

To the Review Committee

Conducting a Section 363 Review

The presbytery has approached you to conduct a review under Section 363 of *The Manual*. Here are some answers to questions frequently asked by review committees about this process.

How much time will this take?

More than you might think! Almost all review committees comment at the end of the process that it took more of their time than they originally estimated. You need to be realistic about your own availability. Do you have a few hours a week for the next three months that you could—potentially—devote to the task? In addition, are you available for six or seven full days over the next three months for interviews, meeting to deliberate as a review committee, and writing and editing the report? Is your time fairly flexible to accommodate the meeting schedules of others? That's a rough guideline of what you might expect, although at the outset of a review, it is almost impossible to predict exactly how much time the process will take.

Am I suited to this task?

If the presbytery has approached you, the presbytery believes that you have the skills and gifts necessary to do this work. You may wish to do your own reflection on it before committing to the task. Are you a good listener? Are you able to be critical and discerning about what you hear, sifting through the information gathered and coming to conclusions about what the truth is? Are you able to make hard decisions that may be unpopular? Some review committee members have found satisfaction in participating in a task that, while intense, is completed within a short time period, as opposed to an ongoing committee commitment.

I don't really consider the minister as my close friend but his teenage son babysits for our family regularly and took care of our house while we were on summer vacation this past year. Does that mean I am in a conflict of interest and should decline to serve on the review committee?

It is critical to avoid a conflict of interest. Even if you feel you can be objective, it is important to consider how others might view your participation. You have raised some factors that might give others pause for concern. Simply by raising these factors, you have answered your own question: you should disclose the potential conflict of interest to the presbytery and err on the side of caution by declining to participate.

How can I provide pastoral support to the ministry personnel and the pastoral charge in this process?

You cannot. Your specific role is to conduct the review, and the expectation is that you will undertake this role with compassion and sensitivity. But you cannot perform another specific function—that of pastoral support person—at the same time. It is the presbytery's responsibility to ensure that pastoral care is provided for the ministry personnel, his or her family, and the pastoral charge. If you sense that this responsibility is not being met, you could raise it with the presbytery or Conference personnel minister.

If I agree to serve, what do I do first?

Get a copy of the presbytery motion(s) ordering the review and appointing you as a member of the review committee for your files. The presbytery motion should outline the specific grounds (i., ii., and/or iii.) under Section 363(c) of *The Manual* on which you are to conduct the review. If the motion is not that specific, ask the presbytery to clarify the grounds—and to do so in another motion. Also, ensure that you are specifically named in the presbytery motion. That will avoid any question in the future about whether you were properly appointed, which will help protect you in case any legal action is ever taken in relation to the review.

This is a 363 review, but the presbytery recently conducted a 333 review of the same pastoral charge that this ministry personnel is serving. Can we save some time and use the information gathered in the 333 review?

No. You may hear much of the same information as did the 333 Review Committee, and people may be unenthusiastic about telling their stories again. It may seem to them like “re-inventing the wheel.” But if you simply used the information gathered by another review committee, you would not be hearing first-hand from the individuals providing that information. You would not be able to assess their demeanour and body language in providing the information. That is an important part of assessing the credibility of the information. You would not be able to ask questions of the individuals to have them clarify or elaborate any points.

Legally, the ministry personnel is entitled to have the review committee make its conclusions and recommendations based only on first-hand information. Information that comes from another review committee is hearsay and cannot be used. Remember, there is a lot at stake for the ministry personnel. One possible outcome is that the pastoral relationship may be dissolved. In these kinds of situations, the law requires that the ministry personnel be treated with a very high degree of legal fairness.

The presbytery recently conducted a 333 review of the same pastoral charge that this ministry personnel is serving. Should we interview the 333 Review Committee?

No. You must rely on first-hand information, not information gathered by other sources. The 333 Review Committee cannot tell you how they experienced the ministry personnel's ministry first-hand. Their only involvement with the ministry personnel has been within the context of the 333 review process. Their role in that process was as investigators. They cannot switch roles and serve as witnesses in this process. The 363 Review Committee must gather its own information from people who have first-hand experience with the ministry personnel: members of the congregation, congregational staff, other presbyters who served on committees with the ministry personnel, etc. The 363 Review Committee may not rely on facts gathered by others.

Can we talk to the ministry personnel's previous pastoral charge or presbytery?

