

Manitoba Criminal Code Review Board

RULES OF PRACTICE AND PROCEDURE

Manitoba *Criminal Code* Review Board
Rules of Practice and Procedure
established pursuant to Section 672.44 of the *Criminal Code*

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1. Purpose

- 1.1. The purpose of these Rules of Practice and Procedure ("**Rules**") is to set out the practices and procedures to be followed in proceedings before the Manitoba *Criminal Code* Review Board (the "**Review Board**") held under Part XX.1 of the *Criminal Code*, c.C-46, R.S.C., 1985.
- 1.2. These Rules are in addition to the processes, procedures, and requirements set out in Part XX.1 of the *Criminal Code* and in the event of any conflict between the Rules and the *Criminal Code*, the *Criminal Code* prevails.
- 1.3. Section 672.5(2) of the *Criminal Code* provides that a hearing may be conducted in as informal a manner as is appropriate in the circumstances. These Rules are intended to be a guide to provide consistency, fairness, and transparency, and to ensure a just and expeditious determination of matters before the Review Board.
- 1.4. For situations that are not contemplated or set out in the *Criminal Code* or these Rules, the Review Board may determine the procedures to be followed.

2. Definitions

- 2.1. Terms used in these Rules have the same meaning as defined in the *Criminal Code* unless otherwise stated.
- 2.2. In these Rules:
 - 2.2.1. "adjournment" means a situation where the Chairperson of the Review Board or his or her designate orders that a hearing continue on another date;
 - 2.2.2. "annual hearing" means a review of an accused's disposition under section 672.81 of the *Criminal Code*;
 - 2.2.3. "day" means calendar day;
 - 2.2.4. "disposition" means order of the Review Board with respect to an accused;
 - 2.2.5. "hearing" includes any hearing held under Part XX.1 of the *Criminal Code*;
 - 2.2.6. "discretionary hearing" means a non-annual hearing held at the request of a party or on motion by the Review Board;
 - 2.2.7. "parties" means the persons listed in section 672.1 of the *Criminal Code*.

3. Practice Directions from Review Board

- 3.1. The Review Board may, from time to time, issue a practice direction or guide for proceedings before the Review Board. All practice directions or guides shall be signed by the Chairperson of the Review Board or his or her designate and shall be posted on the Manitoba Review Board website

4. Non-Compliance with Rules

- 4.1. A failure to comply with these Rules does not nullify a hearing or matter before the Review Board, and the Review Board may set aside the non-compliance in whole or in part.

5. Language/Interpreters

- 5.1. The Review Board may provide an interpreter at the request of a party or where it appears that the accused or a witness at a hearing requires assistance to participate meaningfully in the hearing or in circumstances where the Board finds it necessary and where it is reasonably practicable.

6. Time

- 6.1. The Chairperson of the Review Board or his or her designate may extend or abridge any time prescribed by these Rules.

7. Time and Place of Hearing

- 7.1. The Chairperson of the Review Board or his or her designate shall set the date, time, and place of all hearings or other matters before the Review Board.

8. Notice of Hearing

- 8.1. The Review Board will provide all parties with thirty (30) days' notice of an annual hearing. For all other hearings, the Review Board shall provide as much notice as is practicable.
- 8.2. The Review Board shall provide notice of a hearing to all parties designated as a party to the hearing as set out in Section 672.1 of the *Criminal Code*. In addition, the Review Board shall provide a notice of hearing to:
 - a) the parents or guardian of an accused young person under *The Youth Criminal Justice Act*, c.1, S.C., 2002;
 - b) counsel for the accused;

- c) the Crown Prosecutor representing the Attorney General;
 - d) the Minister of Public Safety and Emergency Preparedness or the Minister responsible for correctional services of the province where the accused is a dual status offender as defined under the *Criminal Code*, relating to the placement of the offender;
 - e) the Public Guardian and Trustee where the Public Guardian and Trustee has been appointed as Committee of the accused;
 - f) a substitute decision maker appointed under *The Adults Living with an Intellectual Disability Act*, S.M. 1993, c. 29; and
 - g) any victim who has requested notice of the hearing, provided the victim has maintained updated contact information with the Review Board or Victim Services.
- 8.3. The Review Board may provide notice of a hearing or change of hearing orally or by mail, fax, or by email.

9. Counsel at Hearings

- 9.1. All parties have the right to be represented by counsel at a hearing.
- 9.2. If an accused has counsel, counsel is to advise the Review Board accordingly not less than ten (10) days prior to the hearing date.
- 9.3. Where the accused is not represented by counsel, the Review Board shall, before or at the hearing, assign counsel to act for any accused:
 - a) who has been found unfit to stand trial; or
 - b) wherever the interests of justice so require.
- 9.4. In deciding whether the interests of justice require the assignment of counsel, the Review Board will consider:
 - a) whether a disposition of detention is a likely outcome of the hearing;
 - b) whether the accused is capable of adequately representing his or her views or interests and of participating in the hearing in an orderly manner;
 - c) whether the accused is capable of participating meaningfully in the hearing;
 - d) whether the hearing involves complex legal issues;
 - e) whether the accused wishes to be represented by counsel;
 - f) what actions the accused has taken to retain counsel; and
 - g) any other information the Board considers relevant.

10. Adding or Designating Parties

- 10.1. The Review Board, acting within the scope of section 672.5 (4) of the *Criminal Code*, may on its own motion, or on request, designate any person as a party to hearing either before or at the hearing.
- 10.2. A request to designate a person a party to a hearing pursuant to 672.5 (4) of the *Criminal Code* may be made:
 - a) in writing before the hearing; or
 - b) by application at the hearing.
- 10.3. A written request referred to in paragraph 10.2 shall set out whether the person seeking to be added as a party has a substantial interest in protecting the interests of the accused and the reasons why it is just that the person be designated a party.

