

# Guidelines for Reviews

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The presbytery has oversight of pastoral charges and ministry personnel. Where there are concerns about a pastoral charge or a ministry personnel, the presbytery has an obligation to take appropriate action. One type of appropriate action is for the presbytery to conduct a review. There are two different processes for a review contained in *The Manual*, depending on the subject of the review:

*Review of pastoral charge (Section 333):* A presbytery may order a review of the state of a pastoral charge where it has reason to fear that the pastoral charge is in an unsatisfactory state.

*Review of ministry personnel (Section 363):* A presbytery shall order a review of a ministry personnel where a question has been raised regarding the ministry personnel's (i) effectiveness, (ii) ability to maintain the peace and welfare of the church, or (iii) refusal to recognize the authority of presbytery.

The two sections in *The Manual* do not contain much guidance as to how a review process is actually carried out. The two processes are similar but not identical. The following guidelines are offered as a resource to those involved in the review process. The guidelines contain advice only. They are not mandatory and there may be valid reasons for doing things differently in a particular case. In all cases, however, it is mandatory for a review committee to comply with the requirements of *The Manual* and the requirements of natural justice. The consequences of not complying with these requirements are serious: the decision resulting from the review may be overturned on appeal or by the civil courts. For this reason, the United Church legal/judicial counsel strongly recommend that the guidelines be followed.

All references to *The Manual* in these guidelines are to the 2004 edition. For more information about reviews, please contact your Conference office.

## Review of Pastoral Charge (Section 333)

### *Why would a Section 333 review be conducted?*

The focus here is on the state of the pastoral charge. The reason for conducting a Section 333 review is that the presbytery has “reason to fear that the pastoral charge is in an unsatisfactory state.” The concern about the state of the pastoral charge may come before the presbytery from a number of sources (see Section 333(b)). It is up to the presbytery to consider the matters brought to its attention and to decide whether a review process is the appropriate response.

### *Appointing the review committee: two options for presbytery to consider*

Under Canadian law, the church is entitled to conduct a review under Section 333 of *The Manual* provided the review process complies with the legal requirements of natural justice. *The Manual* does not specify a process for conducting reviews, nor does it indicate who may serve on a review committee.

Here are two options for a review process, either of which meets the legal requirements. Neither option is mandatory. The presbytery may select whichever option it prefers.

#### *(i) review conducted by a committee*

The presbytery appoints a review committee of three to five members. That range will ensure that there are enough members to share the volume of work involved, but not so many members that the committee becomes unwieldy and ineffective. An odd number guarantees that the review committee will not become deadlocked in its deliberations. The review committee serves on a voluntary basis. Review committee members do not have to be members of the presbytery and may be chosen from another presbytery. For formal accountability purposes, however, they should be members of the United Church in good standing.

There are advantages to the traditional review committee:

- The immediate financial cost for the review is relatively low, since the review committee serves on a volunteer basis.
- Where the review committee members are drawn from the same presbytery, the review committee may have more “investment” in the work. The implementation of any recommendations and the oversight of the pastoral charge will be an ongoing concern of that presbytery even after the review is completed.

#### *(ii) review conducted by one person*

The presbytery appoints one person from a pool of trained individuals to serve the function of the review committee. The Conference executive secretary or personnel minister can suggest appropriate people from a different presbytery and possibly a different Conference. The person is selected on the basis of immediate time availability and extensive experience in the administrative work of the church, and receives a fee for providing the service.

There are a number of advantages to one person conducting the review:

- It is faster. The whole review process—from the presbytery ordering a review to the presbytery taking action on the recommendations—is much shorter than in the traditional process (probably four to eight weeks as opposed to several months).
- A faster process avoids a prolonged time of uncertainty for the pastoral charge and the ministry personnel serving it, and helps to avoid any negative impact on the health of the pastoral charge.
- Since the review process is conducted by someone from outside of the presbytery, it frees the presbytery to focus on the pastoral needs of the pastoral charge.
- It saves many hours spent by a traditional review committee on training, advisory consultations, and group deliberations. It saves many hours spent by Conference and General Council staff in training and advising the review committee.
- There may be long-term cost savings to the presbytery, since a review that is conducted by a skilled and experienced individual is less likely to result in costly appeals or civil court action.

