

# Establishing the Housing Tribunal's authority

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**WHAT constitutes a ruling of the Tribunal?** The ruling of the Tribunal is deemed to be an order of a magistrate's court in terms of the Magistrate's Court Act, 1944 (Act No 32 of 1944). The procedure is laid down in the Rental Housing Act, 50 of 1999 (the Act) and s10(6) states that all decisions are done by consensus. A ruling is a decision by majority of its members presiding on a matter (at least three members and not more than five).

Members of the Tribunal are not judges, nor are they magistrates. They are "commissioners" or "adjudicators" for want of a better word. Their powers are limited by virtue of a statute and their conduct and procedures are regulated within the constraints of law as a judicial functionary. It follows that a member cannot act unilaterally but can hold a dissenting view.

The following provisions are relevant: Section 10(6) All decisions of the Tribunal, subject to subsection 7, must be taken by consensus. (7) Where consensus cannot be reached by the Tribunal, the decision of a majority of the members of the Tribunal must be the decision of the Tribunal. (8) In the event of an equality of votes on any matter, the person presiding at the meeting of the Tribunal will have a casting vote in addition to that person's deliberative vote.

(9) A member or any alternate member of the Tribunal must not attend or take part in the discussions of or decision-making on any matter before the Tribunal in which he or she or his or her spouse, or his or her relative within the second degree of affinity, or his or her partner or his or her

employer, other than the State, or the partner or the employer of his or her spouse, has any direct or indirect pecuniary interest.

Members have to be impartial and are required to apply their minds objectively on the basis of facts to reach a decision that is just and fair. *"A court's duty is not to write a judgment that shows the law and the facts in the best light for one or the other party. Neither is its duty one of writing a judgment that shows the law and the facts in the light that best justifies its own decision as to the outcome of the case. Courts should not appear as advocates for a cause. A court's duty is to write a judgment that is seen to be justified in the light of the totality of the relevant facts and the law before it."* (Christopher J Roederer, Wrongful Conceiving Wrongful Conception: Distributive vs. Corrective Justice).

Once it gives a ruling the Tribunal is said to be *"functus officio"* ("out of court; case is closed; the authority over the issues / questions have ended; fulfilled the purpose of its creation; prevents a member exercising a fresh judgment). The Rental Housing Tribunal cannot review its own ruling, nor can it hold another hearing on the same matter because of the restrictions imposed by s17 of the Act and the general restrictions regarding review proceedings that governs bodies like the Tribunal.

Section 17 says: "Without the prejudice to the constitutional right of any person to gain access to a court of law, the proceedings of a Tribunal may be brought under review before the High Court within its area of jurisdiction."