

Mental Health Review Board

2018/2019 ANNUAL REPORT

July 2019



MANDATE

Our mandate 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*. We have a duty to give patients fair, timely, and independent reviews of their loss of liberty.

VALUE STATEMENTS

Procedural Fairness of Hearings

We will conduct procedurally fair hearings. We will ensure that patients have a meaningful opportunity to be heard. Our decisions will be independent, reasonable, timely, and issued with clear and logical reasons.

Patient-Oriented Service Excellence

We will deliver services that are, at all times, accessible and in the best interests of patients. Our services will be fair, inclusive, and effective. At every stage of our process, we will be responsive, flexible, and sensitive to the needs of the vulnerable public who seek our services.

Public Confidence and Accountability

We will exhibit the highest standards of public service integrity and professionalism. We will be leaders in administrative justice that reflects best practices across Canada. We will be accountable and transparent. We will be financially responsible and balance our budget.

Access to Justice and Innovation

We are committed to improving access to justice in British Columbia. We will strive to develop new efficiencies and innovative solutions in delivering our services. We will continually improve how we deliver our services to ensure that we are fulfilling our legislative mandate.

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Message from the Chair

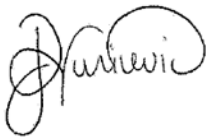
I am pleased to present the Annual Report of the British Columbia Mental Health Review Board for the fiscal year April 1, 2018 to March 31, 2019, submitted in accordance with s. 59.2 of the *Administrative Tribunals Act*. I am accountable for the results as reported.

Our Board is committed to improving access to justice for all British Columbians. Our innovations and improvements are guided by the following values:

- Procedural Fairness
- Patient-Oriented Service Excellence
- Public Confidence and Accountability
- Access to Justice Innovation

We proudly endorse the [Access to Justice Triple Aim](#) which guides our innovation efforts. Our focus is to improve the accessibility of services to the most vulnerable members of our province.

I would like to thank our Board staff and adjudicators for their hard work and professionalism during another exciting year of change. We have achieved many milestones in our restructuring efforts. We have embraced our administrative justice community through colocation and collaboration and together we work towards shared resources and cost savings. Our Board staff espouses our commitment to public service, and it is a great privilege to work with them. Together, we are proud to serve British Columbians.



Diana Juricevic
Chair
July 10, 2019

Board Team

BOARD MEMBERS

Our Board is committed to diversity and we are consciously working to promote the diversity of our Board membership. The Board currently has a complement of 99 members, including the Chair, who are all appointed in accordance with the *Mental Health Act* (the Act) and the *Administrative Tribunals Act*. In terms of gender diversity, the Board is balanced. The details and the biographies of the members can be found on the Crown Agencies and Board Resourcing Office [website](#).

The Board members are independent decision-makers. They hold a variety of professional backgrounds, including legal and medical, with expertise in mental health. Our members and staff work together closely to ensure that timely, fair and professional services are delivered.

PROFESSIONAL STAFF

Our staff are a vital part of the organization. They are an integral part of our professional team and the operation of the Board:

Deputy Registrar

YJ Lin (partial year)

Manager of Finance and Operations

Andrea Nash

Board Staff

Johanna Barbosa (partial year)

Karly Betsworth (partial year)

Shannon Drummond (partial year)

Surindar Jhavar (partial year)

Jacqueline Nash (partial year)

Charlotte Richardson (maternity and parental leave)

Jackson Runkle (partial year)

Laura Weninger

Board Operations

Purpose and Process

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 *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 our 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.

All Board members including the Chair are appointed by the Minister under the *Act*. Currently, the Board has 99 members living in various locations throughout the province. 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. 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.

Strategic Direction

With the cooperation of our stakeholders, and the dedication of our team, the Board achieved many milestones in the past year. These plus many others were part of the restructuring plan.

- *New Rules of Practice and Procedures;*
- *New Practice Directives;*
- New Form 7 simplifying the application process for patients;
- Constructive solutions to the majority of concerns raised in the [Community Legal Assistance Society report](#), entitled, “Operating in Darkness: BC’s Mental Health Act Detention System”, released to the public in November 2017;
- New patient-oriented website at www.bcmhrb.ca;
- New training materials and hearing handbook for Board members;
- First annual training session on procedural fairness for Board members hosted in conjunction with the *Ombudsperson Prevention Initiatives Program*;
- Recruitment, orientation and training of 38 new members to the Board;
- Completion of a Ministry initiative collocating five tribunals in a shared workplace that promotes collaborative working relationships, mobile and remote work styles;
- Modernizing operations through technology and transitioning to a paperless office;
- Planning, development and implementation of a new case management system.