#### *Who may serve on the review committee?*

Committee members must not be biased for or against the pastoral charge. They must not hold any preconceived opinions about the state of the pastoral charge. In addition, they must not *appear* to have any preconceived opinions about the state of the pastoral charge. In legal terms, there must be no “appearance of bias” or “reasonable apprehension of bias.”

There are tests for determining whether there is an “appearance of bias” or “reasonable apprehension of bias” about a prospective committee member. One such test is to ask whether a reasonable person knowing the facts about the committee member would suspect that the member might be influenced—even unintentionally—to favour a person or particular position in the review process for any reason other than one properly based on the information gathered through the review process.

Based on that test, certain people should be disqualified from serving on the review committee:

- anyone who has recently served as ministry personnel in that pastoral charge
- relatives or friends of a member, officer, or staff person in the pastoral charge (e.g., chair of Official Board, trustee, music director)
- members of the Pastoral Relations Committee who have been involved in conversation with members of the pastoral charge’s Ministry and Personnel Committee

It would also be wise to avoid appointing a committee member who may be considered to have prejudged the situation by having publicly expressed a decisive opinion about it.

In any case where there is some doubt about whether an individual would be perceived to be biased, it is better to err on the side of caution by appointing someone else to serve on the committee. In addition to lending a greater appearance of fairness to the whole process, this will eliminate one

possible ground for appealing any decision that the presbytery eventually makes as a result of the review.

### *Starting the process: the presbytery's role*

The presbytery starts the review process by deciding to order the review. It then appoints the members of the review committee and sets the mandate of the committee to review the state of the pastoral charge and to report back to the presbytery with recommendations.

As soon as this decision is made, the presbytery should inform the pastoral charge that the review process is underway. This should be done by written notice to the chair of the Official Board/ Church Board/Church Council of the pastoral charge. Presbytery may call a meeting of the pastoral charge to convey this information. However, notice should still be given in writing in order to avoid any confusion or uncertainty about the information provided by the presbytery. The pastoral charge may be anxious for more information about the actual review process. The presbytery could advise the pastoral charge that the review committee will be in contact with the pastoral charge shortly about the details of the process.

As part of the notice, the presbytery should advise the pastoral charge about the possible outcome of the review process. Section 333 (in contrast to Section 363) does not list specific outcomes for a review; the presbytery should indicate, however, that it may decide that the pastoral charge must follow remedial action recommended by the review committee.

### *What, in a nutshell, does the review committee do?*

The 333 Review Committee investigates the state of the pastoral charge, gathers information about it, makes findings based on that information, and makes recommendations to the presbytery based on those findings.

### *Starting the process: the review committee's role*

The first task of the review committee is to decide on the process it will follow. The review committee determines whom it will contact for investigation and information gathering before making findings and writing its report. The people or groups that should be contacted—and in which order—will depend on the circumstances. The review committee should also establish a general timeline for accomplishing these tasks. It must, however, remain flexible throughout the process. For example, partway through the process, the review committee may learn that it needs to explore sources of information that had not been apparent at the outset and may require additional time.

As a follow-up to the communication made by the presbytery to the pastoral charge, it is important for the review committee to give information to the pastoral charge as soon as possible on how the review process will be conducted, who will be conducting it, the expectations around time frame, etc. This may help alleviate anxiety in the pastoral charge about the review process and encourage participation in it.

### *How does the review committee gather information?*

The review committee provides an opportunity to all members/adherents of the pastoral charge to give input. This could be accomplished through group meetings with the review committee and/or opportunities for members/adherents to meet with the review committee individually. The review committee considers which other specific people or groups should be targeted for input—e.g., the Ministry and Personnel Committee, the trustees, the Official Board, the music director, depending on the specific circumstances and issues—and provides an opportunity for them to meet with the committee.

