Mental Health Review Board

ANNUAL REPORT

2020-2021

Table of Contents

Message from the Chair

I am pleased to present the Annual Report of the British Columbia Mental Health Review Board for the fiscal year April 1, 2020 to March 31, 2021, submitted in accordance with s. 59.2 of the *Administrative Tribunals Act.*

This annual report captures the important work of the Board in service of vulnerable youth and adults in British Columbia during a time of many challenges, requiring significant adaptation.

In March 2020, with the onset of the COVID-19 pandemic, review panel hearings transitioned from in-person attendance to telephone proceedings for the first time in the Board's history. In November 2020, the Board transitioned to virtual hearings. These measures were implemented to keep patients, case presenters, advocates, panel members and staff safe while continuing to carry out and participate in review panel hearings. Working together, the Board found new ways to continue its important work both with and on behalf of its stakeholders.

In January 2021, the British Columbia Representative for Children and Youth released the report entitled, *Detained: Rights of Children and Youth Under the Mental Health Act*, which included fourteen recommendations, one of which was specifically directed at the Board. Recommendation #14 stated, "That the Mental Health Review Board pilot a new Review Board hearing process for children and youth that centres the young person and is trauma-informed and culturally attuned after actively engaging and consulting with health authorities, First Nations, Metis Nation, and urban indigenous communities and leadership and other appropriate bodies." The Board accepted this recommendation and prioritized moving towards its implementation.

Also in January 2021, Chair Diana Juricevic left the Board when she was appointed to the Provincial Court of British Columbia and was replaced in February 2021, by Ning Alcuitas-Imperial, the new Chair of the Board. In December 2021, I was appointed as the Acting Chair of the Board for a six-month term. I sincerely thank both previous Chairs for their service to the Board during this fiscal year. The Board is indebted to them for their leadership, vision and commitment.

I also thank the Board's exceptional Members, staff and stakeholders. It is a privilege to work with each of them. I thank them for their perseverance, dedication and professionalism.

Jacqueline Beltgens
Acting Chair
May 30, 2022

Mandate

The mandate of the Mental Health Review Board is to conduct review panel hearings under the *Mental Health Act* for patients admitted by physicians and detained involuntarily in provincial mental health facilities in a manner that is consistent with the principles of fundamental justice and s. 7 of the *Charter of Rights and Freedoms*. The Board has a duty to give patients fair, timely, and independent reviews of their loss of liberty.

Procedural Fairness of Hearings

The Board is committed to conducting procedurally fair hearings. The Board will ensure that patients have a meaningful opportunity to be heard, and its decisions will be independent, reasonable, timely, and issued with clear and logical reasons.

Patient-Oriented Service Excellence

The Board is committed to delivering services that are, at all times, accessible and in the best interests of patients. The Board's services will be fair, inclusive, and effective. At every stage of the process, the Board will be responsive, flexible, and sensitive to the needs of the vulnerable public who seek its services.

Public Confidence and Accountability

The Board is committed to exhibiting the highest standards of public service integrity and professionalism. The Board will be a leader in administrative justice that reflects best practices across Canada. It will be accountable and transparent. It will be financially responsible and balance the budget.

Access to Justice and Innovation

The Board is committed to improving access to justice in British Columbia. The Board will strive to develop new efficiencies and innovative solutions in delivering its services. The Board will continually improve how it delivers services to ensure that it is fulfilling its legislative mandate.

Board Operations

A person with a mental disorder requiring hospital treatment may be admitted to a hospital and treated voluntarily. However, a mentally ill person may be unsuitable for voluntary admission or may refuse to accept psychiatric treatment. Under the *Mental Health Act,* a person with a mental disorder can be detained and treated in a designated provincial mental health facility on an involuntary basis if certain criteria are met. One of those criteria is certification by two physicians, each independent of the other.

Although an involuntary patient can make an application to Court to challenge their detention, many patients do not have the ability or resources to do so. The Board provides an accessible and alternative process for reviewing detention decisions. The Board welcomes the enhancement of rights advocates to improve access to Board services.

A patient is informed, soon after admission, of the right to a review panel hearing. The patient is given the opportunity to apply for a hearing and request free legal and advocacy services to exercise their rights. Once an application is received, the Board schedules a hearing within the statutory time limit before a review panel that is comprised of three independent and impartial Board members. The panel members apply the same standards that are used in the initial certification decision. This hearing offers patients their only practical access to a review of their detention.