The Board is committed to the completion of the following initiatives:

- Implementing the Access to Justice Triple Aim Framework;
- Continuing broad and extensive consultations with stakeholders to improve the *Rules of Practice and Procedure* and *Practice Directions*;
- Improving the quality and transparency of the mandatory review process;
- Working with the Ministry of Attorney General to implement the new case management system, which is expected to be complete in August 2019;
- Completing the restructuring of the Board to align with mandate and values;
- Improving accountability by eliminating any potential conflicts of interest in the funding model, which include working with the Ministry of Attorney General, Ministry of Health, and Ministry of Mental Health and Addictions to find appropriate funding model for physicians representing the health facilities at review panel hearings;
- Continue our work with stakeholders to find solutions to the remaining concerns raised in the [Community Legal Assistance Society report](#), entitled, “Operating in Darkness: BC’s Mental Health Act Detention System”, released to the public in November 2017;

Our Board is committed to fairness in public service delivery. We will provide a fair service, fair process, and fair decision. We will continue to explore innovative ways to improve our services and ensure the highest quality of adjudication.

Board Metrics

PERFORMANCE STANDARDS

Performance standards keep us focused on providing our public with fair, effective, and timely services. Having standards means that we know when and where we need to improve. Some of our performance measures are set by legislation, while others reflect our commitment to our 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.

Our new case management system will help us establish and monitor a set of key performance measures that objectively quantify and demonstrate to the public how well we are fulfilling our mandate. Our focus will be on ensuring the procedural fairness of hearings and the highest standards of adjudicative integrity.

We are appreciative to the Tribunal Transformation Office for their assistance and guidance with the development of the new system.

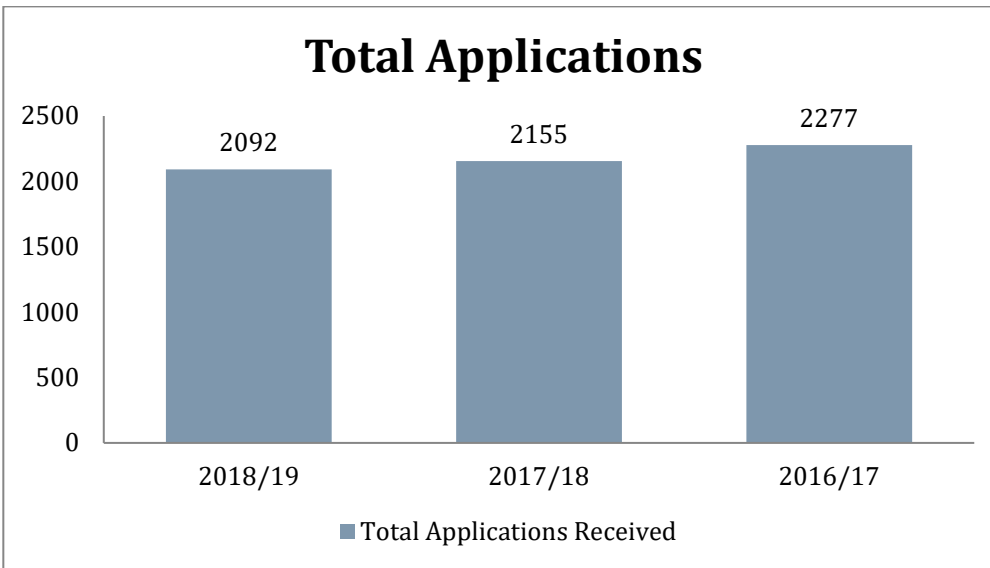
CURRENT STATISTICS

The Board had traditionally collected statistics on a calendar year basis, rather than on a fiscal year basis. As part of our improvement efforts, we have chosen to report this year on a fiscal year basis which is consistent practice across the administrative justice sector.

Caseload

The Board has no control over the number of applications it receives in any given year. Caseloads have been relatively stable over the past three years. This past fiscal year, the Board received a total of 2092 applications, of which 820 proceeded to a hearing on the merits. It is important to note that approximately 10% of the original applications in the past fiscal year were postponed by patients for a variety of reasons. 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 proactively working with stakeholders to explore solutions to reduce the number of cancellations and enhance access to justice.