In all cases, an opportunity should be provided for the ministry personnel in the pastoral charge to meet with the review committee.

The review committee may also invite any of these people or groups to put their thoughts in writing and submit them for consideration rather than (or in addition to) meeting face to face. People should be advised that the review committee may contact them to discuss or clarify anything that they have submitted in writing.

The key legal point here is that the review committee must provide an opportunity for these people to meet with the review committee. People cannot be forced to meet with the review committee. Sometimes, a person or group may refuse to meet with the committee. If the review committee feels it is important to hear from someone who is refusing to meet with it, the committee should make an effort to find out the reason for the refusal, in the interests of obtaining the most complete input possible. If a person has misgivings about the process, the review committee may be able to ease some of the concerns by providing information and answering questions. If the person continues to refuse to meet with the review committee, or to provide the committee with written submissions, the review committee must carry on with its work without that person's input.

Members of the review committee should assume a leadership role in these meetings, but otherwise, there can be flexibility around the process. Preparing a list of questions in advance is helpful, but the review committee should also remain open to deviation from the prepared questions to explore any issues relevant to the state of the pastoral charge that are raised by those providing input.

Members of the review committee must not bring any preconceived notions of the outcome to the process and should remain open-minded. The interview questions should be carefully framed in a way that does not include any assumptions. For example, ask "How do you feel about the way that worship services are conducted?" rather than "How bad do you think worship services have been lately?" People must be allowed to tell their stories in their own words. Questions asked by the review committee should be for clarification or expansion of the information they have provided.

At each meeting, one committee member should be assigned to take accurate and thorough notes of the meeting that can be shared with all review committee members. Later in the process, when the review committee is considering its conclusions, it is important to have a complete record of all information received.

### *What about confidentiality?*

There is often some confusion about confidentiality in the review process. People who are being interviewed by the review committee may assume that their names will never be disclosed as the source of the information, but this is not correct.

It is neither wise nor realistic for the review committee to make guarantees of confidentiality to people. In a recent civil court decision, the civil court said that ministry personnel under review are entitled to know the specific source of any data used by the review committee, including the names of the people providing the information. Even in a review of the state of the pastoral charge under Section 333, if the review committee intends to rely on information, it is important to name the individuals and the specific information that they have provided in the committee's report.

At the start of any interview, the review committee should inform those being interviewed that their names might be used in the committee's report. That will give people an opportunity to frame the answers that they give carefully if they do not wish to have their name revealed as the source of any particular statement.

The review committee should not rely on anonymous written submissions because they will not have had an opportunity to assess the credibility of the source of the information or to have follow-up questions answered.

### *What is "hearsay"?*

Hearsay evidence is evidence given by a person that is not based on that person's direct experience. For example, the chair of the Ministry and Personnel Committee may say that the ministry personnel was hostile and unco-operative in a Board of Trustees meeting because that's what the chair heard from several trustees. The chair of the Ministry and Personnel Committee does not have direct, first-hand knowledge of this behaviour. The chair is repeating what someone else told her. That is hearsay evidence.

In legal proceedings, hearsay evidence is generally inadmissible. In a review, the review committee should avoid relying on hearsay evidence. The review committee should rely on information of which the people being interviewed have direct, first-hand knowledge. In the above example, the review committee would know that the chair of Ministry and Personnel has no first-hand knowledge about what occurred in a Board of Trustees meeting. The committee should ask the chair how she obtained this information, and can then contact the person who was the source and obtain the information on a direct, first-hand basis.

The review committee can guard against relying on hearsay evidence by asking people they interview questions like "How do you know that?" "Were you there when that happened?" or "Who did you hear that from?"

### *After gathering the information—what next?*

The review committee considers all of the information gathered, makes findings based on the information, and then prepares a report with recommendations. The findings are the conclusions that the review committee draws based on all of the information it gathered. The findings must be supported by all the information gathered. To use an extreme example, the review committee may have repeatedly heard from credible members of the congregation that the chair of the Church Board is tyrannical, abusive, and alienates members. The chair may have been pleasant and helpful when interviewed by the review committee, but the committee cannot ignore the congregants' evidence and conclude that there is no problem.

