Mental Health Review Board

ANNUAL REPORT 2019/2020

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Message from the Chair

I am pleased to present the Annual Report of the BC Mental Health Review Board for the fiscal year April 1, 2019 to March 31, 2020, submitted in accordance with s. 59.2 of the *Administrative Tribunals Act*.

Our Board was created 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 way 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.

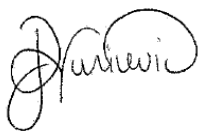
Since I began my term as Chair, we have made access to justice our top priority. Access to justice matters because the laws that set out whether patients should be discharged from involuntary status are very technical. Even lawyers have problems understanding them. But everyone has a right to know how laws affect them. And everyone should be able to understand how to challenge decisions that affect their liberty.

This is why we keep working to redesign our process around the needs of the people we serve. This is the first theme in our report. The second theme is accountability. We proudly endorse the Access to Justice Triple Aim which guides our renovation efforts. Our Board is grounded in these foundational values:

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

Change is not easy but the real work has already begun. I express my heartfelt thanks to everyone serving on our Board. You are working hard to make improvements. You have met the unprecedented challenges of Covid-19. Throughout, you continue to serve our public with integrity and compassion. This is reflected in the many gestures that show you care.

It has been a privilege to serve you as Chair over the past three years. As my term comes to an end, I look forward to passing the torch to the next leader. As a society, we are measured by how we treat the most vulnerable among us. We believe that fair and accessible justice is at the heart of our democracy. May we continue to do the hard work that is necessary to improve access to justice for all British Columbians. Until we meet again.



Diana Juricevic
Chair

September 9, 2020

Fairness and Access

Our Board is committed to improving fairness and access to justice.

Our commitment to Fairness

We strive to ensure the Board delivers fair services, processes, and decisions. These are the procedural, substantive, and relational aspects of fairness that matter to us.

A fair process refers to the process our Board follows to make decisions. A fair process has an impartial and unbiased decision maker. It allows people to be heard in processes that affect them. This includes knowing in advance that a decision will be made, clear information about the legal test and what to expect during a hearing, and a meaningful opportunity to be heard and present their case.

A fair decision refers to the decision itself and includes applying the legal test and considering individual circumstances to reach a fair outcome for the person affected. It also includes providing clear and meaningful reasons to support the decision.

A fair service refers to how a person is treated in their interaction with the Board. If a person feels that they were treated honestly and with respect then they may feel good about the service they received even in the face of an adverse outcome.

Our commitment to Access to Justice

There are three ways that we are seeking to improve access to justice at our Board. We want to improve population access to justice. We want to improve the experience of those who use our services. We want to improve how we spend the money we have been entrusted to spend by the public.

At a population level, our Board is trying to reduce the barriers faced by British Columbians with mental health issues who want to appeal decisions made by their physicians to detain them involuntarily in provincial mental health facilities. At an individual level, our Board is trying to improve the experience for participants in our hearings. Our Board should continually improve how we serve our public. At an operational level, we want to ensure the operations of our Board are administered in the most efficient and effective manner to provide quality services. This requires reviewing and analyzing all aspects of the operations to reduce unnecessary costs and improve quality of services.

What have we done?

Over the past three years, these are the steps that we have taken to achieve these goals:

Procedural Fairness and Quality of Service

- New rules of practice and procedure.
- Seven new practice directions:
  - Guidelines for Patient Representatives

  - Guidelines for Disclosure
  - Guidelines for Designated Facilities
  - Guidelines for Case Presenters
  - Guidelines for Case Notes and Helpful Tips
  - Guidelines for Children in Hearings
  - Guidelines for Mandatory Review Process
- A new series of four training videos, Best Practices for Conducting Hearings
- Updated training manuals for legal members, medical members, and community members
- Regular meetings with public parties
- Public workshops and information sessions to educate the public on the new process
- New hearing handbook for Board members
- Developed a full orientation program for new Board members
- Annual training program for all Board members and staff

Board Integrity and Independence

- Created a Code of Conduct
- New and simple forms on how to participate in a hearing
- Restructured intake, mandatory review, and post hearing administration
- Established a complaints process
- New and simple information sheets on how to complain or file an appeal
- A new website
- Started issuing annual reports
- Established remuneration policy for Board members
- Established a three-year fiscal plan outlining operational and restructuring costs and means to reduce the deficit and comply with Ministry budget allocations

Transformational Change

- Advocated for legislative amendment that enables the recruitment of retired medical practitioners to serve as medical members on the Board
- Recruitment of members to improve diversity
- Restructuring of staffing to improve morale and operational efficiency
- Training and workshops for staff to support a healthy and respectful workplace
- Onboarded new technology including a new case management system that enables a paperless and mobile workplace
- Co-located with five other administrative justice tribunals, moving the Board office from New Westminster to Vancouver

What can we do better?

Most of this report will be focused on answering this question.

To begin with, we need to do a better job of collecting and publishing our metrics. A concept like Access to Justice is hard to measure in practice. We need to use practical indicators. This is why we are following the Access to Justice Triple Aim framework that is being supported and followed in British Columbia. Our new case management system is helping us create and measure what we are doing and what can be done better.

We onboarded a new case management system in November 2019. This has impacted our ability to show you some data because it was housed in two places. The data from April 1, 2019 to November 2019 was housed in the old legacy system. The data from November 2019 to March 31, 2020 is housed in the new case management system.

The information presented in this report relies on data pulled from both systems. The new system is more robust with the ability to compile data that was not accessible in the old legacy system. In some areas, we are only able to offer a smaller sample size, a "five-month" picture rather than a "twelve-month" picture. We are accounting for a 0.5% margin of human error where manual calculations were necessary.

Performance standards keep us moving forward. 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*:

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.

The Board has met the last two performance measures. All review panels issued determinations and reasons within the legislated deadlines. Although the Board is technically meeting the first performance measure, we believe that there is a problem because too many hearings are being held outside of legislated timeframes due to postponements. This is discussed further below.

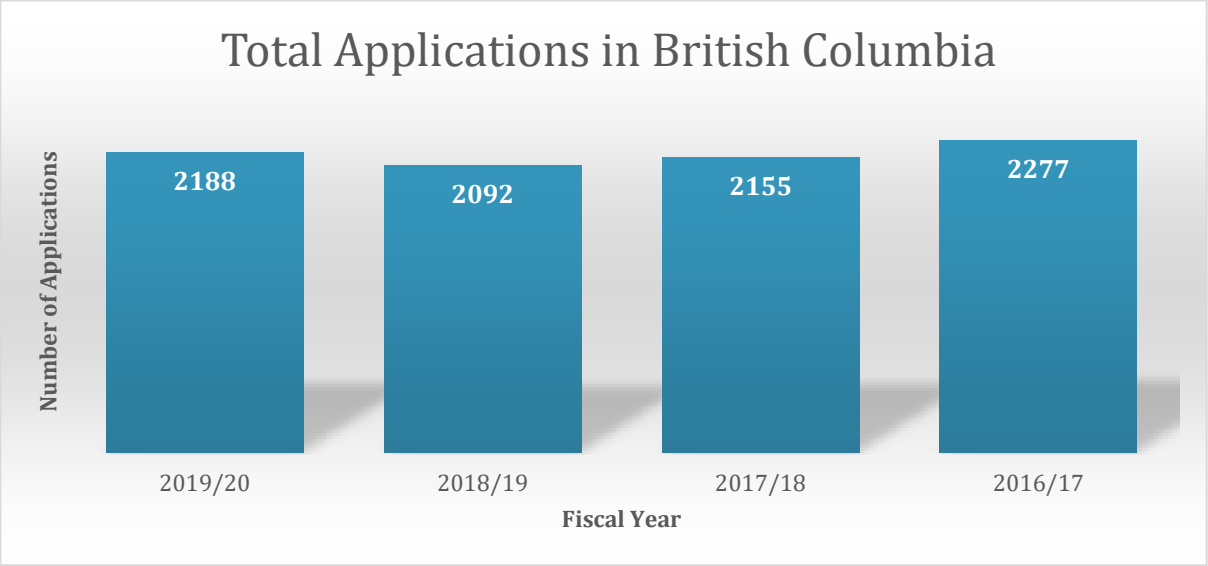
Operations

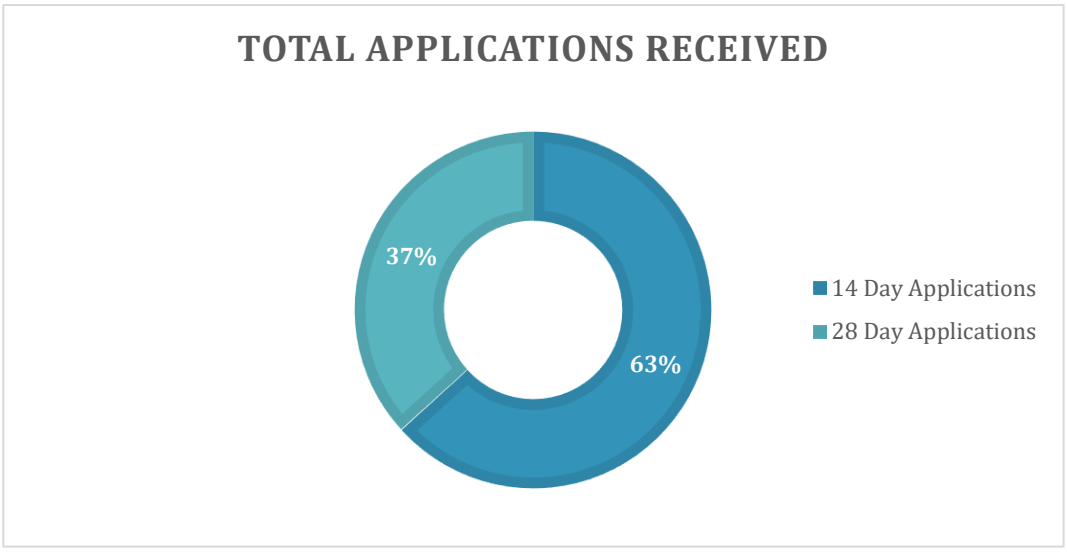
APPLICATIONS

We recognize that only some of the people involuntarily detained under the *Mental Health Act* will challenge their certifications.