After the hearing, the review panel must determine whether all four criteria set out in the Act continue to describe the condition of the patient. If so, the patient continues to be detained on an involuntary basis. If one or more of the criterion is not met, the patient must be discharged from involuntary status. The review panel applies this legal test on a balance of probabilities.

Hearings are conducted throughout the province, usually at the mental health facility where the patient is being treated, or in the case of involuntary outpatients, at a community mental health clinic.

The Board Chair has the authority to establish review panels to conduct hearings and to appoint members to sit on the panel. All Board members including the Chair are appointed by the Minister under the *Act*. A review panel must include a practicing or retired physician, a legal member who is usually a practicing lawyer, and a person who is neither a physician nor a lawyer. The legal member is usually designated to chair the panel.

The Board staff is involved in all aspects of the process, intake of applications, scheduling hearings, and hearing administration. Hearings are scheduled within statutory deadlines and in consultation with patients, facilities, doctors, and legal representatives. They are a dynamic team who find solutions for problems that arise at every stage of the process.

Performance Standards

The Board's case management system helps establish and monitor a set of key performance measures that objectively quantify and demonstrate to the public how well the Board is fulfilling its mandate. The Board's focus is on ensuring the procedural fairness of hearings and the highest standards of adjudicative integrity.

Performance standards keep the Board focused on providing the public with fair, effective, and timely services. Having standards means that the Board knows when and where it needs to improve. Some of the performance measures are set by legislation, while others reflect the Board's commitment to the public.

Performance measures for the Board regarding the scheduling of hearings, rendering decisions, and providing written reasons are established by section 25 of the *Act*, and are as follows:

1. The hearing shall begin within 14 or 28 days after the day the Board receives the application, unless the patient requests a postponement.
2. The review panel must issue a determination no later than 48 hours after the hearing is completed.
3. The review panel must issue its reasons for its determination no later than 14 days after the determination has been issued.

Hearings are conducted at more than 220 venues throughout the province which include hospitals, community clinics, and elderly care centers.

The Board reports on a fiscal year basis which is consistent practice across the administrative justice sector.

Impact of COVID-19 Pandemic

In response to the onset of the global pandemic in March, 2020, the Board began to schedule review panel hearings via teleconference. This was done in response to the need to respect infection control measures in the facilities and mental health centres, as well as keep Board members safe. In November 2020, the Board began to schedule its hearings by default as videoconference hearings via the Zoom application. Despite the pandemic concerns, the Board continued to send at least one review panel member into the facility or mental health centre when the patient was a child or youth. The Board continued to work with stakeholders to ensure that the technological capacity to hold videoconference hearings was in place throughout the province.

As the Province moves into the next phases of the pandemic, planning will begin in earnest to implement a new post-pandemic hearing model. The Board will return to in-person hearings as soon as possible.

In terms of working conditions, Board staff were allowed to choose to work remotely 5 days per week on a permanent basis, but were required to attend the Board office on Robson Street for mandatory meetings.

Stakeholder Relations

The Board continued to have a strong relationship with the Mental Health Law Program, the Ministry of Health (Mental Health and Substance Use), and the Ministry of the Attorney General (Tribunals Transformation and Independent Offices Division). The Board will continue to maintain strong working and communication relationships with its stakeholders to explore innovative ways to improve its services, to find solutions to ongoing concerns, and to ensure the highest quality of adjudication.