The review committee should ask itself what, if anything, it has found to be unsatisfactory about the state of the pastoral charge. What, if anything, has the review committee identified as needing remedial action? The committee now needs to determine the appropriate remedial action.

In deciding what action might be appropriate, the review committee may wish to consult with Conference or General Council staff with experience in congregational life. This consultation is acceptable, but the review committee itself must still make the actual decision about what the recommendations will be.

The 333 Review Committee must keep in mind that this process is a review of the state of the pastoral charge, not the ministry personnel. The recommendations must relate to the pastoral charge, not directly to the ministry personnel. The review committee may not recommend dissolving the pastoral relationship, suspending the ministry personnel, or any other action listed under Section 363. That could only be done as a result of a review conducted under Section 363. If the information gathered convinces the review committee that the problem is really with the minister, the committee could raise a question about "the effectiveness of ministry personnel" or "the failure of the ministry personnel to maintain the peace and welfare of the church" and recommend that a review be conducted under Section 363.

### *Writing the report*

Guidance for writing the report may be found in the attachment entitled "Section 333 and 363 Reviews: Writing the Report." The review committee provides its report to the presbytery and to the pastoral charge.

### *Presbytery response to the report*

The pastoral charge should receive the report at least a week (preferably two) before any action is taken on the report by the presbytery.

The presbytery gives the pastoral charge a specific invitation to attend and speak to the report before making its decision. Although the pastoral charge's presbytery representatives and the ministry personnel will receive notice of the meeting as a matter of course as members of presbytery, this is not adequate as a "specific invitation." The invitation should be given in writing

and perhaps also by telephone to the chair or secretary of the Official Board/Church Board/Church Council.

The presbytery will consider the review committee's report and make a decision in response. In most cases, it is the Executive of the Presbytery, not the whole court, that deals with the report. This practice is based on some wisdom but it is not mandatory. Ideally, the members of the review committee should also be present to answer any questions that the presbytery may have of them in relation to the report.

The court is not bound by the recommendations of the review committee. The presbytery debates the recommendations and then decides to do one of the following:

- adopt the review committee's recommendations in their entirety
- adopt the review committee's recommendations in part
- receive the report of the review committee and take no further action on the matter
- take some other course of action than that recommended by the review committee

If the presbytery is inclined to take some other course of action, the review committee's recommendations must first be given careful consideration. The review committee has had an opportunity to carefully analyze information that it received first-hand from those involved in the pastoral charge. The presbytery should therefore have a good reason for rejecting the review committee's recommendations.

Whatever decision it makes, the presbytery must inform the pastoral charge of the decision. Written notice of the decision should be given to the pastoral charge even if there were members of the pastoral charge present at the meeting. Written notice will serve as a record that the decision was communicated by the presbytery to the pastoral charge, and will also ensure that the pastoral charge receives a full and accurate report of the presbytery's decision.

Any person or court directly affected by the decision may appeal the decision. Please refer to Section 076 of *The Manual* for the appeal process.

## **Review of Ministry Personnel (Section 363)**

*Why would a Section 363 review be conducted?*

The focus here is on a ministry personnel. The reason for conducting the review is that the presbytery has a question about one or more of the following (see Section 363(c)):

- the effectiveness of ministry personnel
- the failure of ministry personnel to maintain the peace and welfare of the church
- a ministry personnel who refuses to recognize the authority of the presbytery

The matter may be brought before the presbytery for its consideration by the presbytery itself, another ministry personnel settled in or appointed to the pastoral charge, the pastoral charge



supervisor, the Session or Official Board/Church Board/Church Council, or by a proposal transmitted through the Official Board/Church Board/Church Council to the presbytery signed by ten members of the pastoral charge or congregation.