As a review committee, you are entitled to seek input from anyone who has information that you believe to be relevant to the issues (effectiveness, peace and welfare, and/or recognizing the authority of presbytery). There are a few exceptions, which are commented upon below. Apart from those exceptions, you are free to contact a previous pastoral charge or presbytery if you feel that it would be helpful. Remember, of course, that the more dated the information, the less relevant it will be to the current concerns. As with all other information that you gather, information from previous pastoral charges or presbyteries must be shared with the ministry personnel and he or she must be given an opportunity to respond to it before you decide what conclusions you will draw from it.

If we learn that the ministry personnel has had a previous 363 review, what do we do with that information?

It depends. First, how do you know that a review was held? Is this the same presbytery, so that you have a copy of the minuted action around the previous review? Does anyone that you have interviewed have first-hand knowledge that a review was held? Have you asked the minister whether this is the first 363 that he or she has undergone?

If the ministry personnel has previously undergone a 363 review, which resulted in a finding that the ministry personnel *was effective*, it is not relevant to the current 363 review and you would do nothing with that information.

If there was a finding that the ministry personnel *was ineffective* and he or she was required to do some remedial work, it is important for the review committee to keep in mind that the ministry personnel met the requirements because he or she was restored to good standing in active ministry. Whatever concerns triggered the previous review had been addressed to the satisfaction of the presbytery that ordered that previous review, and do not need to be probed as part of the current review. The review committee could, however, ask the ministry personnel whether the issues triggering the current review were the same, whether they were completely new, and what he or she learned as a result of the previous review. The answers to those kinds of questions may give the review committee insight into the ministry personnel's current effectiveness, ability to maintain peace and welfare, and/or recognition of the authority of the presbytery.

The ministry personnel has given us a list of 50 people that she wants us to contact for input. Do we have to do that?

The review committee should make every effort to accommodate the ministry personnel's direction around whom to contact. Always remember, it's the ministry personnel who has the most at stake in the process, since the review committee has the power to recommend the dissolution of the ministry personnel's pastoral relationship. At the same time, it is not reasonable to expect the review committee to contact hundreds of people. For large numbers of people (fewer than hundreds!), the review committee might split the list, contact each person by telephone, and ask if they are available on a particular fixed date for an interview. If so, an interview could be scheduled. If not, the interview could be conducted by telephone at that point, using some pre-determined questions. That would strike a balance between fairness to the ministry personnel and reasonableness for the review committee.

Is there anyone from whom we should not get input?

It would be inappropriate to seek input from the Conference personnel minister or executive secretary. As staff, they have specific functions to perform around the process and they cannot serve two roles at the same time. The Conference personnel minister often assists in the implementation of any recommendations around remedial work for the ministry personnel that result from the review. If the Conference personnel minister participates in the review as a "witness," it compromises his or her ability to assist in the implementation of the recommendations afterwards.

Are we allowed to tape record the interviews?

When the review committee conducts interviews, members should take notes of the interview to assist them later in developing findings and recommendations, and writing the report. Tape recording the interview is another method of note-taking. The review committee may use this method, but with the following cautions:

- (i) At the start of each interview, the review committee should indicate that they wish to tape record the interview as a form of note-taking, and ask permission to do so. Some people find that their ability to speak may be affected by knowing that their voice is being recorded. If anyone objects to the tape recording, the review committee would be best advised to proceed with written note-taking only.
- (ii) Tape recording should be a back-up to written note-taking, not the only method of note-taking. A tape recorder could malfunction. Parts of an interview could accidentally be deleted. Review committees may not notice that a tape recorder has ceased to function until after a lengthy part of an interview has already been conducted. To a lesser degree, the same concern is present when notes are recorded on a lap-top computer during the interview. For all these reasons, written note-taking should be the main way of recording the relevant information from the interviews.

What do I do with my notes afterwards? How long do I keep them?

Keep your notes until the presbytery has made a decision on your recommendations and the time for any appeal has expired. That time period varies; consult with the presbytery secretary. Generally speaking, the latest that it would be is 45 days after the presbytery secretary sends out the minutes for the decision made by the presbytery in response to the recommendations. There is no need to keep your notes beyond that time period if your report is thorough and comprehensive. All of the important detailed information from your notes should be included in the review committee's report.

When we are conducting interviews, how active a role do we play?