Initiatives

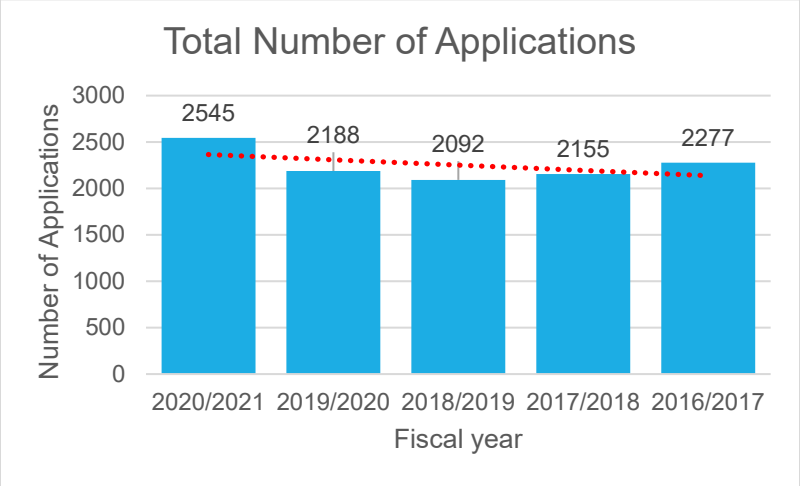
In January 2021, the BC Representative for Children and Youth released their report entitled, *Detained: Rights of Children and Youth Under the Mental Health Act*, which included fourteen recommendations. Recommendation #14 of the Report states, “That the Mental Health Review Board pilot a new Review Board hearing process for children and youth that centres the young person and is trauma-informed and culturally attuned after actively engaging and consulting with health authorities, First Nations, Métis Nation and urban Indigenous communities and leadership and other appropriate bodies.” The Board accepted recommendation #14 and has moved forward in achieving this outcome.

For all other initiatives, the Board welcomes the opportunity to continue to carry out its role under the *Mental Health Act*.

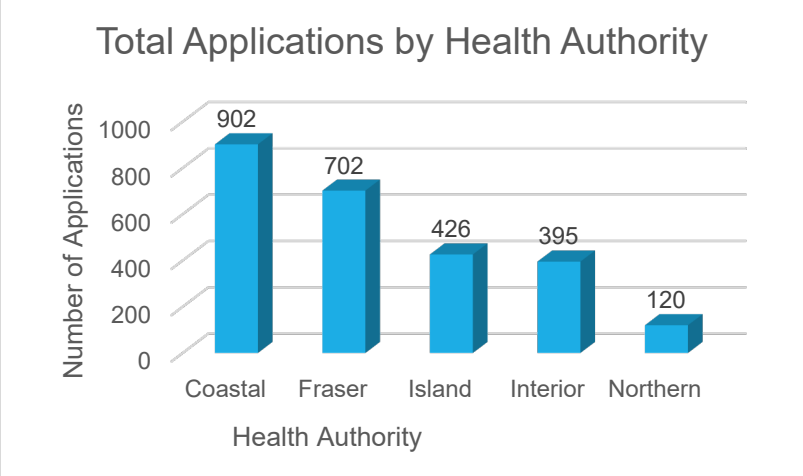
Applications

The Board has no control over the number of applications it receives in any given year. In this fiscal year, the Board received a total of 2,545 applications. This represents an increase of 16% from 2019/2020 when 2,188 applications were received. The trendline is towards an increasing volume of applications, and the Board expects its caseload to increase in future years.

The increase in applications is due, in part, to the recommendations made in the March, 2019, report by the Office of the Ombudsperson entitled *Committed to Change: Protecting the Rights of Involuntary Patients under the Mental Health Act,* the recommendations made in the January 2021 report by the British Columbia Representative for Children and Youth report entitled, *Detained: Rights of Children and Youth Under the Mental Health Act,* and COVID.



In terms of geographic regions, the majority of the applications are from the Vancouver Coastal Health Authority (35%) and Fraser Health Authority (27%).

