



RESTRICTION OF LIBERTIES HEARINGS

Disclaimer: This material is prepared by the Psychiatric Patient Advocate Office with the intention that it provide general information in summary form on legal and advocacy topics which is current when first published. The contents do not constitute legal advice or recommendations and should not be relied upon as such. Appropriate legal advice should be obtained in actual situations. While every care has been taken in the preparation of this material, the Psychiatric Patient Advocate Office cannot accept responsibility for any errors or omissions in the material, including those caused by negligence. The Psychiatric Patient Advocate Office is not responsible for the accuracy of information contained on other websites accessed by links from this website.

This InfoGuide applies only to patients who are under a disposition order of the Ontario Review Board.

What is a restriction of liberties hearing?

- Under section 672.81(2.1) of the *Criminal Code of Canada*, the Ontario Review Board (ORB) must hold a hearing “as soon as practicable” after being notified by the hospital that the hospital has increased the restriction on the accused person’s liberties significantly for a period of more than 7 days.
- A *restriction of liberties hearing*, also known as a “special” hearing, is held when the ORB receives notice from the hospital that your liberties have been significantly restricted.
- There is no uniform standard for what constitutes a significant restriction of liberties. Hospitals may have different views of the specific situations that require them to notify the ORB that a significant restriction of your liberties has occurred. There may be occasions when you believe your liberties have been restricted but the hospital does not. You may request a hearing if you believe you are entitled to one, but the hospital has not notified the ORB. The ORB will decide whether a hearing will be held.
- An example of a significant restriction of liberties that may trigger a hearing is a situation where you have been living in the community and are brought back to the hospital. Another example could be if you were transferred from a minimum secure forensic unit in a hospital to a medium or maximum secure forensic unit.

Will I still be entitled to my annual hearing if there is a restriction of liberties hearing?

- In the typical case the answer is yes. Most restriction of liberty hearings result in a decision about the particular restriction but do review the underlying disposition. It is only when the ORB orders a new disposition that your annual hearing will be replaced. For example, if your annual hearing usually occurs in October and you have a restriction of liberties hearing in June, and the Review Board consequently orders a new disposition, your next annual hearing will occur in June of the following year rather than October of the current year. A new disposition is usually only at issue where one of the parties to the restriction of liberties hearing specifically requests a "full hearing" to review the disposition.

Who informs the ORB when there has been an increase in the restriction of liberties?

- The hospital must notify the ORB any time your liberties are significantly restricted for more than 7 days.

Will the hospital also notify me?

- The hospital has an obligation to inform you of the request for a hearing.
- The Psychiatric Patient Advocate Office may also work with you to explain your options and to assist you in exercising your rights.

How do I apply for a restriction of liberties hearing?

- You are not required to apply for the hearing. There is no application form. The hospital has the obligation to notify the ORB.
- As stated earlier, if you feel that you are entitled to a hearing, and the hospital has not requested one, you can write to the ORB and ask for a hearing. A copy should also be sent to your doctor or the hospital.
- Attached to this InfoGuide is a "Notice to the Board" that you could use, if you wish. However, you may want to speak with your lawyer or the PPAO to discuss your options before writing to the ORB.

What is a waiver of a restriction of liberties hearing?

- Previously, a "waiver" was used if a person did not wish to have the restriction of liberties hearing but preferred to simply wait and attend their annual hearing. **Waivers are no longer accepted by the ORB.**
- Whenever your liberties are restricted for more than seven days, the ORB must hold a hearing, even if you do not want one.

Do I have to proceed with the restriction of liberties hearing as scheduled?

- Maybe. You may choose to ask that your hearing be adjourned for a period of time.
- Generally, the ORB will not agree to an adjournment before the hearing date – they will usually make you attend to make sure that you want an adjournment. The Alternative Chairperson will then make a decision.
- But, keep in mind that the ORB is not obligated to agree to your request for an adjournment as the law requires that a hearing be held.

The hospital has asked that I agree to an adjournment. What can I do?

- If the hospital has asked that the restriction of liberties hearing be adjourned, you may do one of three things:
 1. Do nothing. In this case, the ORB will consider the hospital's request and may agree or disagree to adjourn the hearing.
 2. Object to the timeframe of the adjournment. You may agree to adjourn the hearing but not to the date the hospital is choosing.
 3. Consent to the adjournment. You may agree with the hospital's request.
- You should discuss these matters with your lawyer, if you have one.
- Or, the Patient Advocate may assist you in completing a document to request an adjournment. The form is attached to this InfoGuide.

Who will attend this hearing?

- You and your lawyer (if you have one).
- The person in charge of the facility where you are receiving your care and treatment and/or their representative.
- A lawyer representing the Attorney General of Ontario.
- Witnesses (if you, the hospital or the Attorney General choose to call witnesses)
- Members of the ORB.

Will I need to have a lawyer at this hearing?

- The decision to retain a lawyer is yours.
- However, the ORB may assign counsel to represent you.

If I decide to have a lawyer, who will assist me find a lawyer?

- The Patient Advocate is available to assist you in applying for legal aid and in arranging legal representation.

- In most instances applicants will request to have their lawyer for the annual ORB hearing represent them as this person is familiar with their disposition order.

Do you have any additional questions?

- You may wish to see the ORB website at: www.orb.on.ca.
- You may also contact your local Patient Advocate or call the central office of the Psychiatric Patient Advocate Office at 1-800-578-2343.

RESTRICTION OF LIBERTIES

Notice to the Board

TO: Chair, Ontario Review Board

FROM: _____

Disposition Number: _____

I understand that (*name of facility*) _____

_____, has significantly increased the restrictions on my liberty for more than seven days. I understand that under Section 672.81(2.1) of the *Criminal Code of Canada*, I am entitled to a hearing by the Ontario Review Board.

- I wish to proceed with a restriction of liberty hearing
- I request that the hearing be adjourned to _____.
- I consent to the adjournment request of the Hospital, a copy of which is attached

Dated at _____, this ____ day of _____, 20____.

City

Signature

Witness