The Board expects the caseload to remain stable or slightly increase in future years due to a number of recommendations made in the report which was recently issued by the Office of the Ombudsperson on 7 March 2019 entitled *Committed to Change: Protecting the Rights of Involuntary Patients under the Mental Health Act*.

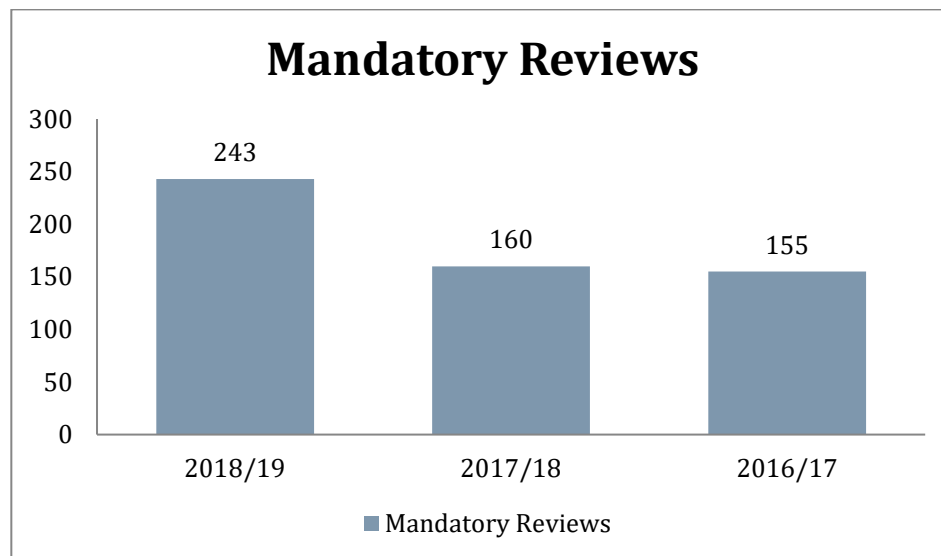


Mandatory Reviews

The mandatory review process is essential for access to justice for the most vulnerable of outpatients who have been involuntarily detained for over one year.

The Board is required by statute to review the treatment records of any patients on extended leave who have been involuntarily detained for more than one year, and who have not requested or had a review panel hearing during that period. The Board Chair conducts a mandatory review of the patient's records to determine whether to order a hearing. The screening threshold is whether there is a reasonable likelihood that the patient would be discharged if a review panel hearing was held. This provides a statutory guarantee that the file of each involuntary patient will be reviewed on an annual basis.

The Board has made concerted efforts to promote accountability among stakeholders. As a result, there has been a significant increase in the number of mandatory reviews over the past fiscal year. The Board continues to improve the screening process for mandatory reviews. This includes creating safeguards to ensure that all mandatory review files are received, reviewed in a timely manner, and that adequate reasons are provided for the decision of whether to order a hearing in the circumstances.