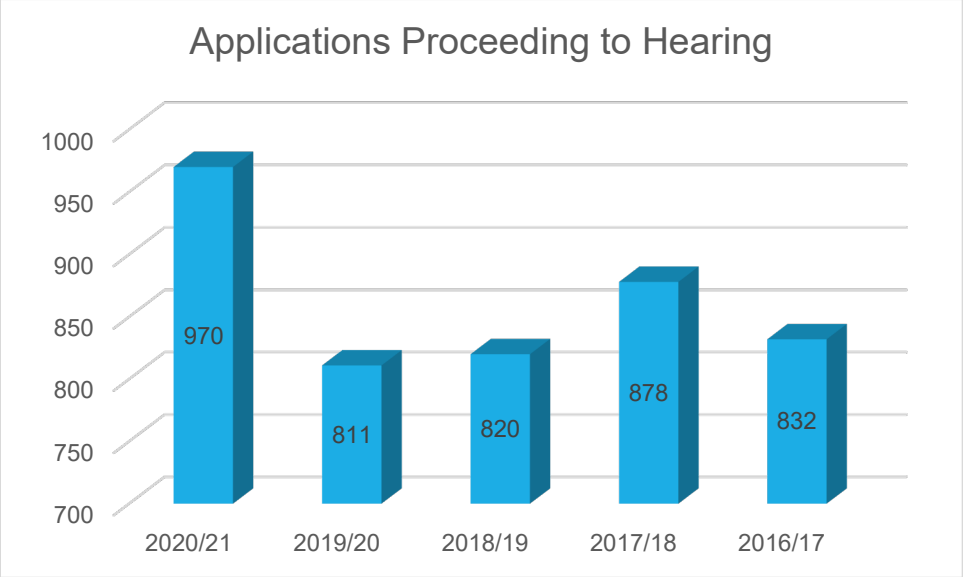


The amount of time the Board has to schedule a hearing depends on the length of a patient's certification. One application requires the Board to schedule a hearing within 14 days, and the other application requires the hearing to be scheduled within 28 days. 64% of applications are scheduled within 14 days.

Hearings

Each application received by the Board can result in more than one hearing being scheduled. Hearings can be postponed multiple times and may take place many months past the date that the application is received. Hearings are considered adjourned when the hearing has already been started and evidence has been heard. In the case of an adjournment, a hearing has to be rescheduled with the same participants and panel members.

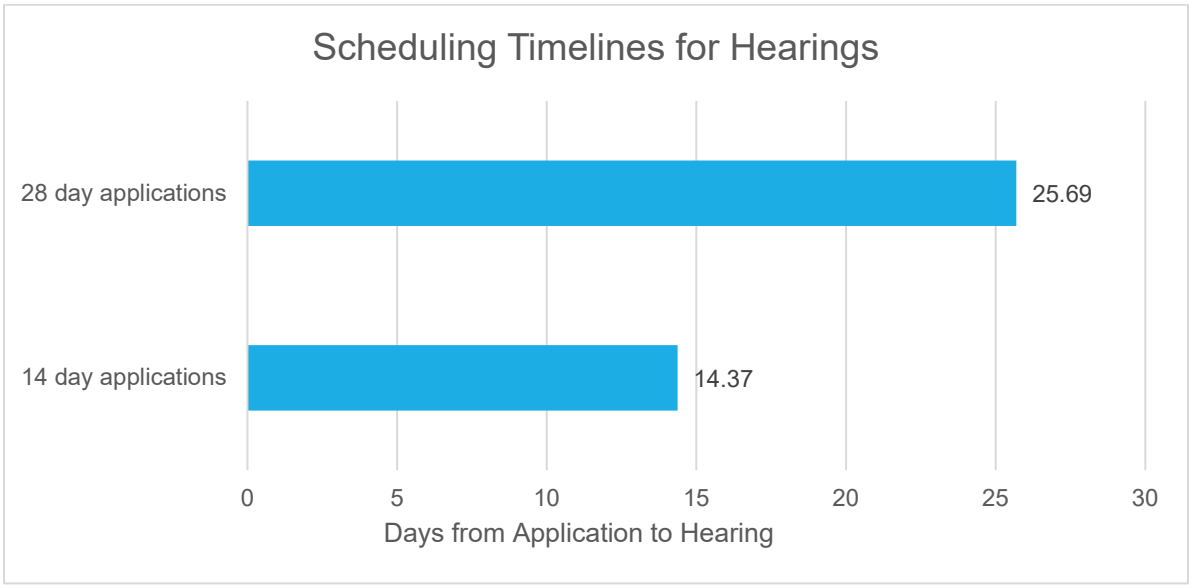
Of the 2,545 applications received in this fiscal period, 2,197 applications were scheduled for a hearing. 970 applications proceeded to a hearing and review panel determination. Of the 2,545 applications that did not proceed to a hearing, 654 applications were withdrawn by the patient, 440 applications were withdrawn as the patient was decertified prior to the hearing, and 62 hearings were cancelled because the patient did not attend the hearing. 255 hearings were either postponed or adjourned.



Scheduling Timelines for Hearings

Patients who were entitled to hearings within 14 days, on average received their hearing within 14.37 days. Patients who were entitled to a hearing within 28 days, on average received their hearing within the time frame, at 25.69 days.