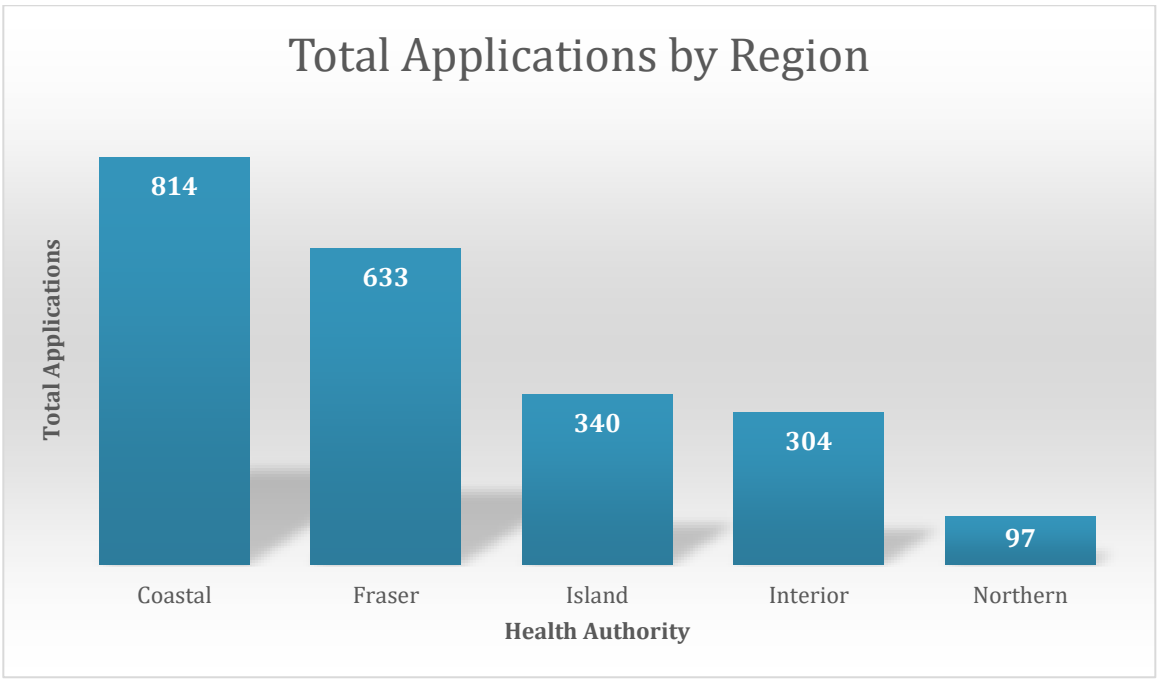
One way to measure whether we are improving population access to justice is to measure the number of involuntary detentions across the province against the number of applications we received. In other words, when involuntary detentions increase across the province, the number of applications for hearings should increase too. If they increase at the same rate, then the access is stable. If they increase at different rates, then the access is either improving or getting worse.

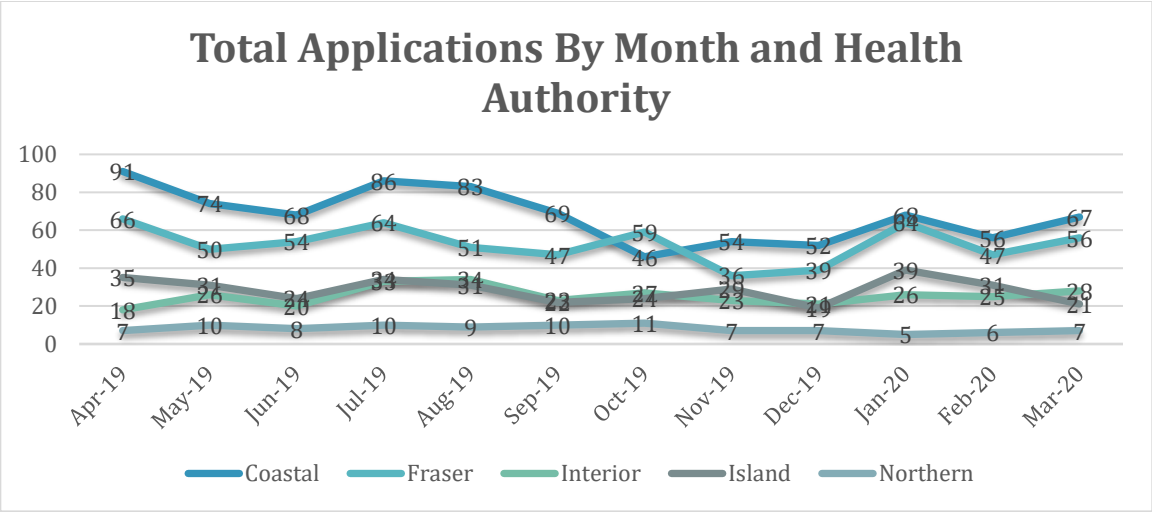
The trend that we are seeing is a decrease in population access to justice. Although we do not have the exact numbers, we know that the number of people who are involuntarily detained under the *Mental Health Act* is increasing, while the number of applications received by us remains consistent with previous years. This past fiscal year, the Board received a total of 2188 applications, of which 820 proceeded to a hearing on the merits.





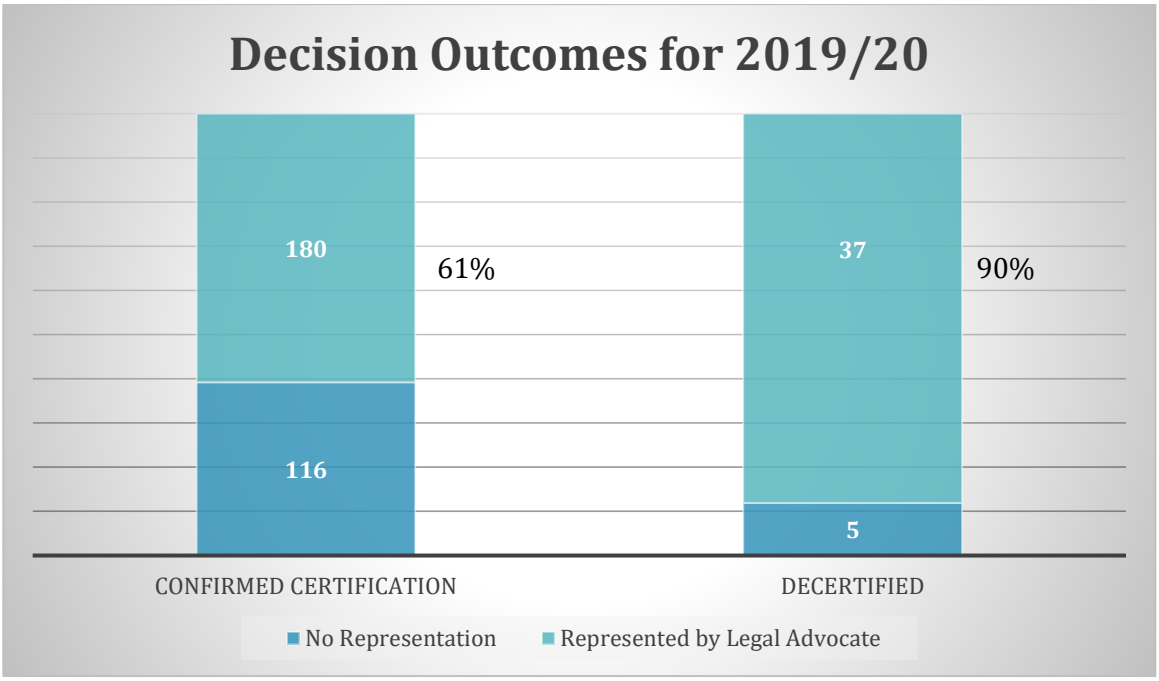
There are two kinds of applications that the Board receives. One application requires the Board to schedule a hearing within 14 days, and the other application requires the hearing to be scheduled within 28 days. The amount of time the Board has to schedule a hearing depends on the length of a patient's certification. The majority of the applications have been received from patients on shorter certification cycles (63%). In terms of geographic regions, the majority of the applications come from the Vancouver Coastal Health Authority (37%) and Fraser Health Authority (29%).





The Board wanted to know whether requests for hearings fluctuate over seasons or geographic locations. The sample size is too small for the Board to draw any meaningful conclusions. However, this chart shows the total number of applications we received broken down by month and geographic location. In future, it may be useful to measure whether there are any seasonal fluctuations in hearings, and if so, whether they reflect fluctuations in certifications.

DECISION OUTCOMES



The data drawn from the new case management system, which is a smaller sample size of five months, shows that 12.4% of patients were decertified. Of those patients who were decertified, 90% of them were represented by a legal advocate.

MANDATORY REVIEWS

A patient can request a hearing at any 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.

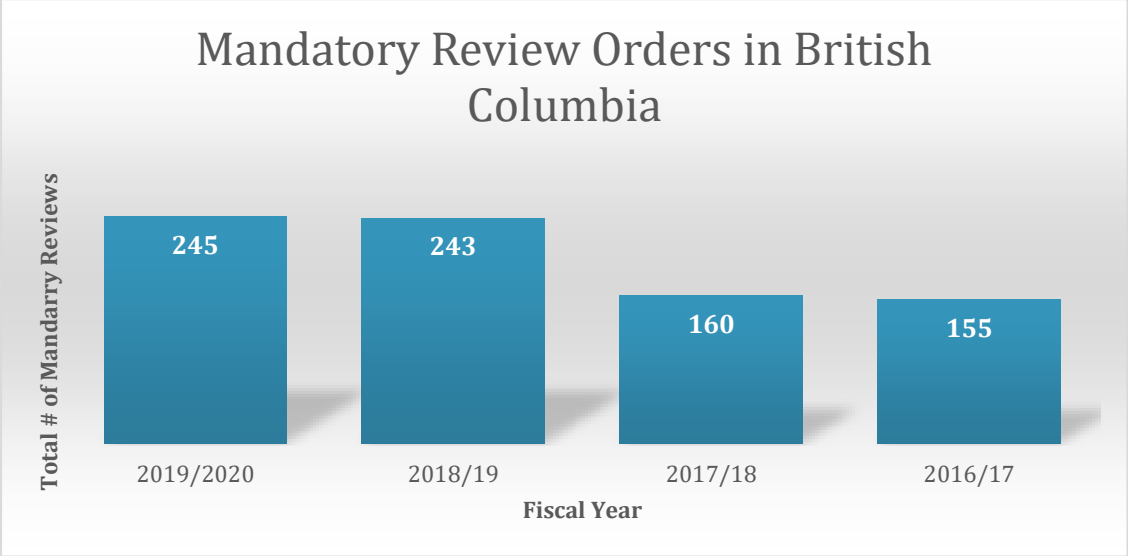
Section 25(1.1) of the *Mental Health Act* requires a mandatory review of the treatment records for all patients who are on extended leave for 12 or more consecutive months when no hearing has been held during this time. This process is meant to safeguard against long-term involuntary detentions.

The mandatory review process depends on cooperation with Health Authorities. The Board needs help with the following steps. First, the Board asks Health Authorities twice a year to provide a list of patients who have been on extended leave for 12 months or more ("patient lists"). The Board reviews the patient lists to determine which patients may be entitled to a mandatory review of their medical file. Second, Facilities must submit to the Board an Extended Leave Review Panel Hearing Directive ("Directive") for each patient who has been on extended leave for 12 months or more and who has not had a hearing or requested one during that period. Another Directive must be submitted to the Board after every 12 months a patient continues to be on extended leave and has not had a hearing during that time.