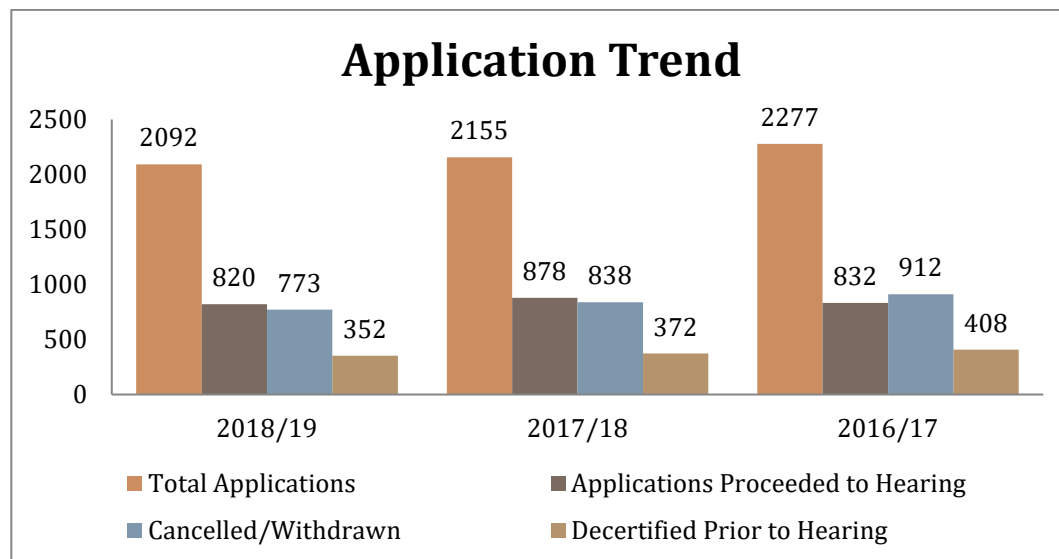


Hearings

An area of concern for the Board are the number of applications that do not proceed to a hearing. While comparable to previous years, only 39 percent of applications proceeded to a hearing this past fiscal year. 61 percent of hearings were cancelled.

Although a patient can withdraw their application at any time prior to the commencement of the hearing, it is the Board's view that such a high cancellation rate identifies an access to justice issue. With a new case management system, the Board will be closely monitoring and reporting on this issue.

Fiscal Year	Applications proceeded to hearings		Cancelled or Withdrawn by patients		Decertified prior to hearing		Others		Total applications
	#	%	#	%	#	%	#	%	
2018/19	820	39%	773	37%	352	17%	147	7%	2092
2017/18	878	41%	838	39%	372	17%	67	3%	2155
2016/17	832	37%	912	40%	408	18%	125	5%	2277

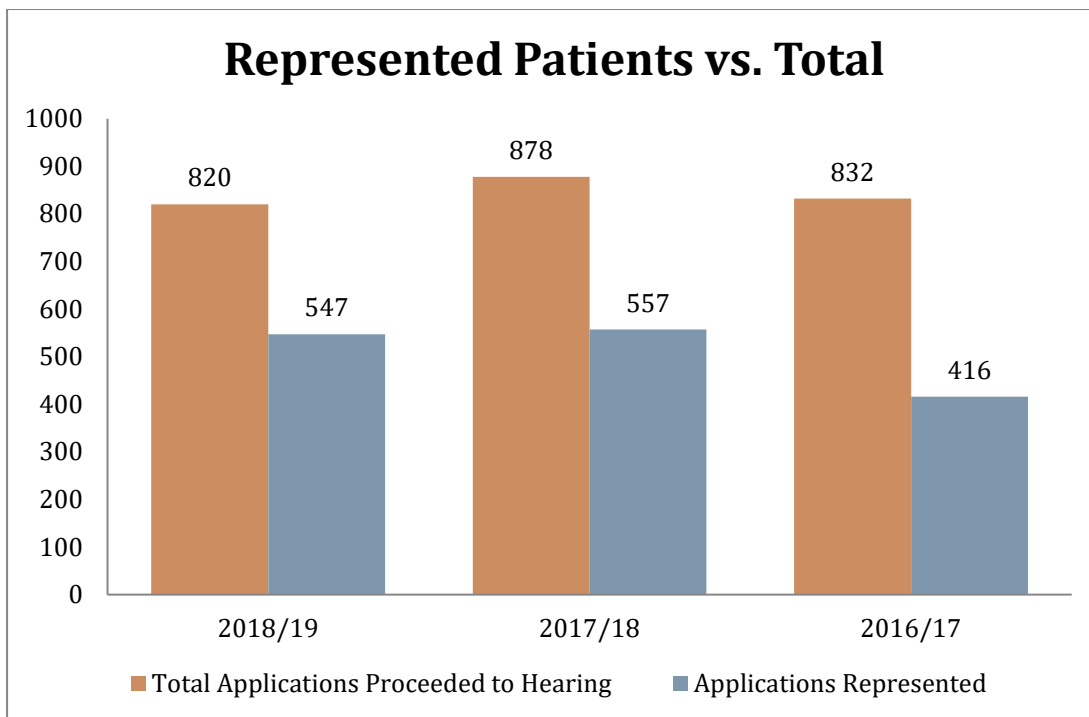


Our Board is actively seeking to reduce the number of hearing cancellations and withdrawals. The 2017/18 fiscal year was the first year where the number of applications that proceeded to a hearing exceeded the number of cancellations and withdrawals. The 2018/19 fiscal year continued this trend.

