused will take more than two hours or will be unusually complex, counsel shall advise the Review Board as soon as practicable.

Pre-hearing Conferences

29. Where the Review Board receives notice that a hearing is expected to take longer than two hours or that the hearing may be unusually complex, the Review Board may request the parties to participate in a pre-hearing conference to in order to determine the issues and the appropriate amount of time required for the hearing.

Rescheduling of Hearings

30. Where a party has obtained the written consent of all other parties, and the rescheduling is one which may be lawfully granted, the Chairperson may reschedule a hearing.

Early Reviews

31. Where a hospital requests an early review an up-dated hospital report should be received prior to the hearing.

Adjournment Requests

32. Where a party requests an adjournment of a hearing or motion and all parties do not consent to the adjournment, the issue shall be considered and determined by the Review Board at the outset of the scheduled hearing.
33. Any party seeking an adjournment shall serve every other party with a Notice of Motion and file a Notice of Motion with the Review Board, along with any materials in support, not less than three weeks prior to an "annual" hearing and without delay prior to any other hearing. Where a hospital report is received by the parties less than 15 days prior to the scheduled date of an annual hearing, the Notice of Motion for adjournment shall be served and filed as soon as practicable following receipt of the hospital report.

Witness Fees

34. The Review Board is not responsible for the payment of any costs, witness fees, or disbursements which may arise from the preparation of any report or attendance at hearings before the Review Board.

Dispositions and Reasons

35. The registrar shall issue Dispositions and Reasons as two separate documents.

Appeals

- 36.** Where counsel for a party appeals against a Disposition of the Review Board a copy of the Notice of Appeal shall be served upon the Review Board.

The Honourable Douglas H. Carruthers, Q.C., Chairperson
Ontario Review Board

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