In all cases, it is up to the presbytery to decide whether to order a review. The presbytery does not have to order a review in absolutely every case that it hears a complaint about ministry personnel. The presbytery should, however, take all concerns very seriously. If the presbytery feels that a concern raises a question for the presbytery about the ministry personnel's effectiveness, or one of the other criteria, it should not hesitate to order a review. A review is intended to be exactly that: a review of the situation that is conducted in an open-minded and thorough way. No presumptions about the outcome can be made, and no adverse conclusions can be drawn from the mere fact that a review process is being conducted.

#### *Appointing the review committee: two options for presbytery to consider*

Under Canadian law, the church is entitled to conduct a review under Section 363 of *The Manual* provided the review process complies with the legal requirements of natural justice. *The Manual* does not specify a process for conducting reviews, nor does it indicate who may serve on a review committee.

Here are two options for a review process, either of which meets the legal requirements. Neither option is mandatory. The presbytery may select whichever option it prefers.

##### *(i) review conducted by a committee*

The presbytery appoints a review committee of three to five members. That range will ensure that there are enough members to share the volume of work involved, but not so many members that the committee becomes unwieldy and ineffective. An odd number guarantees that the review committee will not become deadlocked in its deliberations. The review committee serves on a voluntary basis. Review committee members do not have to be members of the presbytery and may be chosen from another presbytery. They should, however, be members of the United Church in good standing.

There are advantages to the traditional review committee:

- The immediate financial cost for the review is low, since the review committee serves on a volunteer basis.
- Where the review committee members are drawn from the same presbytery, the review committee may have more "investment" in the work. The implementation of any recommendations and the oversight of the ministry personnel will be an ongoing concern of that presbytery even after the review is completed.

##### *(ii) review conducted by one person*

The presbytery appoints one person to serve the function of the review committee. The Conference executive secretary or personnel minister can suggest appropriate people from a different presbytery and possibly a different Conference. The person is selected on the basis of immediate time

availability and extensive experience in the administrative work of the church, and receives a fee for providing the service.

There are a number of advantages to one person conducting the review:

- It is faster. The whole review process—from the presbytery ordering a review to the presbytery taking action on the recommendations—is much shorter than in the traditional process (probably one to two months as opposed to several months).
- A faster process avoids a prolonged time of uncertainty for the ministry personnel and the pastoral charge, and helps to avoid any negative impact on the health of the pastoral charge.
- Since the review process is conducted by someone from outside of the presbytery, it frees the presbytery to focus on the pastoral needs of the ministry personnel and the pastoral charge.
- It saves many hours spent by a traditional review committee on training, advisory consultations, and group deliberations. It saves many hours spent by Conference and General Council staff in training and advising the review committee.
- There may be long-term cost savings to the presbytery, since a review that is conducted by a skilled and experienced individual is less likely to result in costly appeals or civil court action.

#### *Who may serve on the review committee?*

Committee members must not be biased for or against the ministry personnel. They must not hold any preconceived opinions regarding the concerns being investigated about the ministry personnel. In addition, they must not *appear* to have any preconceived opinions regarding the concerns about the ministry personnel. In legal terms, there must be no “appearance of bias” or “reasonable apprehension of bias.”

There are tests for determining whether there is an “appearance of bias” or “reasonable apprehension of bias” about a prospective committee member. One such test is to ask whether a reasonable person knowing the facts about the committee member would suspect that the member might be influenced—even unintentionally—to favour the ministry personnel or a particular position in the review process for any reason other than one properly based on the information gathered through the review process.

Based on that test, certain people should be disqualified from serving on the review committee:

- relatives and friends of the ministry personnel
- people who have had some other close association with the ministry personnel (for example, people currently serving on the same committees as the ministry personnel, people who are or recently were under the pastoral care of the ministry personnel)

It would also be wise to avoid appointing a committee member who may be considered to have prejudged the situation by having publicly expressed a decisive opinion about it.

In any case where there is some doubt about whether an individual would be perceived to be biased, it is better to err on the side of caution by appointing someone else to serve on the committee. In addition to lending a greater appearance of fairness to the whole process, this will eliminate one possible ground for appealing any decision that the presbytery makes as a result of the review.