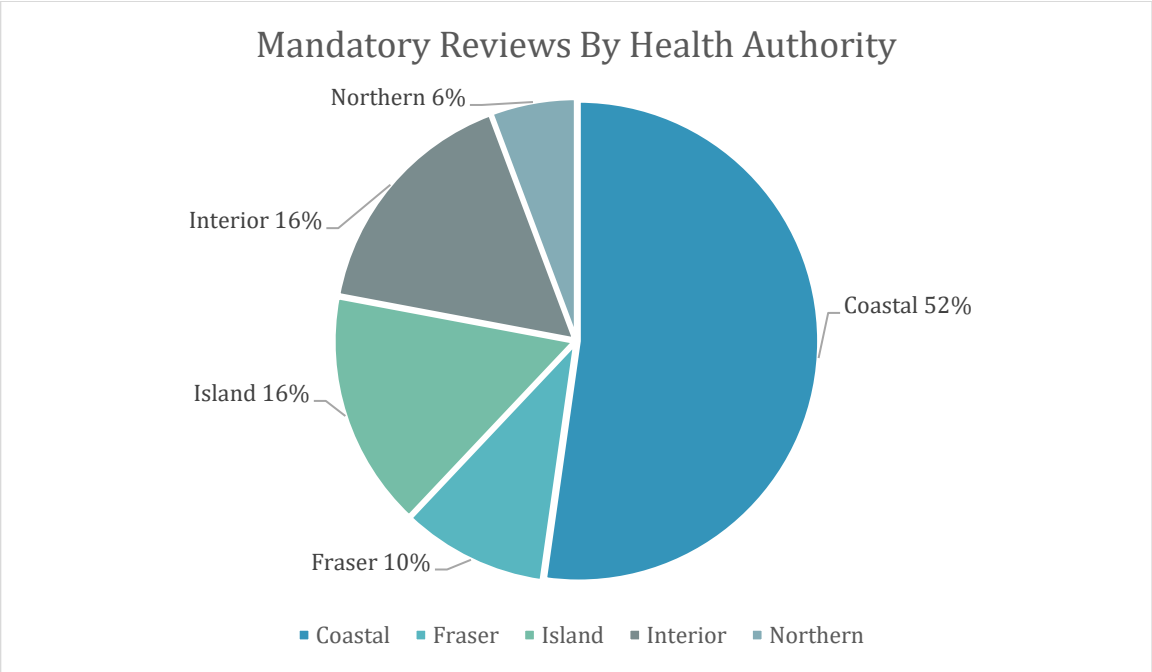
The Directive is how patients provide their guidance to the Board on whether or not they want their file reviewed. The Directive is also how facilities confirm to the Board that they have gone through the patients' rights with them. The Directive provides the patient with three options: request to have their file reviewed, waive their right to have their file reviewed, or request a review panel hearing.

A file review is conducted by the Board upon a patient's request or in the absence of a Directive being done. The Board requests treatment records from the facility in order to conduct a file review. The Board Chair reviews the patient's treatment record, assesses that record against the legal test set out in section 22(3) of the *Act*, and decides 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.

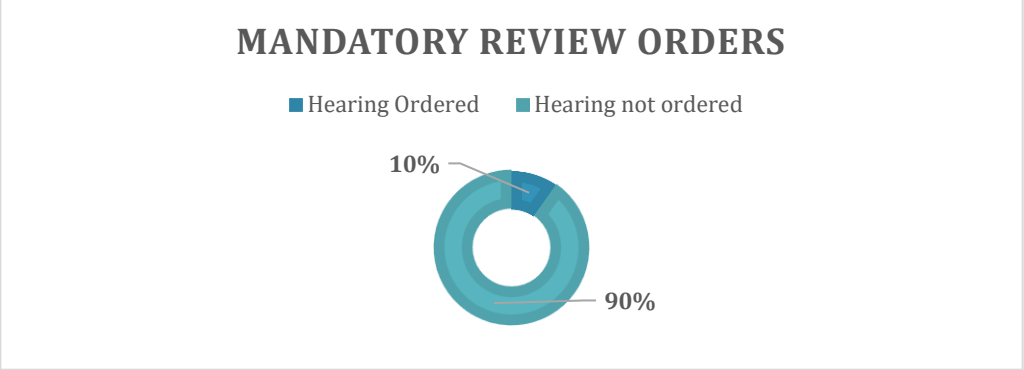
Based on data collected from the new case management system, which is a sample size of five months, the mandatory review process took an average of 17.5 days from the date the treatment records were received to the date the orders were sent.



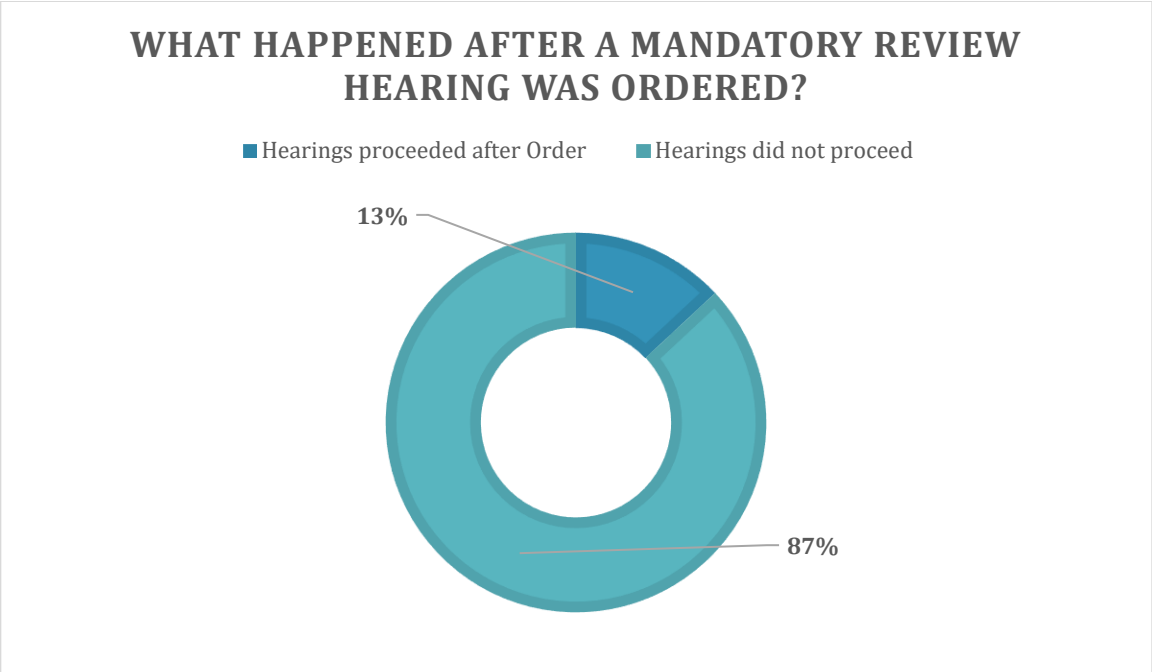
The total number of mandatory review orders issued this fiscal year is 245. The spike in orders issued from 2017/18 to 2018/19 reflects steps taken by the Board to improve compliance with requests for patients lists and treatment records. The Board would like to see an expanded process for collecting information on the Directive.



The number of mandatory reviews across geographic regions should be proportionate to the number of certified patients in those geographic regions who are on extended leave for 12 months or more. The Board does not have access to this data in order to assess population access to justice. This graph shows that 52% of mandatory reviews are done in the Vancouver Coastal Health Authority. This is more than the four other Health Authorities combined.



90% of mandatory reviews result in no hearings being ordered. This means that 10% of mandatory reviews result in a hearing being ordered. In other words, there is a reasonable likelihood that the patient would be discharged following a hearing in only 10% of mandatory reviews. Although this is not that far off from the 12.4% of patients who are decertified in hearings, the low percentage may indicate an access to justice concern if the screening threshold is too high or if there are other systemic barriers to access in this discretionary decision-making process.



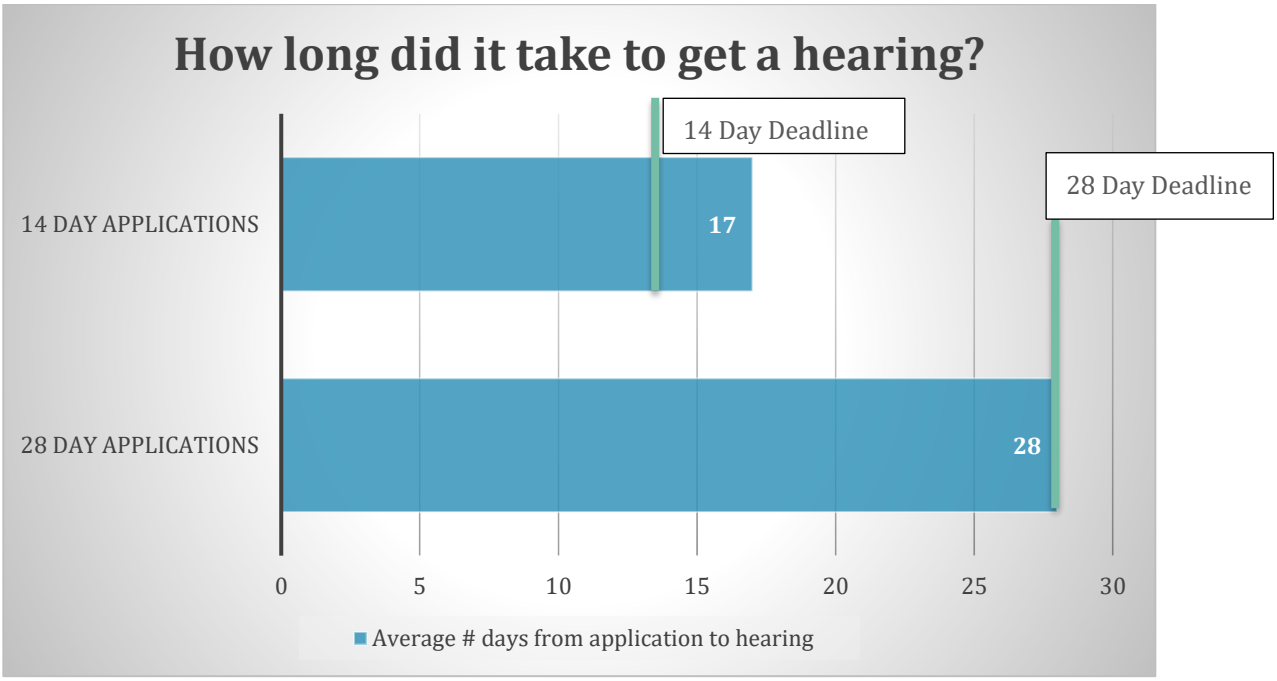
Of the mandatory reviews that ordered a hearing, only 13% of them went to a hearing.

Based on data collected from the new case management system, which is a sample size of five months, the review panel took an average of 5.5 days to issue reasons for their decision after a mandatory review hearing. This is compliant with the fourteen-day statutory deadline.

Mandatory review hearings did not proceed for two main reasons. First, 44% of the hearings did not proceed because the patient was decertified after the mandatory review order was sent. The remaining 43% did not proceed because the patient withdrew, and in a few cases, the hearing was postponed and ultimately cancelled because the patient could not be found.