46% of the 14-day application hearings that did not take place within their deadline were due to postponements or adjournments for patients to obtain representation. Likewise, 40% of the 28-day application hearings that did not take place within their deadline were due to postponements or adjournments to obtain representation.



Postponements of Hearings

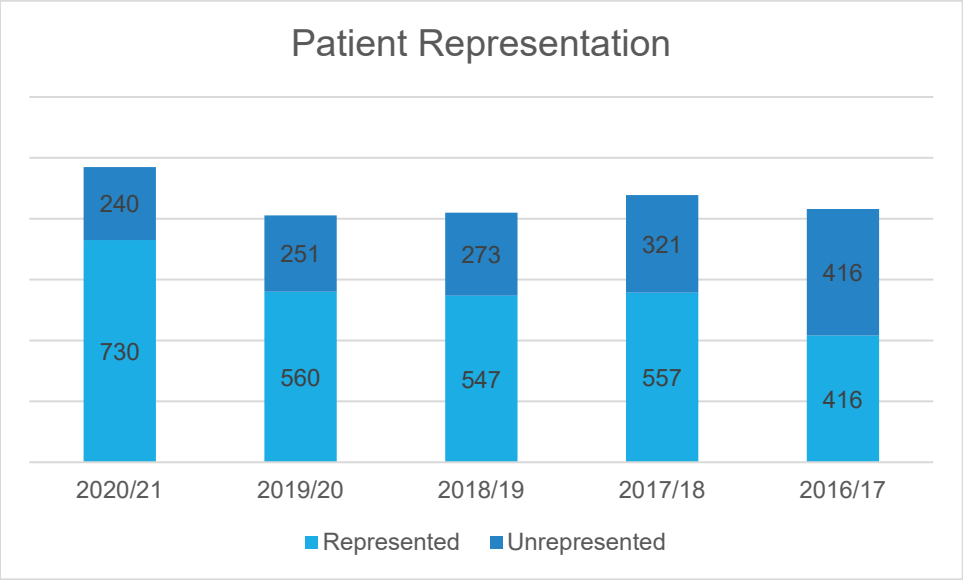
From a procedural fairness perspective, the Board is concerned with any process that delays a patient's access to justice. From an operational perspective, cancellations or postponements are costly in cancellation fees and staff time. The Board is working with stakeholders to explore solutions to reduce the number of cancellations and thus enhance access to justice for the patient.

Of the 2,545 scheduled hearings, 249 hearings were postponed. 114 hearings were postponed at the request of the patient or because of patient availability. 87 cases were postponed for patients to obtain legal representation for their hearing. 21 cases were postponed as patients were unwell. 127 postponements occurred because of administrative issues.

Patient Representation

During this fiscal period, 730 patients were represented by a legal advocate or legal counsel at a hearing. 724 of these patients were represented by a legal advocate through the Mental Health Law Program (MHLP). MHLP is run by the Community Legal Assistance Society.

In this year, patients were self-represented or represented by a non-legal advocate, such as a family member or friend in 240 hearings. MHRB continues to work with Ministry of the Attorney General and the MHLP to ensure that there is no barrier to accessing legal representation and access to justice.