#### *Starting the process: the presbytery's role*

The presbytery starts the review process by deciding to order the review. It then appoints the members of the review committee and sets the mandate of the committee to review one or more of the concerns (see "*Why would a Section 363 review be conducted?*" above) that have raised a question for the presbytery, and to report back to the presbytery with recommendations.

As soon as this decision is made, the presbytery should inform the ministry personnel that the review process is underway. This could be done by telephone, but should be followed up with a written notice to avoid any confusion or uncertainty. The pastoral charge should also be informed by written notice to the chair of the Official Board/Church Board/Church Council. In addition to (not instead of) written notice, presbytery may call a meeting of the pastoral charge to explain that a review will take place.

Both the ministry personnel and the pastoral charge may be anxious for more information about the actual review process. The presbytery could advise them that the review committee will be in contact with them shortly about the details of the process.

The presbytery should also advise the ministry personnel and the pastoral charge about the possible outcome of the review process. For a review under Section 363, the possible outcomes are identified in paragraphs i. to vii. of subsection 363(d). The presbytery should draw the attention of the ministry personnel and pastoral charge to these paragraphs.

The decision by a presbytery to order a review may not be appealed (Section 077 of *The Manual*). But any decision made by the presbytery in response to the review committee's recommendations is subject to appeal.

#### *What, in a nutshell, does the review committee do?*

The 363 Review Committee investigates the concerns about the ministry personnel, gathers information, makes findings based on that information, and makes recommendations based on those findings.

#### *Starting the process: the review committee's role*

The first task of the review committee is to decide on the process it will follow. The review committee determines whom it will contact for investigation and information gathering before making findings and writing its report. The ministry personnel is the key person to provide input. Other people or groups that should be contacted—and in which order—will depend on the circumstances. The review committee should also establish a general timeline for accomplishing these tasks. It must, however, remain flexible throughout the process. For example, partway through the process, the review committee may learn that it needs to explore sources of information that had not been apparent at the outset and may require additional time.

As a follow-up to the communication made by the presbytery to the ministry personnel and the pastoral charge, it is important for the review committee to give information to both the ministry personnel (see next section) and the pastoral charge as soon as possible on how the review process will be conducted, who will be conducting it, the expectations around time frame, etc.

### *Respecting the rights of the ministry personnel*

The review committee should keep in mind that it is the ministry personnel who is most directly and, potentially, most severely affected by the outcome of the review process. The ministry personnel must be given an opportunity to hear the concerns that have been raised about him or her and to respond to those concerns.

It is helpful for the review committee to meet with the ministry personnel as the first step in the review process. The purposes of such a meeting are

- to outline the process the committee intends to follow
- to receive initial input from the ministry personnel, which can assist in clarifying the issues
- to find out if there is anyone that the ministry personnel specifically feels the review committee should speak to as part of the investigation in addition to any people or groups that the committee has already identified
- to help to alleviate some of the anxiety around the whole review process through contact with the ministry personnel at an early stage

### *How does the review committee gather information?*

In addition to the ministry personnel, the review committee normally provides an opportunity to all members/adherents of the pastoral charge to give input. This could be accomplished through group meetings with the review committee and/or opportunities for members/adherents to meet with the review committee individually. The exact format will depend on the circumstances and the issues involved. The review committee considers which other specific people or groups should be targeted for input—e.g., the Ministry and Personnel Committee, the trustees, the Official Board, the music director—and provides an opportunity for them to meet with the committee. In a multi-staff situation, the other ministry personnel should be given a specific opportunity to provide input.

The review committee may also invite any of these people or groups to put their thoughts in writing and submit them for consideration rather than (or in addition to) meeting face to face. People should be advised that the review committee may contact them to discuss or clarify anything that they have submitted in writing.