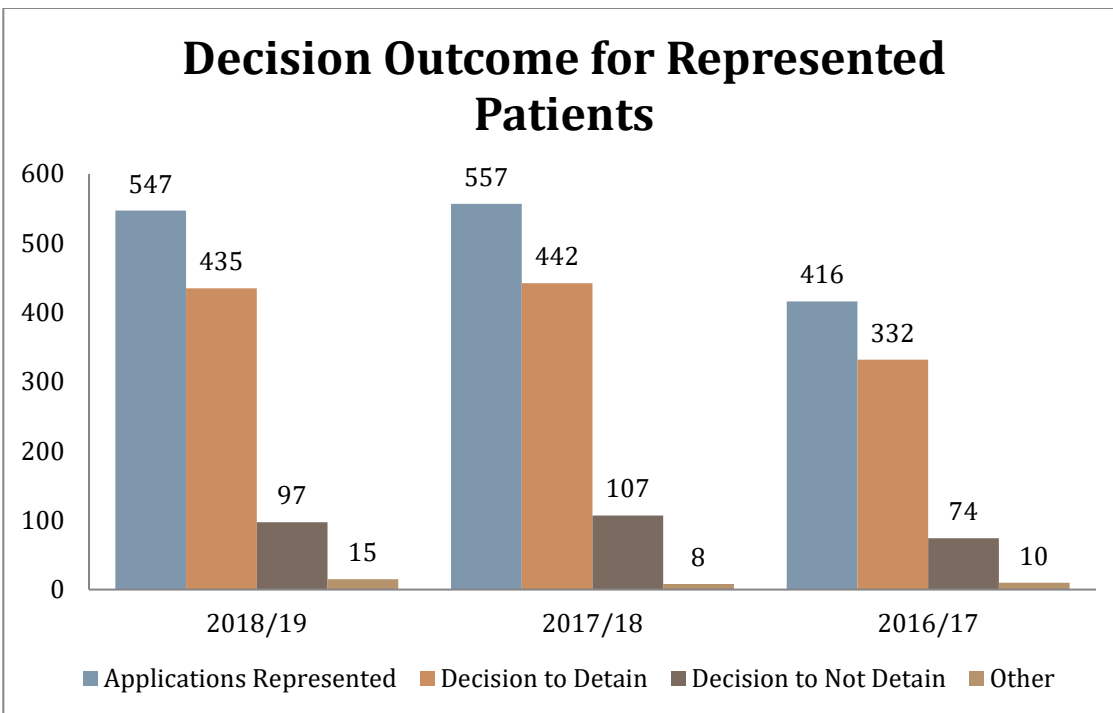
Legal Representation

Our Board is committed to ensuring that patients have meaningful access to rights advice and legal representation. We applaud the government's announcement to provide more advocates for mentally ill patients. The Board welcomes all initiatives that provide patients a meaningful opportunity to be heard in legal proceedings.

Fiscal Year	Patients represented		Decision Outcome						Total Applications Proceeded to Hearing
	#	%	Detained		Not Detained		Other		
			#	%	#	%	#	%	
2018/19	547	67%	435	53%	97	12%	15	2%	820
2017/18	557	63%	442	50%	107	12%	8	1%	878
2016/17	416	50%	332	40%	74	9%	10	1%	832



The trend is moving in the right direction. Last year, 67% of the patients were represented by legal advocates, compared to 63% in 2017/18, and 50% in 2016/17.



The correlation between legal representation and outcomes remains stable. Over the past two fiscal years, an average of 18.5% of patients who were represented by legal advocates during hearings receive a favorable decision not to continue their detention, which is a slight increase from 18% in 2016/17.

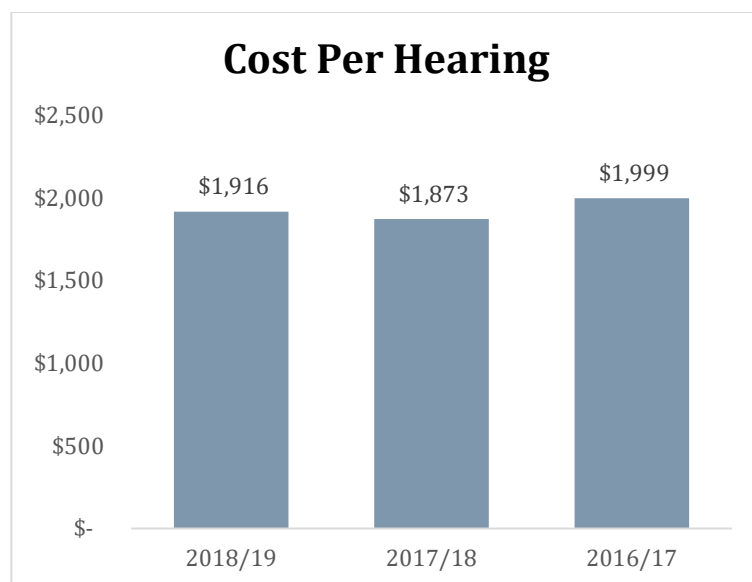
Cost per Hearing

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.