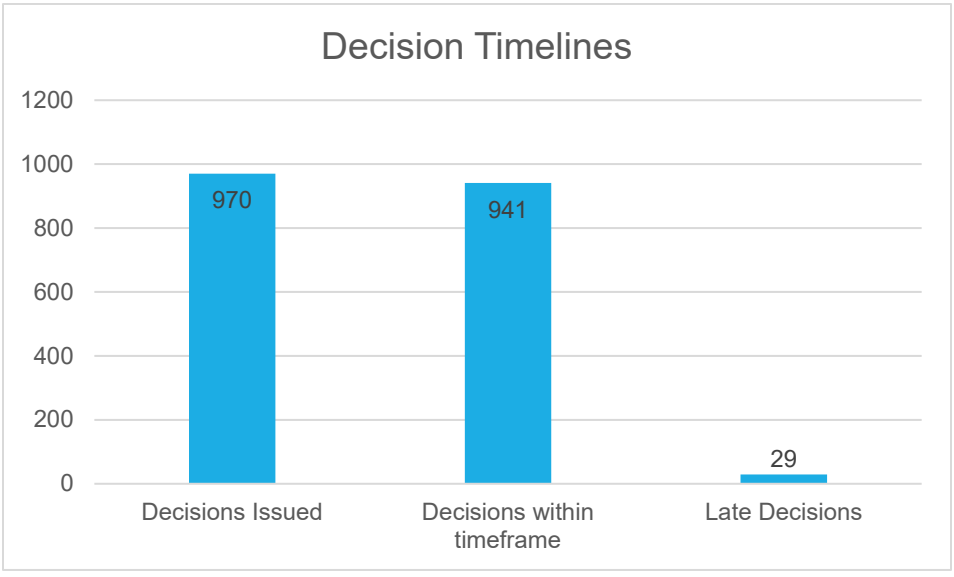
Hearing Outcomes

Of the hearings that proceeded to a review panel for determination, patients were detained (ie. their certification was upheld) 86% of the time and decertified 14% of the time.

Patients represented by a legal advocate or legal counsel were detained in 621 cases, and decertified in 109 cases. Unrepresented patients were detained in 218 cases and decertified in 22 cases.

Decision Timelines

The statutory timeline for issuing of written reasons for a review panel's determination is 14 days after the hearing: *Mental Health Act* s. 25(2.8). In 2020/2021, 970 decisions were issued. 97% of the Board decisions were issued within the statutory timeline, with an average time of 4.8 days. When decisions were not issued within the statutory timeline, the delay was usually due to operational circumstances.



Mandatory Reviews

Section 25(1.1) of the *Mental Health Act* requires a mandatory review of the treatment records for all patients who are on extended leave for 12 or more consecutive months when no hearing has been requested or held during this time. The mandatory review process provides access to justice for those patients who are on extended leave and have been involuntarily detained for over one year. This process is meant to safeguard against long-term detention for patients on extended leave. The Board Chair must order a hearing where there is a reasonable likelihood that a patient would be discharged following a hearing.

The Board honours the obligations and is guided by the principles contained in the *United Nations Convention on the Rights of Persons with Disabilities* and the values contained in the *Charter of Rights and Freedoms*.

The mandatory review process depends on cooperation with Health Authorities. The Health Authorities must monitor the length of patient certification and frequency of their requests for review panel hearings. Twice a year, the Board asks the Health Authorities to provide a list of patients who have been on extended leave for 12 months or more. The Board reviews the patient lists to determine which patients may be entitled to a mandatory review of their medical file.

Facilities must give written notice to the Board of any patient who has been on leave or transferred to an approved home under Section 37 or 38 of the Act for 12 or more consecutive months and a review panel hearing has not been requested or held within that period by way of the Extended Leave Review Panel Hearing Directive ("**Directive**"). The Directive must be received one month before the patient reaches 12 consecutive months of extended leave. Another Directive must be submitted to the Board after every 12 months a patient continues to be on extended leave and has not had or requested a hearing.

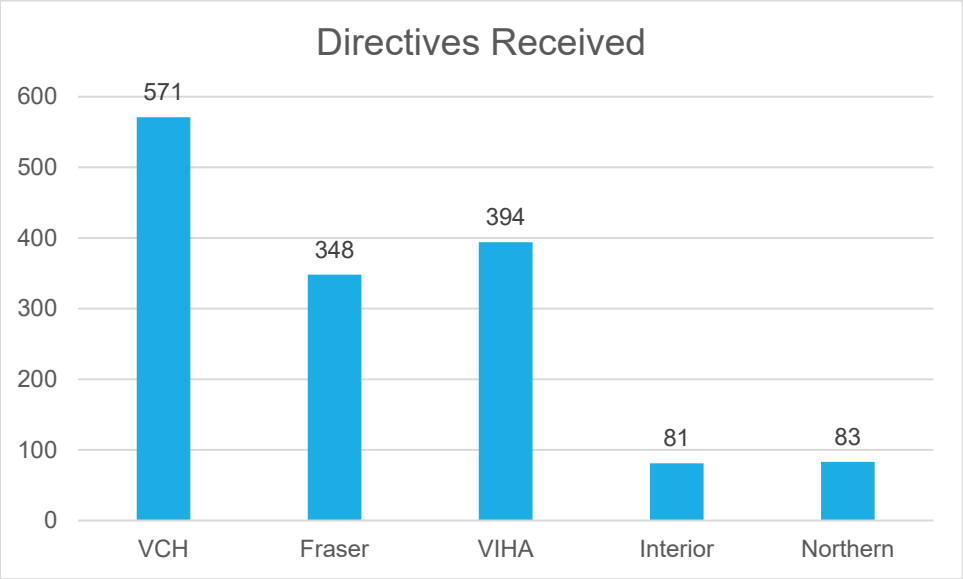
The Directive allows patients to provide their guidance to the Board on whether or not they want to confirm their wish to proceed with this mandatory review of their treatment records, or to waive the right to have the records reviewed. The Directive also serves as a reminder to facilities to advise patients of their rights set out in Form 13. The Directive provides the patient with three options:

- request to have their file reviewed,
- waive their right to have their file reviewed, or
- request a review panel hearing

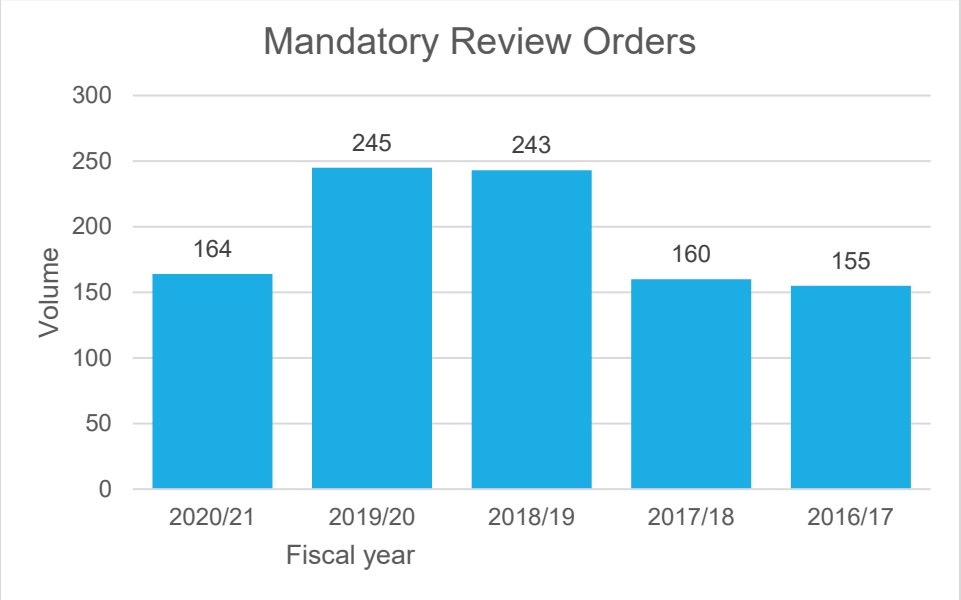
Facilities must provide treatment records when requested by the Board. The Board asks for treatment records when a patient does not fill out the Directive, or a patient fills out the Directive and wants their file reviewed. The Board Chair assesses the treatment records to determine whether there is a reasonable likelihood that the patient would be discharged following a hearing. When there is a reasonable likelihood of success, the Board Chair must order a hearing ("**Mandatory Review Order**").

80% of patients waived their right to a file review. 16% of the patients either wanted a hearing or requested a file review. A file review was conducted on the remaining 4% of the patients who did not expressly waive their statutory right to a review. The Board observed a decrease in the number of Directives requesting a file review, but an increase in the number of applications for review panel hearings.

In 2020/2021, the Board received 1,477 Directives from the five Health Authorities.



In 2020/2021, there were 164 Mandatory Review Orders issued by the Board.



In 2020/21, the Mandatory Review Process took an average of 29.5 days from the date the treatment records were received to the date the Orders were sent. While this would appear to be a significant increase from the 17.5 days reported the 2019-2020 Annual Review period, the sample size in 2019-2020 was only five months due to the new case management system. The Board aims to monitor the trendline for average processing times in the future.

Financial Disclosure

Improving Costs

The Board is accountable for all expenditures and is committed to ensuring that public resources are utilized in the most responsible and cost-effective way.

It is difficult to accurately measure the cost associated with applications and hearings this year against other years as the Board's operations were adjusted due to the pandemic.

In the following sections, you will notice that the cost per hearings and cost per application fell substantially during this fiscal year. This is a direct result of hearings being conducted by telephone or virtually, with no travel costs. You will also notice that the number of applications received, and the number of hearings conducted far exceed historic norms. These two factors would normally result in highly elevated expenditures. However, no travel costs during this fiscal year offset the costs in both areas.