The key legal point here is that the review committee must provide an opportunity for people to meet with the review committee. People cannot be forced to meet with the review committee. Sometimes, a person or group may refuse to meet with the review committee. If the review committee feels it is important to hear from someone who is refusing to meet with it, the committee should make an effort to find out the reason for the refusal, in the interests of obtaining

the most complete input possible. If a person has misgivings about the process, the review committee may be able to ease some of the concerns by providing information and answering questions. If the person continues to be unwilling to meet with the review committee, or to provide the review committee with written submissions, the review committee must carry on with its work without that person's input.

Even if it is the ministry personnel under investigation who is unwilling to meet with the review committee, the process may be completed without that person's participation. The review committee must first ensure that the ministry personnel has been given opportunities to meet with it, and that the committee has made efforts to accommodate any particular needs of the ministry personnel. For example, the ministry personnel could be allowed to have a support person present at any meeting with the review committee.

Members of the review committee should assume a leadership role in these meetings, but otherwise, there can be flexibility around the process. Preparing a list of questions in advance is helpful, but the review committee should also remain open to deviation from the prepared questions to explore any concerns about the ministry personnel that are raised by those providing input.

Members of the review committee must not bring any preconceived notions of the outcome to the process and should remain open-minded. The interview questions should be carefully framed in a way that does not include any assumptions. For example, ask "How do you feel about the way that worship services are conducted?" rather than "How bad do you think worship services have been lately?" People must be allowed to tell their stories in their own words. Questions asked by the review committee should be for clarification or expansion of the information they have provided.

At each meeting, one committee member should be assigned to take accurate and thorough notes of the meeting that can be shared with all review committee members. Later in the process, when the review committee is considering its conclusions, it is important to have a complete record of all information received.

The ministry personnel should be given a second opportunity to meet with the review committee at the end of the information-gathering stage of the process. At this point, the review committee shares with the ministry personnel the input received from all sources and hears any response that he or she may wish to make.

### *What about confidentiality?*

There is often some confusion about confidentiality in the review process. People who are being interviewed by the review committee may assume that their names will never be disclosed as the source of the information, but this is not correct.

It is neither wise nor realistic for the review committee to make guarantees of confidentiality to people. In a recent civil court decision, the civil court said that ministry personnel under review are entitled to know the specific source of any data used by the review committee including the names of the people providing the information.

At the start of any interview, the review committee should inform those being interviewed that their names might be used in the committee's report. That will give people an opportunity to frame the answers that they give carefully if they do not wish to have their name revealed as the source of any particular statement.

The review committee should not rely on anonymous written submissions because they will not have had an opportunity to assess the credibility of the source of the information or to have follow-up questions answered.

#### *What is "hearsay"?*

Hearsay evidence is evidence given by a person that is not based on that person's direct experience. For example, the chair of the Ministry and Personnel Committee may say that the ministry personnel was hostile and unco-operative in a Board of Trustees meeting because that's what the chair heard from several trustees. The chair of the Ministry and Personnel Committee does not have direct first-hand knowledge of this behaviour. The chair is repeating what someone else told him. That is hearsay evidence.

In legal proceedings, hearsay evidence is generally inadmissible. In a review, the review committee should avoid relying on hearsay evidence. The review committee should rely on information of which the people being interviewed have direct, first-hand knowledge. In the above example, the review committee would know that the chair of Ministry and Personnel has no first-hand knowledge about what occurred in a Board of Trustees meeting. The committee should ask the chair how he obtained this information, and then contact the person who was the source and obtain the information on a direct, first-hand basis.

The review committee can guard against relying on hearsay evidence by asking people they interview questions like "How do you know that?" "Were you there when that happened?" or "Who did you hear that from?"

#### *What if the ministry personnel is unwell?*

If the ministry personnel is under a temporary or permanent disability, the presbytery should not proceed without obtaining legal advice (United Church staff lawyers or presbytery's own local legal counsel). The issue here is that before any action can be taken that adversely affects the ministry personnel, the ministry personnel must be given an opportunity to respond to any concerns about him or her. Most of the actions listed under subsection 363(d) would adversely affect the ministry personnel. A minister under a disability is not likely in a position to respond effectively to such concerns. In those circumstances, the law may require that the review process be put on hold until the ministry personnel is capable of exercising the legal entitlement to an opportunity to respond.