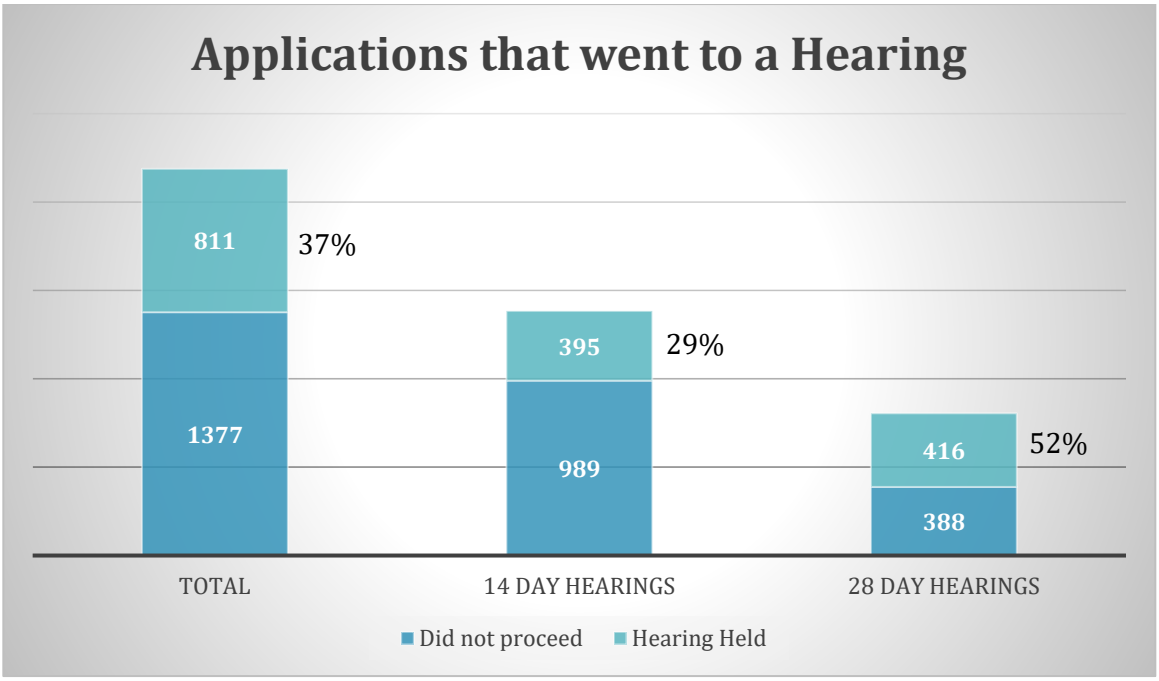
Improving Population Access to Justice

HEARINGS OUTSIDE STATUTORY TIMELINES

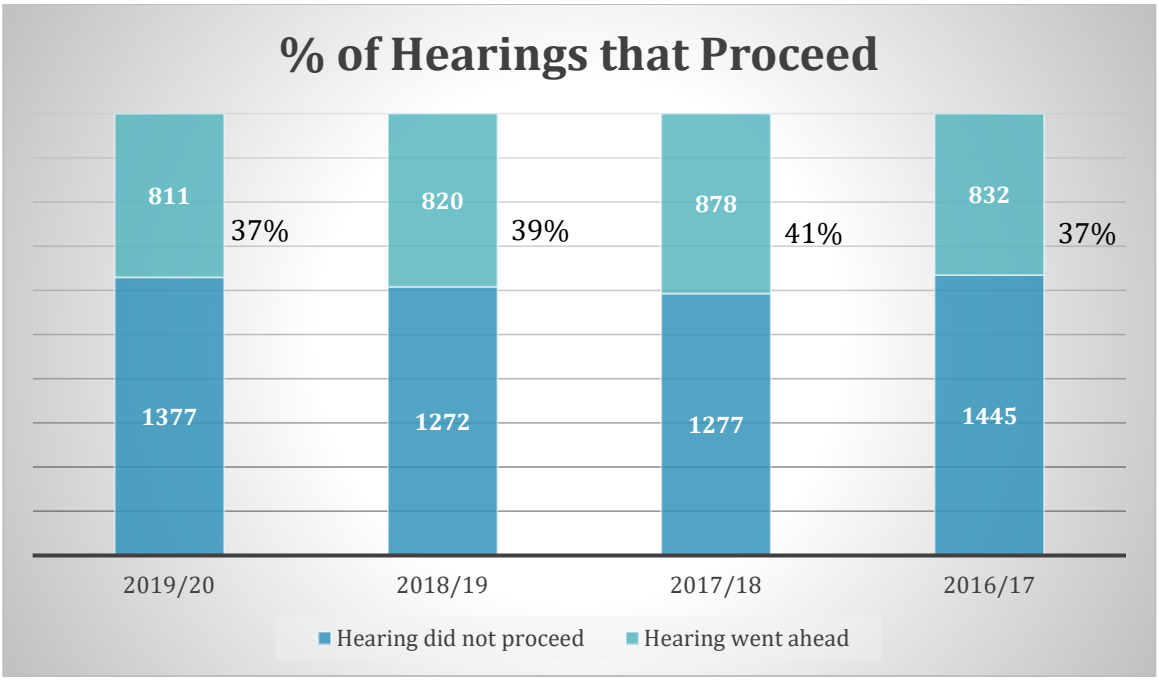


Hearings are taking place outside the legislated timelines. This is a problem. Although the Board always consults with parties and schedules hearings before the deadline, party-requested postponements are causing delays. For patients who are entitled to hearings within 14 days of asking for one, they are actually getting their hearing on average three days later. Although this may be due, in practice, to the number of patients who request postponements, our Board is very concerned about this statistic because it shows that we are not meeting the spirit of our mandate.

HEARINGS ARE NOT GOING AHEAD



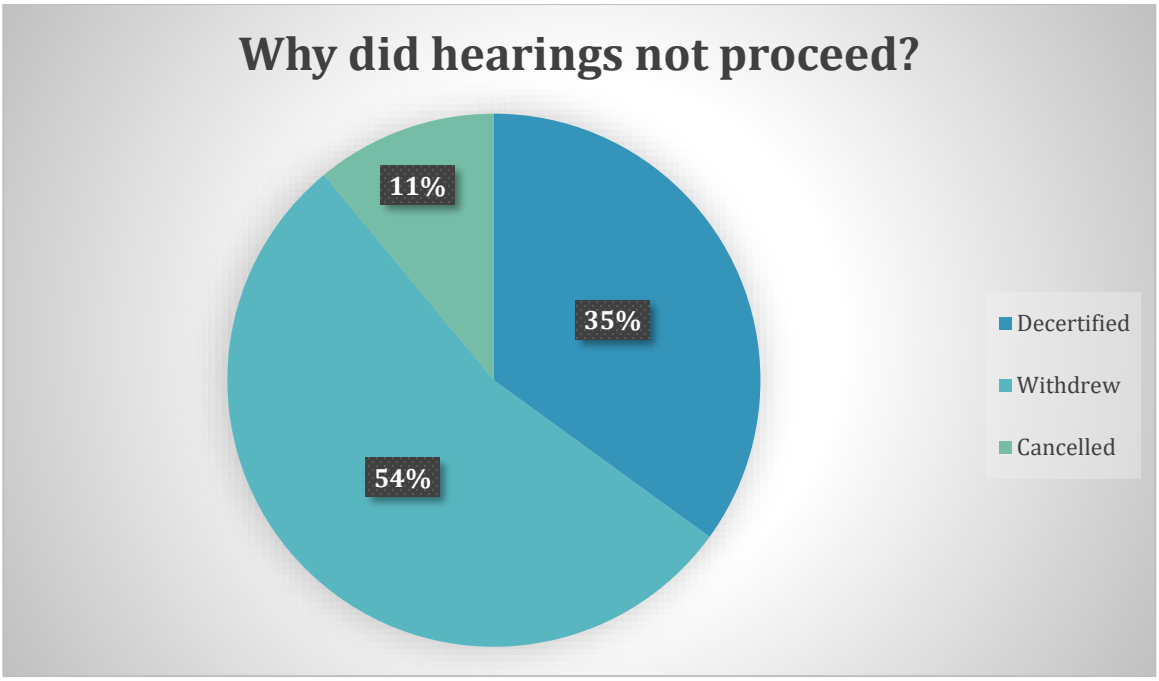
Our Board is concerned about the number of applications that do not proceed to a hearing. Only 37% of patients who applied for a hearing actually had a hearing. The patients who are on shorter certification cycles, and entitled to hearings within 14 days, are being disproportionately affected. Only 29% of them had the hearing they applied for. The Board wants to understand why.



Fewer patients proceeded to hearings they applied for this past year (37%) compared to the previous two years (39% and 41%). The trend is worsening over time.

Fiscal Year	Applications proceeded to hearings		Cancelled or Withdrawn by patients		Decertified prior to hearing		Others		Total applications
	#	%	#	%	#	%	#	%	
2019/20	811	37%	778	36%	485	22%	114	5%	2188
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

WHY DID HEARINGS NOT PROCEED?

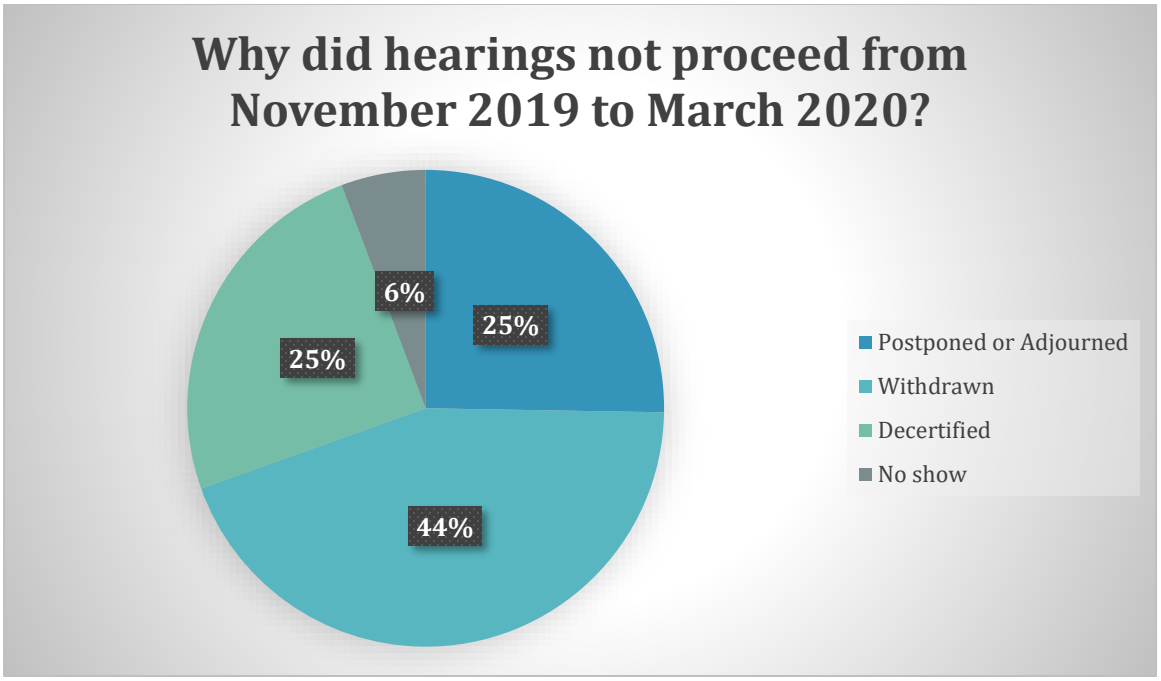


The Board has identified three main reasons why hearings are not going ahead.