Cost Per Hearing

The Board pays its members to conduct hearings, including hearings that are cancelled, withdrawn, or postponed within 24 hours of the scheduled hearing. This cancellation policy reflects best practice across the sector. While the Board has no control over cancellations, it continues to improve practices to reduce the number of cancellations and postponements in the 24 hours prior to hearing.

The cost per hearing calculation includes all expenditures directly related to conducting a hearing, including member and case presenter fees, interpreting services, and in past years, travel costs. Over the previous three years, the cost per hearing has been relatively stable despite mandatory increases in the physician's sessional rates, and cost associated with training and orientation of new members. The Board has seen a decrease in the cost per hearing this year despite a 21% increase in hearings conducted.

Fiscal Year	Hearings Proceeded	Adjudication Cost	Cost Per Hearing
2020/21	970	$1,829,696	$1,886
2019/20	811	$1,668,763	$2,057
2018/19	820	$1,563,657	$1,846
2017/18	878	$1,642,653	$1,866
2016/17	832	$1,662,423	$2,027

Adjudication Cost	2016/17	2017/18	2018/19	2019/20	2020/21
Member Fees	1,226,616	1,174,380	1,113,031	1,200,973	1,346,742
Case Presenter Fees	290,358	377,458	364,407	384,556	477,029
Members Travel	139,683	90,152	81,809	82,080	18
Interpreters	5,766	663	4,410	1,154	5907
Total	**1,662,423**	**1,642,653**	**1,563,657**	**1,668,763**	**1,829,696**

Cost Per Application

The cost per application encompasses all areas of expenditures from the early stage of receiving the application to post hearing administration. As noted in 2019/20 Annual Report, the Board expected the cost per application to drop slightly this year as a result of restructuring. The actual numbers show a 17% decrease. Again, this is attributable to no travel costs this year.

Fiscal Year	Total Applications	Total Cost	Cost Per Application
2020/21	2,545	$2,489,529	$978
2019/20	2,188	$2,516,128	$1,149
2018/19	2,092	$2,420,841	$1,157
2017/18	2,155	$2,021,567	$938
2016/17	2,277	$2,087,398	$917

When the Board is able to safely transition back to in-person hearings, if the number of applications and hearings are similar to or more than this year, it is expected that expenditures will rise.

Operating Costs

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	463,167	511,000	47,833
Employee Benefits	117,515	130,000	12,485
Hearing Costs	1,829,696	1,634,400	(195,296)
Members Fees	1,346,742		
Case Presenter Fees	477,029		
Travel Costs	18		
Interpreters	5,907		
Travel (Management and Employee)	0	2000	2000
Information Services – Operating	74,831	65,600	(9,231)
Office and Business Expenses	4,320	5000	680
Other Expenses	0	0	0
TOTAL COST	**2,489,529**	**2,348,000**	**(141,529)**

Our Team

Board Members

Board members are independent decision-makers. They are dedicated and highly qualified, with a variety of professional backgrounds with expertise in mental health. Members and staff work closely together to ensure that timely, fair and professional services are rendered. The Board is committed to diversity and is consciously working to promote the diversity of the Board membership. In terms of gender diversity, the Board is balanced.

During 2020/2021, the Board currently had 97 members, including the two Chairs. The 97 members live in various locations throughout the province and include 37 legal members, 26 medical members, and 34 community members. All members are appointed in accordance with the *Mental Health Act* and the *Administrative Tribunals Act*. The details and biographies of the members can be found on the Crown Agencies and Board Resourcing Office website.

During this fiscal year, the Board welcomed several new members, some members were reappointed, and some members left the Board for other professional opportunities or retired from professional life. I thank all members for their commitment and service. In particular, I acknowledge the retirement of long-term valued Board members, Dr. K.C. Wong, Honourable Frank Cole, and Cheryl Vickers.

Staff

The Board's staff are a vital and integral part of the team and the operation of the Board:

Manager of Finance and Operations
Andrea Nash

Board Staff
Johanna Barbosa
Karly Betsworth
Shannon Drummond
Jacqueline Nash
Charlotte Richardson
Danyka Wadley
Laura Weninger

Organizational Chart