

MENTAL HEALTH REVIEW TRIBUNAL

Practice and Policy Guideline #13

NATURAL JUSTICE CONSIDERATIONS

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.

Introduction

1. Section 27(1) of the New Zealand Bill of Rights Act 1990 states that:

“Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person’s rights, obligations or interests protected or recognised by law.”

2. The Review Tribunal is therefore required to observe the principles of natural justice in respect of any person in respect of which it has the power to make a determination about their rights, obligations or interests protected or recognised by law.
3. One of the principles of natural justice is *audi alteram partem* which encapsulates the notion that adverse conclusions or findings should not to be made about people without them first having notice of what is said about them, and being given sufficient opportunity to reply.
4. The principle of *audi alteram partem* is not an absolute rule. The law contemplates some exceptions.
5. The Review Tribunal is sometimes requested to receive evidence but not disclose it to all participants in the review hearing. Whether the non-disclosure of evidence is justified will depend on all the circumstances of the case. It is above all an issue of fairness. The greater is the importance of the ultimate determination to the person whose rights, obligations or interests might be affected, the greater is the requirement of disclosure.

Similarly the greater the significance of the particular evidence concerned, the greater is the requirement of disclosure.

Requirements

6. The Review Tribunal should at all times be mindful of the requirement to observe the principles of natural justice.
7. It should be mindful that the requirement may be owed not just to patients, but others involved in the review process as well.
8. It should be mindful that the provision in clause 5 of Schedule 1 of the Act that for “... the purposes of any review of a patient’s condition, a Review Tribunal may receive any evidence that it thinks fit, whether it is admissible in a court of law or not...” does not override the requirements of natural justice.
9. It should be mindful that it could breach natural justice if it reads and takes account of confidential information on patient files without it being disclosed to affected persons.
10. If it declines an invitation to receive and take account of evidence on the basis that it not be disclosed to all affected persons, it should explain why it is so declining. Particularly where the request is by a family member of the patient, it should avoid the impression that it is discounting the concerns of the family member.

Last updated August 2015

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