You need to strike a balance between allowing people simply to tell their stories, and asking questions to focus the interview on getting information relevant to the issues. If you have a large number of interviews to conduct, you will need to be sensitive to making the most effective use of your time.

Perhaps you could ask interviewees whether they wish to make an opening statement for no more than, say, five minutes. If they choose to make a statement, you could feel free to intervene with questions at the stated five-minute mark. If they choose not to make a statement, you could prompt their response by asking questions such as "How have you experienced X's ministry?" "Has X been an effective worship leader?" or "What is X's participation like in Church Board meetings?"

It is helpful for the review committee to develop a list of questions beforehand that could be asked of everyone. Those questions should be open-ended, not leading. For example, ask "How do you find X as a pastoral care provider?" Do not ask "So how bad was X at pastoral care?" or "Do you agree that there were a lot of shortfalls in how X provided pastoral care to the congregation?"

Leading questions invite a particular response. Your questioning must reflect a neutral and unbiased approach. You must not express any opinions about this matter until you get to the stage of writing your final report.

The goal of the interviews is to get the fullest picture possible. If underlying issues start to emerge in the response that an interviewee is giving, the review committee should feel free to deviate from its list of questions to explore those underlying issues.

We know we can't rely on hearsay evidence. But we're not lawyers! What's hearsay?

The term "hearsay" may not be that helpful. To put it another way, the review committee must gather—and rely upon—only first-hand information. When people are giving you input, they must tell you what they experienced themselves, not what they learned from someone else.

For example, Mary Brown tells you that the minister was a helpful visitor when Mary's husband died. That is first-hand information because Mary Brown experienced the minister's visit with her own eyes and ears. She was there.

If Mary Brown tells you that the minister said all the wrong things when he visited her friend Barb after Barb's husband died, you need to ask how she knows that. If the answer is "Because I was there too," it is still first-hand information. If the answer is "Because Barb told me," it's not something that Mary experienced herself. It is Barb's experience and Mary only has second-hand knowledge of it. If it is critical for the review committee to know about the minister's visit with Barb, the review committee could contact Barb and ask her to meet with them. That way, they would get a first-hand answer. If Barb is unwilling to meet with them, the review committee needs to disregard the whole piece of information. The review committee may not use second-hand information.

Several members of the congregation have told us that they are uncomfortable with having their names used in the report that they will only speak to us on a guarantee of confidentiality. Is this acceptable?

No! You must tell people at the start of every interview that their names may be included in the review committee's report. You must also tell them that their names—and what they have said—will be shared with the ministry personnel. If they cannot accept that arrangement, they have the option of not continuing the interview. Do not tell them that anything is "off the record." Do not tell them that you won't use their names or information in the report but you still want to hear their input. In that kind of situation, it would be very difficult for you to prove that you weren't influenced in some way by this "secret" information. It is a basic principle of natural justice that the ministry personnel be given the names of all people providing input about him or her—and the details of that input. If that principle is not honoured by the review committee, the consequences for the whole review process can be very serious. Any decision made by the presbytery in response to the recommendations may be overturned on appeal or by the civil courts because of the breach of natural justice.

Should we ask people to sign a non-confidentiality agreement?

That is not necessary and should be avoided. One member of the review committee will have explained to them at the start of the interview that information shared cannot be kept confidential. The other members of the review committee are witnesses to that explanation. People may find signing a legal document intimidating—in a process that may already produce anxiety. Also, having a signed document doesn't really offer any more protection than giving an oral explanation at the start of the interview.

It would be wise for the review committee to limit its process to the steps that are specifically referred to in these guidelines unless they first check with the Conference executive secretary or personnel minister. Even actions that are taken with the best of intentions may carry with them the unintended consequence of jeopardizing the whole review process!

We have conducted all the interviews and read all the written material given to us. What do we do with it?

At this point, you have gathered information. You need to organize it in some usable way.

One approach is for the review committee to identify a few "themes" that have recurred in the input, and include all information gathered under the appropriate theme. For example, the themes could be relationships with congregational staff, conflict resolution skills, use of ministerial authority, and accountability for time. You could also organize it by source of information such as input from the trustees, input from the Worship Committee, and input from other members. In any case, you need to include the details, i.e., the names of those who provided input and a description of that input, what they saw and heard, how they felt about it, exactly when the events occurred, the circumstances surrounding the events, who else was present, etc.