First, of the hearings that did not proceed, 54% of them did not proceed because the patient withdrew. Patients can withdraw their applications at any time. Some certified patients are discharged from hospital and placed onto extended leave before their hearing so they decide to withdraw. The number of withdrawals may or may not raise an access to justice issue.

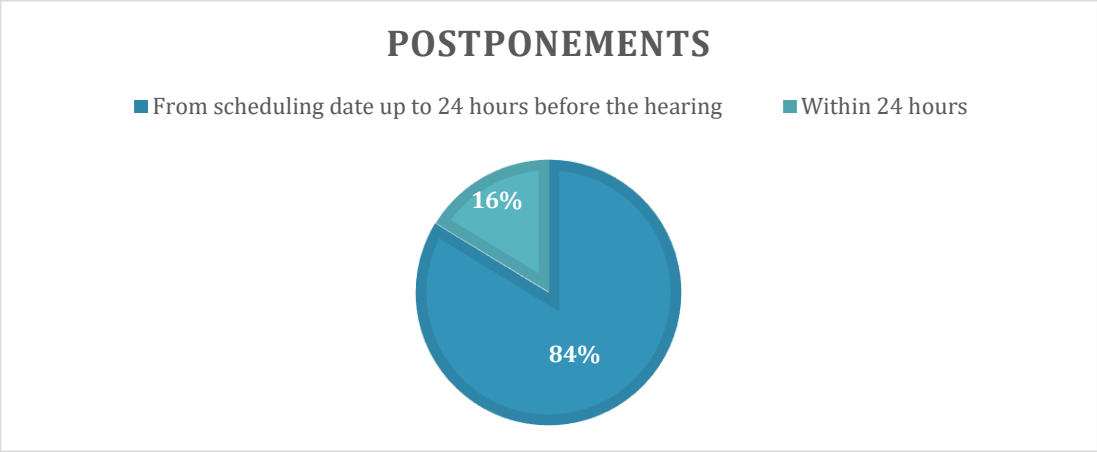
Second, of the hearings that did not proceed, 35% of them did not proceed because patients are being decertified after they have requested a hearing. This may or may not raise an access to justice issue. A decertification may show that treating physicians are being responsive to the needs of their patients. A decertification may also indicate an abuse of process. The Board would like to measure whether a patient is decertified and recertified in order to avoid a review panel hearing. The Board scheduling team reports that there is cause for concern but the Board was unable to publish reliable metrics. More work needs to be done on this issue.

Third, of the hearings that did not proceed, 11% of them are cancelled or do not proceed for other reasons such as a patient not showing up to the hearing or being ineligible because they already had a hearing in their certification period. The Board has proactively addressed this access to justice issue by assessing eligibility requirements on a case-by-case basis and granting fresh hearings in the same certification period when it is fair and reasonable in the circumstances.



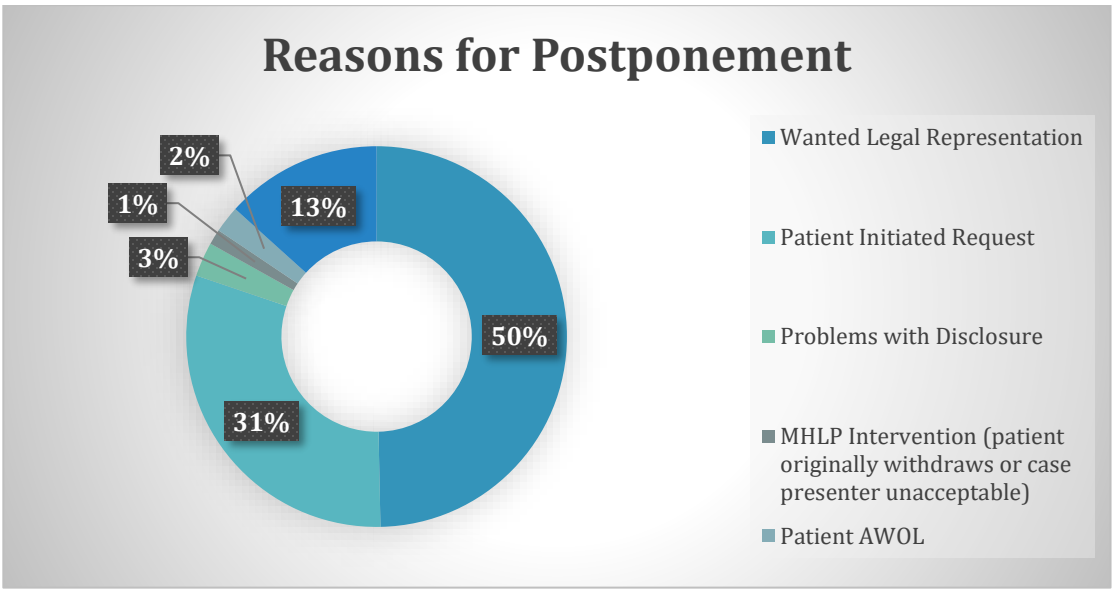
The information contained in this chart comes from the new case management system which is based on a sample size of five months. Of the hearings that did not proceed, 50% of them did not proceed because patients withdrew their applications or did not show up for their hearing. Of the hearings that did not proceed, 25% of them did not proceed because patients were decertified. Of the hearings that did not proceed, 25% of them did not proceed because the hearings were postponed or adjourned.

Postponements



84% of the hearings are postponed up to 24 hours prior to the hearing. 16% of hearings are postponed within 24 hours of the hearing. This has a cost impact on the Board because of cancellation fees.

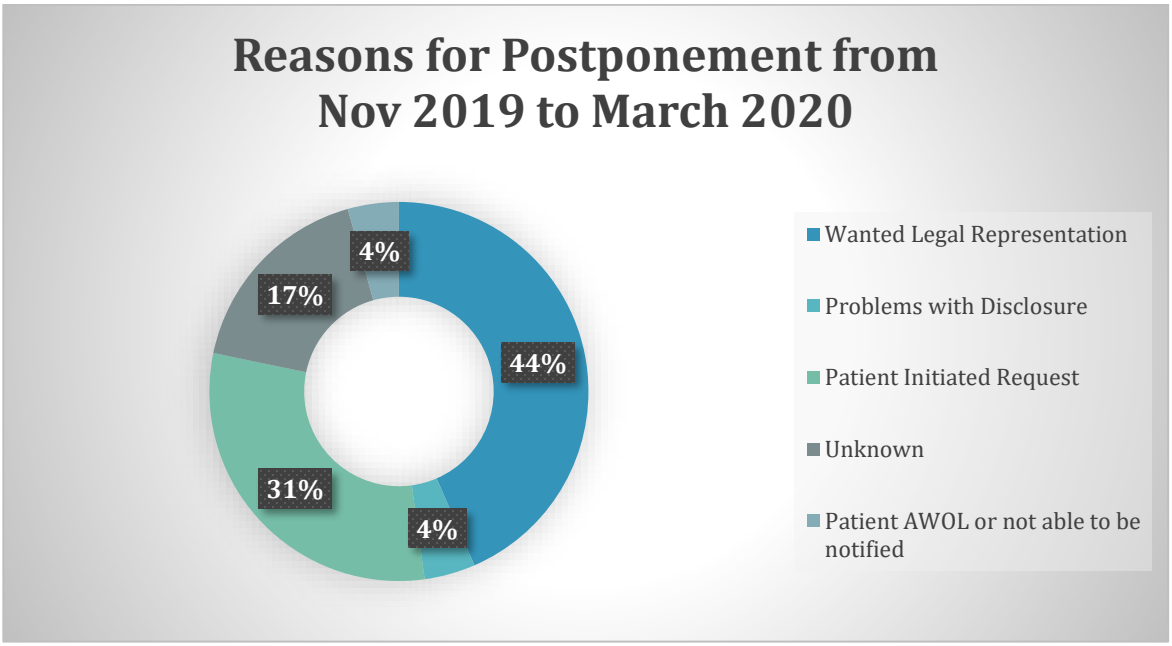
The Board asks for reasons to be given when there is a postponement of a hearing. Because we transitioned to a new case management system, we are providing you with two different sets of statistics. The first chart covers the whole fiscal year from April 1, 2019 to March 31, 2020 and is based on the applications received.



50% of patients postponed their hearings for legal representation. When a patient requests representation from a free legal advocate, but no legal advocate is available on the scheduled hearing date, the patient is faced with a decision. Do they postpone their hearing outside the legislated time frame or do they attend their hearing unrepresented? Of those self-represented patients who attended their hearing, some account

for the adjournments at the start of the hearing because they ask for a lawyer at the start of their hearing or the panel decides that they cannot proceed with the hearing unless the patient gets a legal advocate.

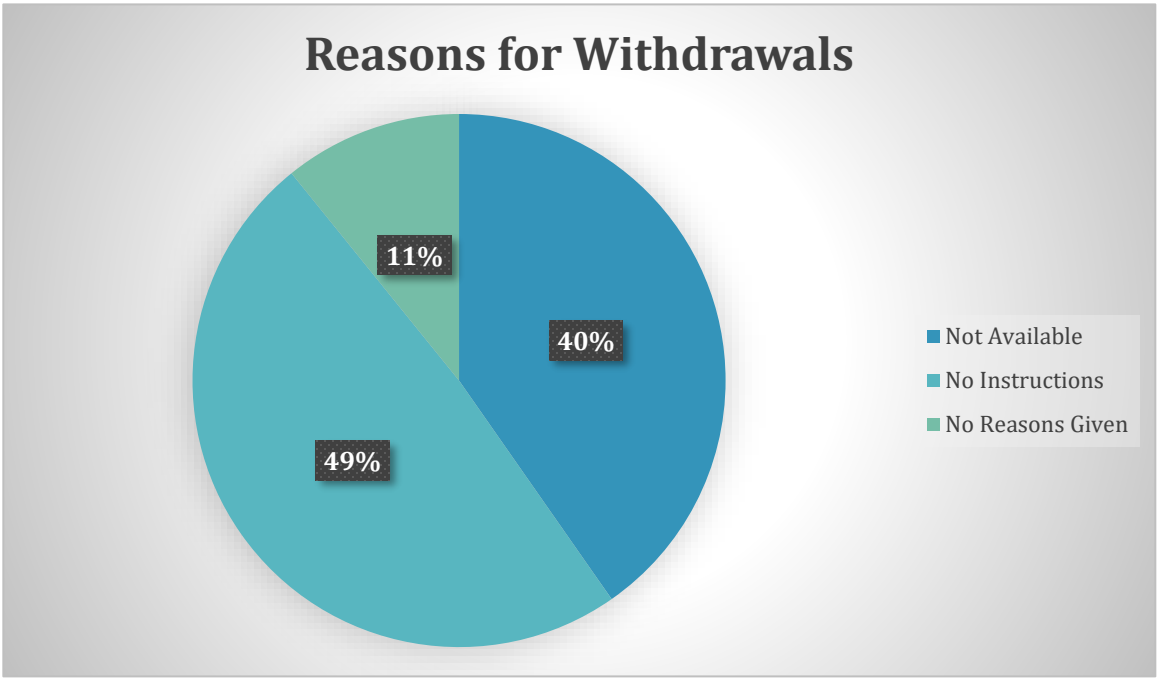
31% of patients postponed their hearings because they were no longer available that day, needed more time to prepare for the hearing, or gave no reason. 3% postponed because there were problems with disclosure. 2% of postponements are because the patient is unable to be found. 1% of postponements are because of an intervention from a legal advocate, such as where a patient originally withdrew but their advocate confirmed postponement. In one case, the legal advocate found the case presenter unacceptable. The remaining 13% postponed for unknown reasons.