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, we have implemented practices to reduce the number of cancellations 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, travel expenses and interpreting services. Over the past three years, the cost per hearing has been relatively stable despite mandatory increases in member remuneration, and the cost associated with training 38 new members in the 2018/19 fiscal year.

Fiscal Year	Hearings Proceeded	Member Related Cost	Cost Per Hearing
2018/19	820	\$1,571,347	\$1,916
2017/18	878	\$1,644,173	\$1,873
2016/17	832	\$1,662,872	\$1,999

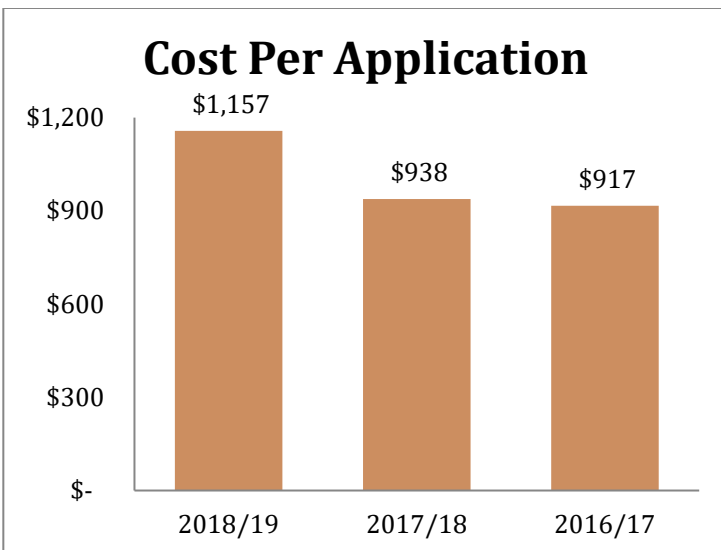


Cost per Application

The cost per application encompasses all areas of expenditures from the early stage of receiving the application to post hearing administration and record retention. The cost per application in the 2018/19 fiscal year was slightly higher than in the two preceding years. The Board expects these costs to stabilize over the coming years.

The slight increase partially results from the Board's restructuring efforts to improve access to justice and procedural fairness (see Financial Disclosure section for more details). For example, the Board is providing patients with information on how to appeal its decisions. For the first time in decades, two patients appealed decisions to the BC Supreme Court. The Board expects more judicial reviews and s. 33 applications, as part of its efforts to promote transparency and accountability. While the Board will complete restructuring by the end of this year, there will be future costs associated with member training and maintenance of a new case management system.

Fiscal Year	Total Applications	Total Cost	Cost Per Application
2018/19	2,092	\$2,420,841	\$1,157
2017/18	2,155	\$2,021,568	\$938
2016/17	2,277	\$2,087,398	\$917



FUTURE STATISTICS

The Board's new case management system is integral to its efforts to improve transparency and accountability. The Board aims to generate future statistics on the following:

- Cost per case by geographic location
- Number of applications/hearings per capita of involuntary patient population
- Hearing cancellation rate by facility or health authority
- Patient reasons for cancellation/postponement
- Patient discharge rate by facility or health authority
- Time to hearing/resolution for cases heard
- Legal representation on outcome of cases heard

These future metrics will hold us accountable to the public and assist our Board in identifying opportunities for improvement and innovation.

Financial Disclosure

BOARD OPERATING COSTS

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	629,696	407,000	(222,696)
Supplementary Salary & Benefits	172,887	112,936	(59,951)
Member Fees and Costs Associated with Hearing	1,571,347	1,221,064	(350,283)
Professional Services	26,320	0	(26,320)
Information Services	3,628	1,000	(2,628)
Office and Business Expenses	16,963	10,000	(6,963)
Total	2,420,841	1,752,000	(668,841)

The Board's total expenditures for fiscal 2018/19 were higher than the previous two years. This increase was projected and reported throughout the year. While some of the increased costs were one-time expenditures resulting from restructuring, the majority were regular costs associated with standard operations such as the recruitment and training of 38 new members, facilitating a province wide training session for members using a cost effective web format, training and alignment of staffing, cross-appointment of members to create accessibility in out-of-town locations, and the assistance of the legal services for judicial reviews.