#### *After gathering the information—what next?*

The review committee considers all of the information gathered, makes findings based on the information, and then prepares a report with recommendations. The findings are the conclusions that the review committee draws based on all of the information it gathered. These findings must

be supported by all the information gathered. To use an extreme example, the review committee may have repeatedly heard from credible members of the congregation that the ministry personnel is tyrannical, abusive, and alienates members. The ministry personnel may have been pleasant and helpful when interviewed by the review committee, but the committee cannot ignore the congregants' evidence and conclude that there is no problem.

The review committee should ask itself whether it has found any of the concerns about the ministry personnel to be substantiated. If so, the review committee should consider what remedial action, if any, is required in order for the ministry personnel to be effective, to maintain the peace and welfare of the congregation, or to recognize the authority of the presbytery. The list of possible decisions that the presbytery might make in response to the review is contained in subsection 363(d). In many cases, the review committee will decide that it is appropriate to use the language of subsection 363(d) in wording the recommendations. Paragraph vii. of subsection 363(d) allows the presbytery, in responding to a review, to take "such other action as will promote the welfare of the pastoral charge and the ministry personnel." That paragraph gives the review committee discretion to craft other recommendations that would be appropriate remedial action.

In deciding what action might be appropriate, the review committee may wish to consult with Conference or General Council staff with experience in ministry personnel and education. This consultation is acceptable, but the review committee itself must still make the actual decision about what the recommendations will be. If the review committee is considering a recommendation for action other than those listed in paragraphs i to vi of subsection 363(d), this consultation is strongly advised.

### *Writing the report*

Guidance for writing the report may be found in the attachment entitled "Section 333 and 363 Reviews: Writing the Report." The review committee provides its report to the presbytery, to the ministry personnel and, depending on the circumstances, likely also to the pastoral charge.

### *Presbytery response to the report*

The ministry personnel should receive the report at least a week (preferably two) before any action is taken on the report by the presbytery.

The ministry personnel should also be given a specific invitation to attend and speak to the report before the presbytery makes its decision. The usual notice of presbytery meeting should not be considered a "specific invitation." If the review committee is recommending any discipline of the pastoral charge (this is a possibility under Section 363(d) i.), the report must be given to the pastoral charge and the same invitation extended.

The presbytery will consider the review committee's report and make a decision in response. In most cases, it is the Executive of the Presbytery, not the whole court, that deals with the report. This practice is based on some wisdom, but it is not mandatory. Ideally, the members of the review committee should also be present to answer any questions that the presbytery may have of them in relation to the report.

The court is not bound by the recommendations of the review committee. The presbytery debates the recommendations and then decides to do one of the following:

- adopt the review committee's recommendations in their entirety
- adopt the review committee's recommendations in part
- receive the report of the review committee and take no further action on the matter
- take some other course of action than that recommended by the review committee

If the presbytery is inclined to take some other course of action, the review committee's recommendations must first be given careful consideration. The review committee has had an opportunity to carefully analyze information that it received first-hand from the ministry personnel and those closely involved with the ministry personnel. The presbytery should therefore have a good reason for rejecting the review committee's recommendations.

Whatever decision it makes, the presbytery must inform the ministry personnel of the decision. Written notice of the decision should be given to the ministry personnel even if the ministry personnel was present at the meeting. Written notice will serve as a record that there was a specific communication of the decision by the presbytery to the ministry personnel. It will also ensure that the ministry personnel has received complete and accurate information about the presbytery's decision, since there will be some lapse of time before the minutes of the presbytery meeting are distributed in the normal course.

Arrangements should also be made for communicating the decision to the pastoral charge. Again, the presbytery may wish to hold a meeting of the pastoral charge to convey the information. This is advisable particularly if the presbytery decides to dissolve the pastoral relationship or if the ministry personnel is placed under suspension and will therefore be absent from the pastoral charge for a period of time.