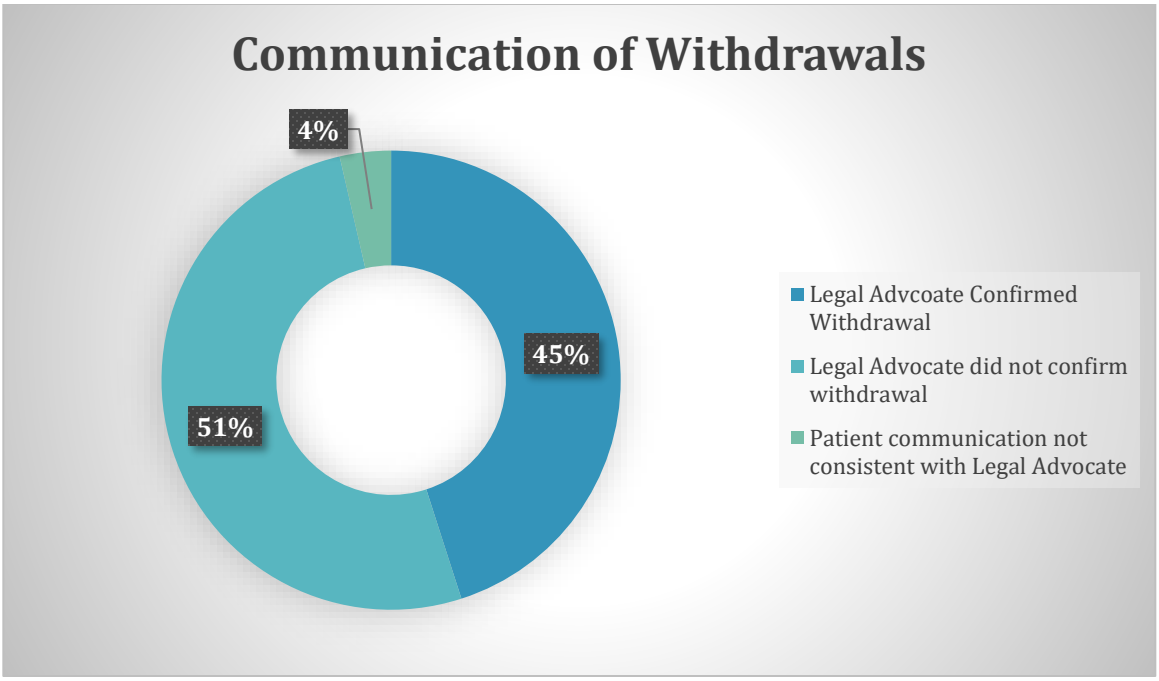
The information in this chart comes from the new case management system. The sample size is five months and based on the date of the hearing. No reasons were given in 17% of the cases. 44% of patients postponed their hearings for legal representation. 31% were patient initiated requests because they were unable to attend, needed more time, or did not give a reason. 4% were due to problems with disclosure. 4% were because the patient was unable to be found or not able to be notified.

Disclosure issues are impacting hearings. Postponements are being used as a remedy for disclosure issues. Legal advocates report that they are not able to offer effective representation without seeking a postponement. Although postponements are being used to remedy disclosure issues, the delay prejudices patients. This effectively deprives patients of the benefit of the mandatory scheduling timelines in sections 6(5) and (6) of the Mental Health Regulation. When a patient was represented by a legal advocate, it took an average of 19.6 days to reschedule the hearing.

Withdrawals



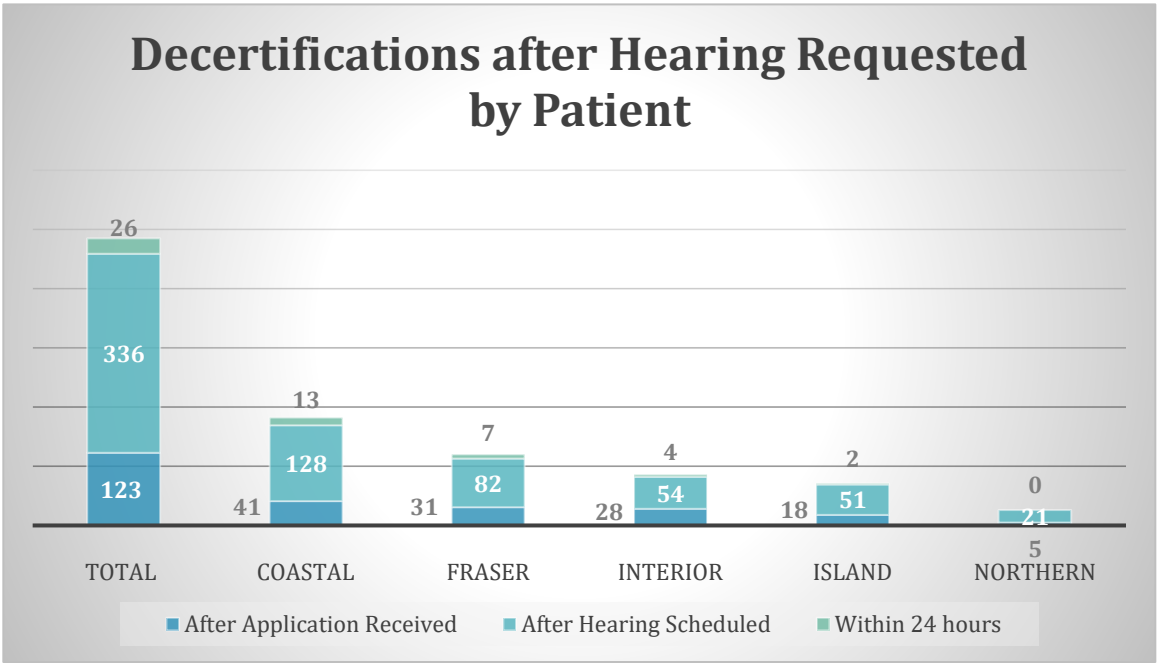
Legal advocates advise the Board by email if they come off record for a patient. Of those instances, 40% of the time, the legal advocate was not available and the patient chose to proceed without representation. 49% of the time, the legal advocate was not able to get instructions from the patient. 11% of the time no reasons were provided.



When the Board receives a signed withdrawal or verbal request for withdrawal by the patient, the Board provides legal advocates with an opportunity to confer with their client and confirm their intentions before closing a file. In 45% of the cases, legal advocates were able to confirm the patients' intentions and the file was closed. In 51% of the cases, legal advocates missed the Board's deadline for confirmation or did not respond.

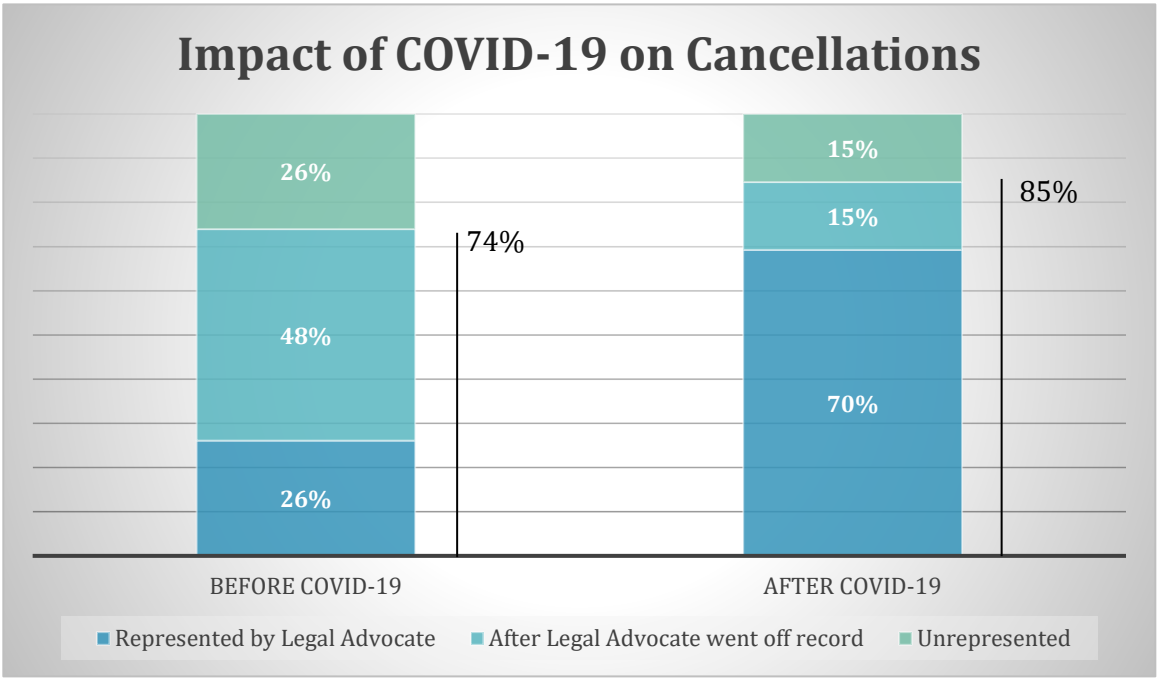
In 4% of the cases, the patient communicated information to the Board that was not consistent with their legal advocate. In those cases, the legal advocate confirmed that the patient does want to proceed or they want to postpone. One way of looking at this statistic is that this process is actually helpful 4% of the time. It gives legal advocates an opportunity to confer with their client to ensure that they are not being pressured to withdraw their requests for hearings.

Decertification



This metric is based on applications received in the 2019/2020 fiscal year. It shows the point in the process patients were decertified. Of those patients who were decertified, 25% were decertified before the Board was able to schedule a hearing and 75% were decertified after a hearing was scheduled. Of those patients who were decertified after the Board scheduled a hearing, 5% were decertified within 24 hours before the hearing.