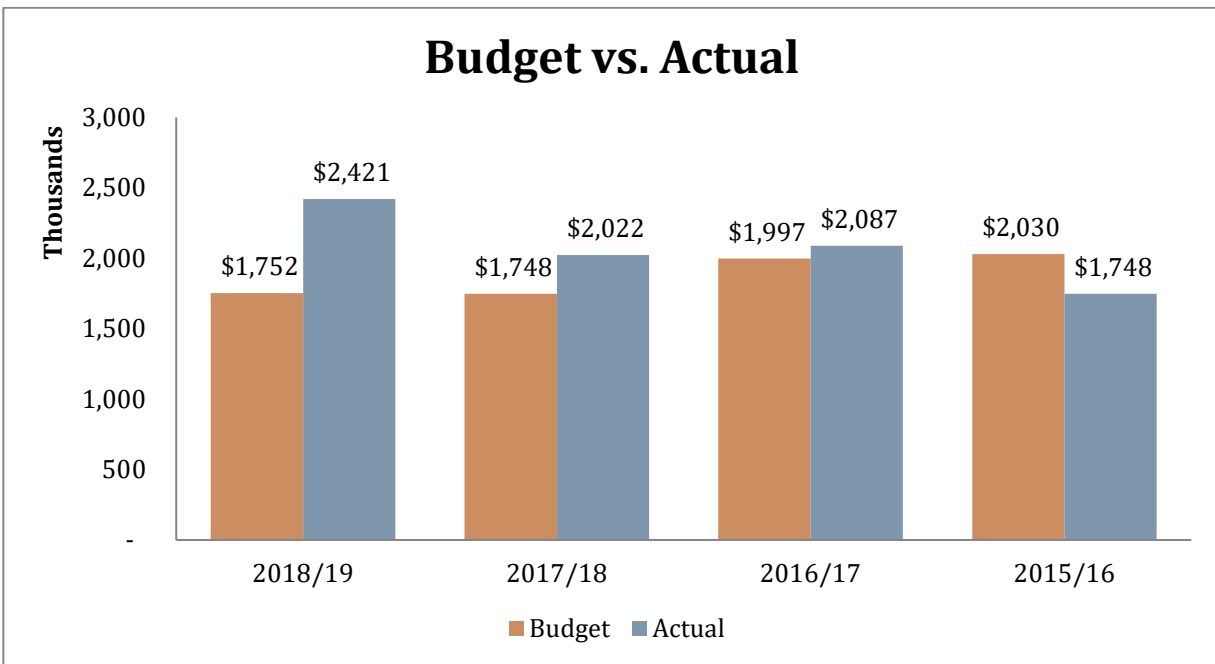
As previously mentioned, expenditures associated with conducting hearings remained consistent with previous years. 65% of the budget is expended in costs directly related to conducting hearings. The second major area of expenditure is salaries and benefits. In 2018/19 the Board underwent a realignment of staffing; review of positions and classifications, a one-year maternity/parental leave, and the addition of a mandatory review clerk and a full-time salaried member.

The Board is appreciative to receive a budget lift for the 2019/20 fiscal year that supports both the restructuring plan and the standard operating expenditures required to fulfill our mandate. The Board would like to thank the Ministry of Attorney General's financial management team and the Tribunal Transformation Office for their support in facilitating this increase in funding.

TRENDS AND OPPORTUNITIES

The Board is close to completing its restructuring efforts which started in September 2017. We will be onboarding a new case management system, refreshing our information systems, completing the transition to a paperless office and facilitating an annual member training session. As it relates to case presenter fees, we will explore a funding model that aligns with our role as an independent administrative justice tribunal. We will continue to explore innovative ways to reduce and eliminate inefficiencies in our operations.

Fiscal Year	Budget	Actual	Variance	
			Actual vs Budget	Budget vs 2015/16 budget
2018/19	\$1,752,000	\$2,420,841	\$(668,841)	\$(245,000)
2017/18	\$1,748,000	\$2,021,568	\$(273,568)	\$(282,000)
2016/17	\$1,997,000	\$2,087,398	\$(90,398)	\$(33,000)
2015/16	\$2,030,000	\$1,747,983	\$282,017	Base year



Appendix A – Organizational Chart