Once you have compiled the information in this way—and before you give it to the ministry personnel—you should ask the Conference executive secretary or personnel minister (depending upon the practice in your Conference) to review it. He or she—in turn—may ask the legal counsel at the General Council Office to review it as well to ensure that it contains the necessary level of detail and other requirements in order to honour the natural justice rights of the ministry personnel.

How much detail do we need to include in the information that we give to the ministry personnel?

Where the comments you heard reflect negatively on the ministry personnel, you need to include all of the details that you heard (name of person giving you the information, dates and places where events were alleged to have occurred, who was there, who said what, the context, etc.).

The ministry personnel is entitled to that level of detail. If you tell the ministry personnel that "Mary Brown says that you get angry at council meetings," it is almost impossible for him or her to respond to that comment, other than to say "No, I don't" or "Yes, I do." That's not fair to the ministry personnel. And it doesn't help you decide whether he or she is effective or not.

Instead, you could tell the ministry personnel that “Mary Brown says that at the council meeting on the second Tuesday in May, in the discussion around whether to proceed with renovations to your study, you got angry. She said that happened right after the Finance Committee reported that there were no funds for renovations right now. She said that you raised your voice, threatened to resign, and left the meeting in a huff.” The ministry personnel would know exactly the circumstances and the context, and could explain (for example) that while the outburst was inappropriate, she had just spent two nights without sleep visiting a dying parishioner in hospital, and that she was dismayed because she’d been told the previous day by the chair of the Finance Committee that he didn’t see any problem with the cost of the renovations, and that the mould on the study walls was causing an ongoing severe allergic reaction that made it impossible for her to use the study.

The review committee must include details in order to honour the ministry personnel’s right to natural justice. The details also help paint a clearer picture of the underlying causes of the current situation. In this example, there may be issues around congregational finances, functioning of the Finance Committee, occupational health and safety, overworked ministry personnel, etc. The purpose of a review is to be remedial and the review committee may be able to address some of these underlying causes in their recommendations if they have a full appreciation of the context.

Once the Conference executive secretary/personnel minister has commented on the information, what do we do with it?

Give the written material to the ministry personnel and set up a meeting at which the ministry personnel will respond to it. The ministry personnel will likely want a few days (or a week) to review the material and consider a response, and you must honour that. If the ministry personnel wishes to respond immediately, that’s fine too. If the ministry personnel wishes to bring a lawyer to the response meeting, he or she may ask for more time to allow for the lawyer’s schedule. The review committee must, however, remain in control of the process. It would be unreasonable (except in the case of serious illness or similar reasons) for the ministry personnel—lawyer or no lawyer—to insist on more than a month to prepare for the response meeting.

What do we do in the response meeting with the ministry personnel?

You need to go through each piece of information that you have gathered that has a negative impact on the ministry personnel, and ask for his or her response. You need to note the response given. You need to ask questions in order to get a full and accurate response. For example, if the ministry personnel responds by saying “That’s not how I remember that meeting,” you need to ask for his or her version of events. You need to ask enough questions so that you are in a position to decide what really happened and whose version is correct. Where you have inconsistent versions of events, you must decide which version you prefer, and why.

The response meeting is often a long, slow, laborious process, but it is critical to get the ministry personnel’s response to every negative allegation.

It is also wise to discuss the positive comments that you have heard about the ministry personnel. While there's no legal requirement that the ministry personnel have an opportunity to respond to positive comments, it does let the ministry personnel know that the review committee has a balanced picture of the situation. Hearing nothing but negative comments could be very demoralizing!

We have all the facts from everyone involved. We know that we must come up with some recommendations. Anything else?

There's one critical step in between. The review committee must come to a conclusion—and must state that conclusion. Depending on the grounds named by the presbytery for this review in the presbytery motion, you will conclude that

- the ministry personnel is effective
- the ministry personnel is not effective
- the ministry personnel has failed to maintain the peace and welfare of the church
- the ministry personnel has not failed to maintain the peace and welfare of the church
- the ministry personnel has refused to recognize the authority of presbytery
- the ministry personnel has not refused to recognize the authority of presbytery

These are the phrases used in Section 363(c) of *The Manual*, and they should be used in your conclusion. Your very task is to come to a conclusion with those words! If you try to express your conclusion in different words, it may create ambiguity and confusion. As long as you are clear by using those exact phrases (as applicable to your review) you can—and should—elaborate, explain, and offer commentary and reasons for your conclusion.