Covid-19 Trends and Cancellations

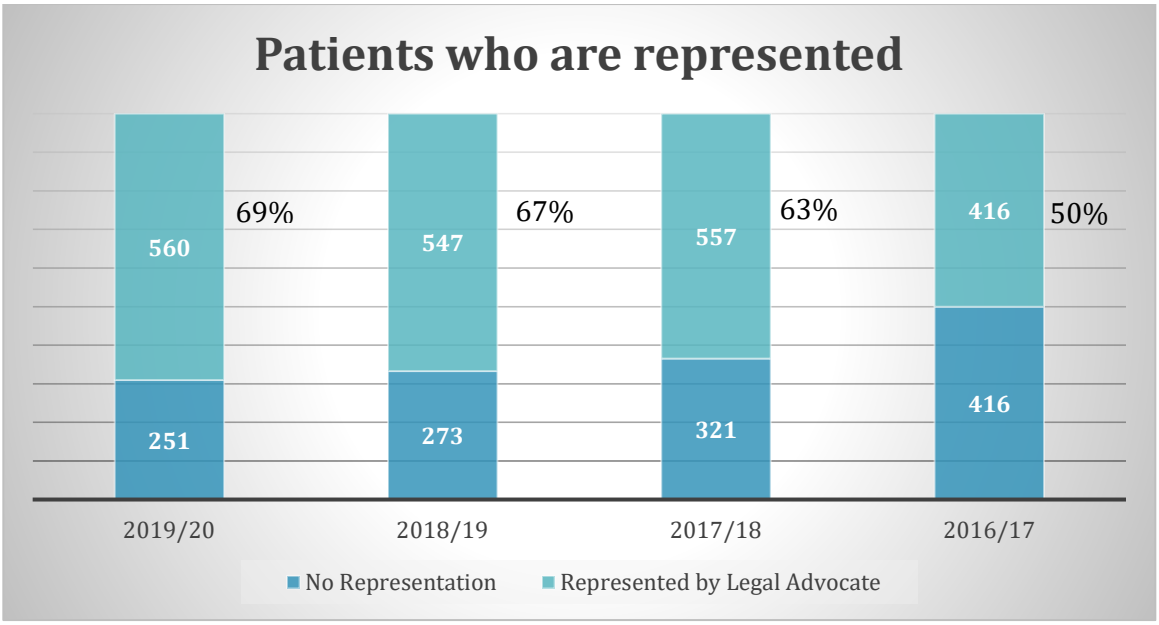


Sometimes, hearings do not proceed because a patient does not show up for their hearing. We refer to this as "patient no show cancellations". Although the pandemic started just before the end of this fiscal, we want to see whether Covid-19 has had an impact on "patient no show cancellations". Our ability to see trends is limited by a sample size of seven months that is unevenly distributed (we looked at what was happening 4.5 months before the start of Covid-19 and 2.5 months after the start of Covid-19).

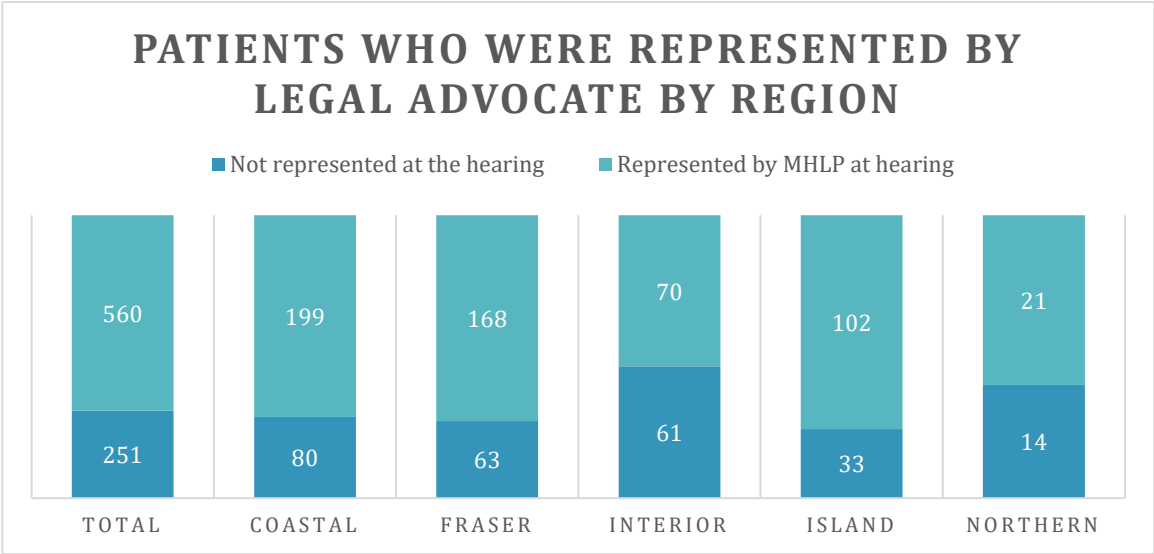
We are expecting an impact in user experience because we have only been able to conduct telephone hearings in response to Covid-19. We are moving to video hearings and will return to in-person hearings as soon as possible.

Covid-19 appears to be having an impact on the ability of legal advocates to represent patients. Of those patients who do not show up to their hearings, the vast majority have been represented by a legal advocate at some point. 74% of patients who did not show up to their hearings had been represented by a legal advocate at some point before Covid-19, and that number increases to 85% of patients after Covid-19. 48% of "no show cancellations" happened after legal advocates went off the record before Covid-19 compared to 15% after Covid-19. 70% of patients who did not show up to their hearings after Covid-19 were still represented by a legal advocate.

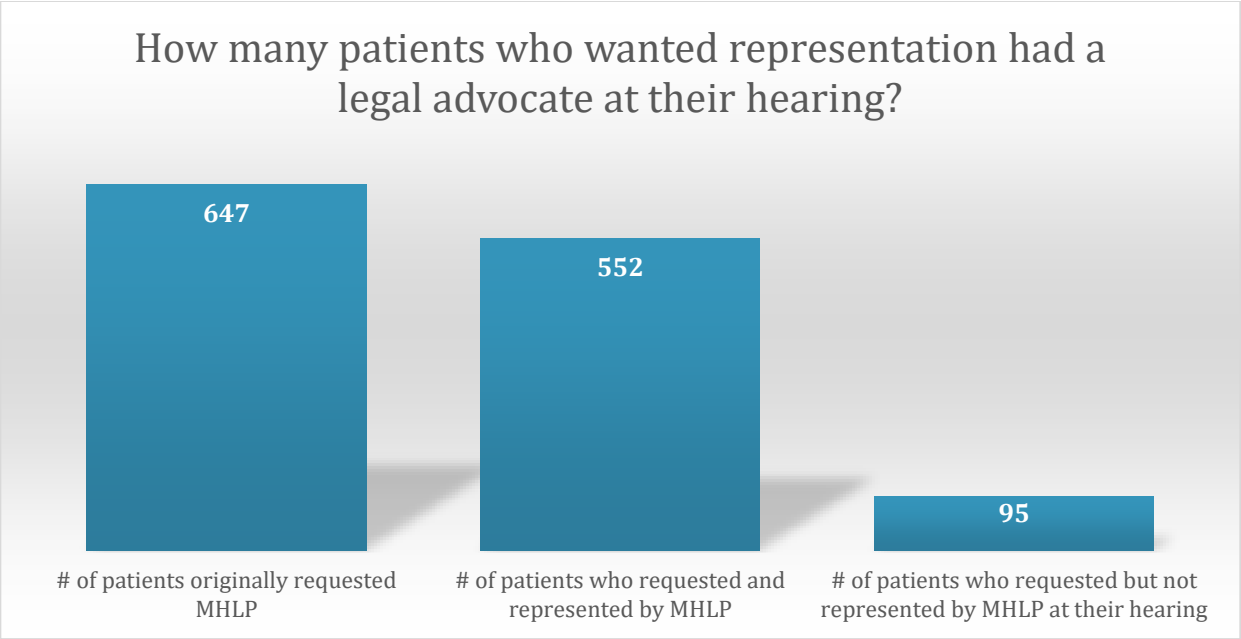
ACCESS TO LEGAL REPRESENTATION



This chart shows that a total of 69% of patients are represented by legal advocates at hearings. The trend is moving slowly in the right direction. Only 50% of the patients were represented at hearings four years ago.



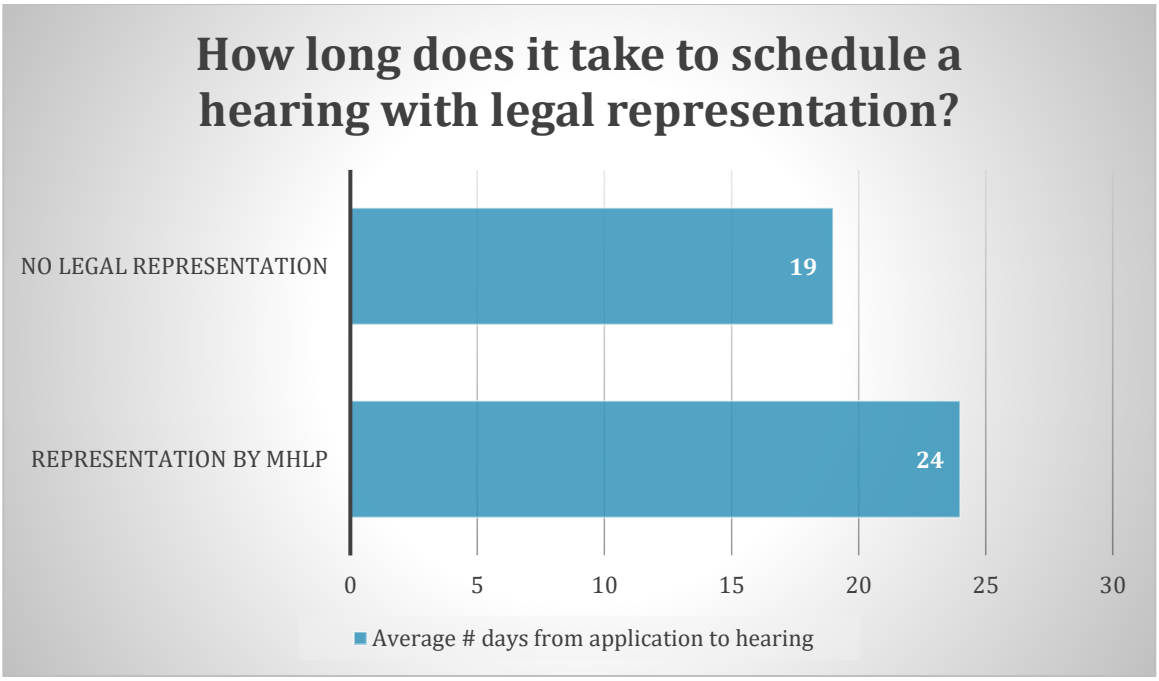
This chart shows the number of patients who were represented by a legal advocate at their hearings as a portion of the number of total applications that went to a hearing in each health authority across the province. 71% of patients were represented by a legal advocate at their hearing in Vancouver Coastal Health, 73% in Fraser Health, 53% in Interior, 76% in Vancouver Island, and 60% in Northern.



This chart includes only those patients who had a hearing which amounts to a subset of 647 patients. Of those patients who asked for legal representation and had a hearing, 85% of them were represented by a legal advocate at their hearing. 15% of them did not get the legal representation they asked for.