11. Attendance at Hearings

- 11.1. Parties, representatives of parties, and witnesses are expected to attend Review Board hearings in person unless:
 - a) parties other than the accused have notified the Review Board prior to the hearing that they will not be attending the hearing;
 - b) an application by the accused to be excused from the hearing pursuant to s. 672.5 (10) of the *Criminal Code* has been approved by the Board. or
 - c) the parties or their representatives have made alternate arrangements in consultation with the Review Board to have their evidence received.
- 11.2. An accused or accused's counsel will notify the Review Board as soon as possible of an application to excuse an accused from the hearing pursuant to s. 672.5 (10) of the *Criminal Code*.
- 11.3. Where an absolute discharge is being sought, the Board will require the attendance of the accused's assessing/treating psychiatrist at the hearing.

12. Order of Proceedings at Hearings

- 12.1. Review Board hearings are inquisitorial rather than adversarial. Unless the parties and the Chair or his or her designate agree otherwise, the proceeding at the hearing will be as follows:
- a) Review Board panel members will have an opportunity to ask questions of each witness, followed by questions from counsel for the Attorney General and then questions from the accused or counsel for the accused;
 - b) when evidence received from witnesses is complete, counsel for the Attorney General will be given an opportunity to make a submission following which the accused or counsel for the accused will be given an opportunity to make a submission.

13. Evidence, Documents and Authorities at Hearings

- 13.1. Any reports or other evidence obtained at the request of the Review Board will be provided to all parties prior to the hearing.
- 13.2. Copies of any documents on which a party may seek to rely at a hearing must be provided to all other parties and the Review Board at least ten (10) days prior to the date of the hearing.
- 13.3. Any party intending to rely upon the evidence of an expert witness who is not a member of the accused's treatment team, shall provide every party and the Review Board with a report signed by the expert, setting out his/her name, address, qualifications, and the substance of his/her proposed testimony not less than ten (10) days prior to the hearing.
- 13.4. Any party wishing to examine or cross-examine the author of a report or disposition information must notify the Review Board in advance of the hearing and request that a subpoena for the witness's attendance be issued.
- 13.5. A party intending to call a witness who has not produced a report submitted to the Review Board shall, in advance of the hearing, notify the Review Board of the identity of the witness as well as an estimate of the amount of time required to receive such testimony / evidence and the Review Board shall provide notice to the other parties.
- 13.6. Copies of court decisions on which a party may wish to rely at the hearing should be submitted electronically to the Review Board in advance of the hearing, unless the decisions are referenced on the Manitoba Review Board website.

13.7. A request to withhold specific disposition information from an accused pursuant to s. 672.51 (3) of the *Criminal Code* may be made to the Review Board in writing. The request should specify the reasons why disclosing the information to the accused:

- a) would endanger the life or safety of another person;
- b) would seriously impair the treatment or recovery of the accused; and/ or
- c) is not necessary to the proceeding and would be prejudicial to the accused.

14. Alternative Hearing Procedures

14.1. The Review Board may convene a non-oral discretionary hearing where:

- a) a request has been made in writing to hold a non-oral discretionary hearing;
- b) the written request for a non-oral discretionary hearing has set out the reasons in support of a non-oral discretionary hearing;
- c) all parties have provided the Review Board with written consent to conduct a discretionary hearing as a non-oral hearing; and
- d) the Chairperson of the Review Board or designate thereof has consents to conduct the hearing as a non-oral hearing.

14.2. The Review Board may convene a hearing by video hearing pursuant to s. 672.5 (13) of the *Criminal Code* where:

- a) all parties consent to proceed by video hearing; and
- b) appropriate facilities exist.

15. Lengthy Hearings

15.1. If any party has reasonable grounds to believe that a hearing will take more than one hour or will be unusually complex, the party shall advise the Review Board as soon as possible.

15.2. Where a hearing involves novel or complex legal issues, the Review Board may require the parties to submit written arguments, authorities and replies within set dates before the hearing.

16. Discretionary Hearings

16.1. The Board, on its own motion or at the written request of a party, may hold a discretionary hearing.

16.2. Where the Board consents to hold a discretionary hearing, all parties will be provided at least seven (7) days written notice of the hearing.

17. Adjournments

- 17.1. Where a party requests an adjournment of a hearing and all parties do not consent to the adjournment or rescheduling, the issue shall be determined by the Review Board at the outset of the scheduled hearing, or at another time determined by the Review Board.

18. Excluding Members of the Public

- 18.1. A request to exclude a member of the public from a hearing may be made in writing to the Review Board in advance of a hearing or by application at the hearing.
- 18.2. The Review Board may exclude a member of the public from the hearing where the Review Board is satisfied that the exclusion order is in the best interests of the accused and is not contrary to the public interest.
- 18.3. Where the request to exclude a member of the public relates to the exclusion of a member of the media, the media must be provided ten (10) days advance notice of the request and be provided an opportunity to respond.
- 18.4. The Review Board may distribute a written request to exclude a member of the public from a hearing to the parties for the purposes of obtaining the parties' position on the application and may convene a separate hearing or proceeding to determine the issue.

19. Unfit Accused

- 19.1. 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 whether the accused has been returned to court for a *prima facie* hearing.

20. Fees

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

21. Dispositions and Reasons

- 21.1. The Review Board shall issue a formal order and reasons for the disposition as two separate documents after each hearing and shall provide them to all parties.
- 21.2. The Review Board shall issue a formal order within seven (7) days of the hearing.