What kind of recommendations may we include?

Please refer to Section 363(d) of *The Manual*. There are several specific kinds of actions listed that the review committee might recommend. There is also a general clause that allows a presbytery to order “such other action as will promote the welfare of the pastoral charge and the ministry personnel.” If you choose to recommend one of the actions listed in Section 363(d), you should follow the language of that section. There is no need for the review committee to be creative in language at that point, and it may give rise to confusion.

How do we decide on recommendations?

Once you have come to your conclusion about the ministry personnel's effectiveness (or maintenance of the peace and welfare of the church, or recognition of the authority of presbytery), you may wish to seek assistance from the Conference personnel minister or executive secretary in determining the appropriate recommendation. One way of approaching the situation is to ask: Where does the ministry personnel fall short of the skill level that we would expect? What kind of remedial action would address that deficiency? Sometimes, the answer is for the ministry personnel to take a particular program of study in an area of weakness.

We think that the ministry personnel is effective and that it's the pastoral charge that is problem. What do we do?

In many cases, there are issues in the pastoral charge that require addressing—regardless of whether or not the concerns about the ministry personnel are substantiated or not. Section 363(d) of *The Manual* is broad enough to allow a 363 Review Committee to make recommendations either to discipline the pastoral charge or to take action that will promote the welfare of the pastoral charge.

We suspect that the ministry personnel may have an untreated psychiatric disorder, but we aren't medical experts. What do we do?

See Section 363(d)iii of *The Manual*. The review committee may recommend that the presbytery order the ministry personnel to undergo a medical, psychiatric, or psychological examination. The review committee could also indicate that the results of that examination would dictate what course of treatment—if any—would be appropriate for the ministry personnel to follow.

Once the report is finished, should anyone else read it before it is sent to presbytery?

Yes, the Conference executive secretary or personnel minister should review it, particularly to ensure that your recommendations are complete and workable. The executive secretary or personnel minister may ask the General Council legal counsel to review it as well.

After the report has been reviewed by the Conference executive secretary or personnel minister, what do we do with it?

You send or deliver your report to the presbytery. At the same time, you send or deliver a copy of the report to the ministry personnel. If you are making any recommendations that affect anyone else, you would get a copy of the report to them as well. For example, if you are recommending that action be taken with respect to the pastoral charge, you would send or deliver a copy of the report to the Official Board/Church Board/Church Council c/o the chair or secretary. This would be in addition to the copies that are always sent or delivered to the presbytery and the ministry personnel.

Is that the end of our task?

The final step in the process is for the review committee to attend the meeting where the presbytery considers and takes action on the recommendations. Usually, this will be at a meeting of the Presbytery Executive, not the full presbytery. It is best if all members of the review committee can attend that meeting, but if distance or other essential commitments prevent it, it is acceptable for only one or two to attend. At the meeting, all members of the presbytery (executive) will have a copy of the report. The review committee may wish to draw attention to a particular piece of the report, or to offer comments about their report. The ministry personnel will have been invited to attend the meeting and will have an opportunity to speak to the report. Any comments made by the ministry personnel must be directed to the presbytery (executive). This is not an opportunity for the ministry personnel to ask questions of the review committee, and the presbytery (executive)

should not permit that to happen. The review committee and ministry personnel will then leave the meeting so that the presbytery (executive) may consider what action it will take in response to the recommendations.

What if I am sued as a member of the review committee?

Call the legal staff at the General Council Office if you are served with a claim or if you learn that legal action is likely. The legal staff will give you specific advice on dealing with the situation and arrange for legal representation for you if necessary. As an individual appointed by presbytery to a specific volunteer role, you have the benefit of insurance coverage through the General Council to pay for the defence of any lawsuits and to pay the cost of any compensation. In addition, there is indemnity by the General Council for all persons serving in a volunteer or paid capacity in the United Church. In short, as long as you carry out your task in good faith and to the best of your ability, you have nothing to fear from legal action.

We have heard that the ministry personnel is appealing the presbytery's decision to adopt our recommendations. Do we defend the appeal?

Once the presbytery (executive) takes action on the recommendation, there is a presbytery decision. If the ministry personnel appeals the decision, it is up to the presbytery to respond to the appeal and to defend the decision. The review committee does not have a role in the appeal process.