

## **The Ontario Review Board (ORB)**

### **What is the Ontario Review Board?**

The Ontario Review Board is an independent tribunal that oversees and annually reviews the status of every person found to be not criminally responsible (NCR) or unfit to stand trial for criminal offences on account of a mental disorder. The ORB can set conditions which the individual under its jurisdiction must follow but it cannot mandate treatment, unless the individual consents to it.

The board panel consists of no less than five members – a psychiatrist, a mental health professional, a lawyer, a community member, and a Chairperson. The Chairperson must be either (a) a practicing or retired judge or (b) someone who can be appointed to a judicial office (e.g. a lawyer who has 10 years' experience). All members of the Board are appointed by the Lieutenant Governor.

### **What happens at the ORB hearing?**

At most hearings, the ORB hears evidence from the individual and their lawyer, the Crown attorney, psychiatrist, and sometimes other people, such as a family member or another specialist. The hospital gives a report to the ORB with the individual's history and progress. Based on the evidence, the ORB determines what happens to the individual after the hearing. These are referred to as a "disposition order" and can include stipulations such as whether the individual should be in hospital, whether they can live independently in the community, and what type of supports and programs they might need to help in their recovery. In rare cases, the court can order the individuals who are found unfit to stand trial to undergo treatment. This is the only time that psychiatric treatment can be mandated without the individual's consent.

With a few exceptions, all ORB hearings are held in the hospital where the individual is detained or to which a conditionally discharged individual reports to. On some occasions a hearing might be held in court if the individual is in jail. Hearings before the ORB are informal and not as adversarial when compared to criminal or civil trial hearings.

## **What decisions will the ORB make?**

The trial court that provided the NCR verdict can make the first disposition. If the court makes the disposition, it must be reviewed by the ORB within 90 days (unless it is an absolute discharge). If the court does not make the disposition, the ORB must make a decision about the individual's case within 45 days. On rare occasions, it is possible to have a special early hearing if there has been a major change in the individual's situation or health.

The ORB can make 3 dispositions:

- **Absolute Discharge** – the ORB and the Court have no further jurisdiction over the individual. This disposition is only applicable to NCR cases and is not an option for an individual found unfit to stand trial.
- **Conditional Discharge** – the individual is allowed to live in the community provided they abide by specific conditions that the ORB sets. Such conditions can include having to report to a hospital, refrain from use of alcohol or drugs, report any change of address, or refrain from contact with certain individuals.
- **Detention Order** – the individual is ordered to be held at a psychiatric hospital and conditions for this detention are specified. These can include whether the individual stays at a minimum, medium or maximum secure unit; what access they would have to the community; whether they have to submit to drug or alcohol testing; etc.

The ORB reviews the conditions each year to determine whether they need to remain the same or be changed, depending on the progress made by the individual.

Unlike a jail sentence, there is no set date for release for individuals under the ORB jurisdiction. Individuals found NCR may spend longer time in the hospital than what they would have spent in jail if they were found guilty in court. Sometimes, even if the individual has only a minor charge but their mental health state does not improve, they might be under the jurisdiction of the ORB for a long time.

## **How does the ORB make its decisions?**

ORB decisions are made by a majority vote and are based on the following:

- Is the individual a risk to members of the public?

- How is the individual's mental health now? How was it over the past year?
- How integrated into society is the individual? For instance, do they have good connections to any friends or family? Could they work or volunteer? Could they successfully live outside of the hospital?
- Does the individual have any other needs that should be considered?

Given the answers to each of these questions, the ORB decides on what will be the "least onerous and least restrictive" disposition. This means that the ORB has to give the individual the most freedom possible while limiting any burden that may result from the disposition. At the same time, the ORB must keep in mind the individual's safety, treatment needs and safety of the public.

For more information visit [www.orb.on.ca](http://www.orb.on.ca). You can also contact your local Patient Advocate or call the central office of the Psychiatric Patient Advocate Office (PPAO) at 1-800-578-2343.