Please note that of all of the applications received, 1572 patients originally requested the support of free legal advocates through the Mental Health Law Program ("MHLP) on their applications. Most of those applications did not proceed to a hearing, and these patients may or may not have received some legal assistance along the way, depending on what point in the process their hearing was cancelled.

There were 13 additional patients who asked to be represented by MHLP after they applied for a hearing. This means that they originally did not select the option on their application to be represented by MHLP but later asked for that representation. MHLP was able to represent 8 of those 13 patients at their hearings.



It takes longer to schedule a hearing when a patient is represented by a legal advocate than when a patient is unrepresented. This shows that the system is creating delays in scheduling timely reviews for represented patients. The Board would like to know why.

Improving User Experience

A responsive tribunal is one that listens to the people who use its services. We cannot design a user-centered justice system unless we know how our public experiences our process. Feedback from our public tells us what we are doing right and where we need to improve. It is also important to publish the feedback we get because we believe in being transparent about how our Board works.

We reached out to members of the community to survey how they are experiencing our process. These were the questions asked:

1) How does your client experience our hearings?
2) Do they feel empowered to participate in our process and are their voices heard?
3) What obstacles do your clients face in accessing our hearings?
4) What obstacles have your clients faced in receiving help from legal advocates?
5) How can we improve our process for your clients?
6) What challenges does your team face when navigating our process?

Patients on Extended Leave

Our first survey response is from an **"Assertive Community Treatment" team that serves a vulnerable population of patients who are, in some cases, homeless**. We have paraphrased some of their answers to protect their privacy:

General Feedback

- It is hard to connect our clients with their legal advocates. Some advocates are really flexible and provide us their cell numbers. Other advocates are a harder to connect with.
- For most of our clients, the hearing is not an empowering experience. They are listening to evidence that highlights times in which they have not been at their best. For those who are discharged from extended leave, it may empower them but often damages our relationship with them; this is even truer for those who are detained.
- Only a small percentage of our clients who ask for hearing are organized enough to follow up with their advocates. Our Assertive Community Treatment ("ACT") team spends a lot of time trying to connect our clients with their advocates. We leave reminders about the hearing, provide cab vouchers to get them to the hearing, and deal with the fallout when their advocates pull out of representing them because they have not been able to make contact. We go above and beyond trying to get our clients to hearings and to connect them with their advocates.
- Our ACT team does not have challenges navigating the process. The challenge is to get clients to the hearing and to connect them with their advocate. It would be useful to have some direction as to how much effort is expected from the ACT team to get clients to a hearing because we have to balance client's rights along with their level of wellness, organization, and motivation to attend or follow through.

Feedback about the Mandatory Extended Leave Review Process

- This process happens every 6 months and creates an influx of hearings. For example, one of our doctors had 5 hearings booked over a period of three weeks.
- Of the hearings that are booked, few of our clients are able to follow through with them. This is even with a great deal of support from our ACT team: numerous reminders and prompts, leaving taxi vouchers, calling to remind clients on the day of the hearing. We put a great deal of work into connecting clients with their advocates, and even still, this rarely happens as our clients do not generally have phones.
- We believe our clients have a hard time following through with these hearings because of the severity of their mental health issues: disorganization, paranoia, significant substance use.
- We review client's rights each time we renew their extended leave (and informally on a regular basis). The mandatory review process for our extended leave clients seems duplicative. Our clients have several opportunities in between renewal periods to request panels given how often they are being seen in the community.
- We take every opportunity to take clients off extended leave if it is not required. Where it is required, we believe it is for a good reason given the severity of their symptoms. We really do not want to see people become ill.

Patients in Hospitals

The Board also received feedback from a hospital about the experience of a youth in hospital. The patient participated in a hearing and chose to do so without a legal advocate. The patient's treating psychiatrist provided the following feedback about the panel review hearing:

- Due to COVID-19, the hearing proceeded by way of telephone which was quite challenging for the patient.
- The three adjudicators were on the phone. It was difficult for the patient to understand all of the information being presented on the phone and it was challenging for the adjudicators to respond to the patient's difficulties as they could not see the non-verbal communication. The patient often spoke softly or with gestures, which the adjudicators could not hear or see. The psychiatrist had to frequently assist the patient and the adjudicators to facilitate the conversation. The psychiatrist needed to intercede at one point to notify the adjudicators that the patient appeared to be struggling (based on the psychiatrist's interpretation of expression and body language) and offer a break which the patient accepted.
- The patient's parent was present during the hearing, as a witness, but also as a supporter by choice of the patient. The adjudicators were not able to see the interaction taking place between the patient and the parent.
- The patient found the whole process quite anxiety provoking. During deliberations, the patient chose to spend time alone in the hospital room.
- Once the patient was invited back into the meeting room for the adjudicator decision, the adjudicators shared that "all four criteria were met." The adjudicators did not provide further

explanation, i.e. that meant that the patient would remain a certified patient and have to stay in the hospital. Before the adjudicators ended the call, the psychiatrist quickly clarified what this meant, which they affirmed, and the call was abruptly ended. The patient was still not clear on what had been decided and the psychiatrist needed to explain it slowly and clearly after the call.

- A week later, the patient reapplied for a hearing, appearing disgruntled with the experience and repeatedly asked the psychiatrist questions. The patient kept saying they "needed to be prepared" and asking what was needed to "win" a hearing.

These surveys highlight areas where we believe we can do better in serving British Columbians at the Board. This is just the start of our commitment to engage in user experience surveys. We have so much more work to do.

Improving Costs

Cost per Hearing

The Board is accountable for all expenditures and wants to make sure that public resources are spent in the most responsible and cost-effective way.

The Board pays its members to conduct hearings. The Board also pays members when hearings are cancelled within 24 hours of the scheduled hearing or withdrawn or postponed within 24 hours of the scheduled hearing. We are trying to find ways to reduce the number of hearing cancellations.

The cost per hearing captures all of the expenses associated with adjudication. This includes paying members for their time at the hearing, any travel-related expenses, and the costs for interpreters. It also includes paying the treating physician who is referred to as a ("case presenter") to prepare for and attend the hearing. The Board should not be paying case presenter fees. This funding model must be changed because it undermines public confidence in the administrative justice sector. Tribunals must remain neutral and should not be paying the fees for "only one party" to a legal proceeding. The Board welcomes the support from government to preserve the neutrality and integrity of the administrative justice sector.

The hearing costs have increased slightly. We have seen a decline in travel costs as a result of our policy decision to stop members from flying and reduce members from travelling long distances to attend hearings. There are three reasons that we are seeing an increase in hearing costs. First, hearings are taking longer to complete which is a direct result of our efforts to improve fairness in our proceedings. Our adjudicators are reporting document disclosure disputes, late attendance of parties, and inadequate preparation from legal advocates as reasons for adjournments at the start of hearings which is causing them to last longer. Second, the number of late cancellations has a direct impact on the costs of hearings. Third, the case presenter and medical members have received annual increases in their fees.

Fiscal Year	Hearings Proceeded	Adjudication Cost	Cost Per Hearing
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
Member Fees	1,226,616	1,174,380	1,113,031	1,200,973
Case Presenter Fees	290,358	377,458	364,407	384,556
Members Travel	139,683	90,152	81,809	82,080
Interpreters	5,766	663	4,410	1,154
Total	**1,662,423**	**1,642,653**	**1,563,657**	**1,668,763**

Cost per Application

The cost per application includes all areas of expenditures from the moment we receive an application to post hearing administration and record retention. The cost per application stabilized this past year but still remains higher than in the two preceding years. This trend flows from the Board's restructuring efforts to improve access to justice and fairness. There were expenses associated with member training, a new website, the office relocation, and a new case management system.

Fiscal Year	Total Applications	Total Cost	Cost Per Application
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

Financial Disclosure

OPERATING COSTS

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	593,813	585,000	(7,812)
Employee Benefits	150,769	148,000	(2,769)
Hearing Costs	1,668,763	1,555,000	(119,462)
Members Fees	1,200,973		
Case Presenter Fees	384,556		
Travel Costs	82,080		
Interpreters	1,154		
Travel			
Deputy Registrar and Legal Member	5,699	5,000	(699)
Professional Services	21,540	30,000	8,460
Information Services	70,016	19,000	(51,016)
Office and Business Expenses	5,530	10,000	4,470
Other Expenses	0	0	0
TOTAL COST	**2,516,128**	**2,348,000**	**(168,128)**

The deficit is fully reflected in two areas:

Hearing costs – The Board historically expends 1.6 million in this area. The costs associated with hearings vary according to the number of applications received and the number of hearings conducted.

Information Systems – This is a new expense that is directly related to the development and operating costs associated with the new case management system.

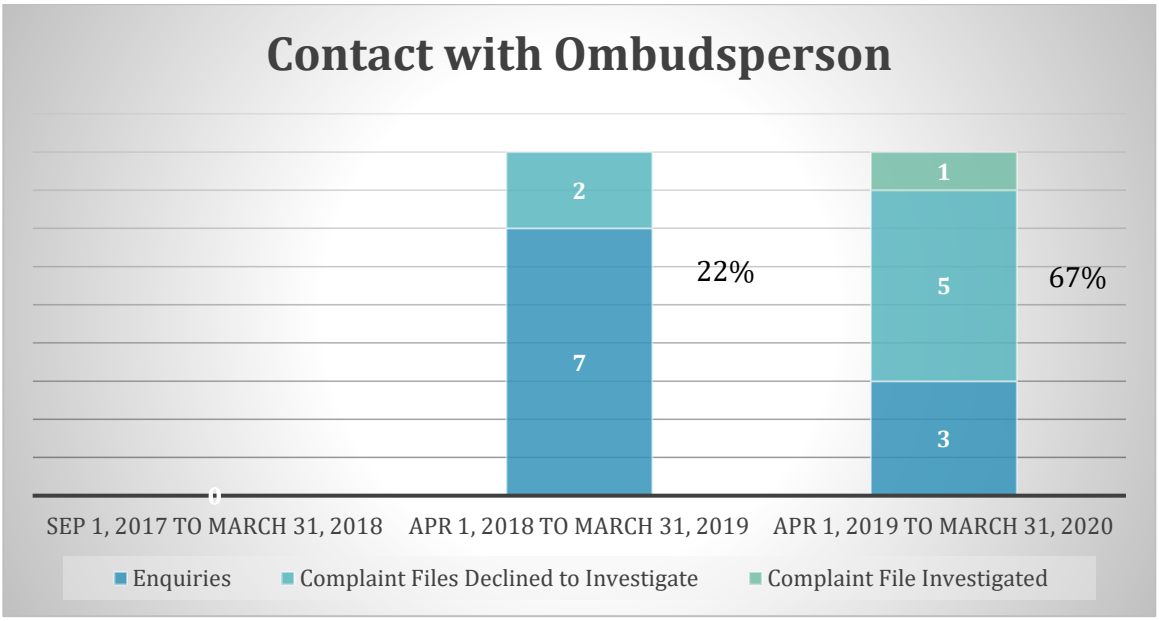
Accountability

The Board strives to be as open and accountable as possible.

COMPLAINTS TO THE BOARD CHAIR

The Board has a new internal complaints and investigation process. The Board Chair receives, on average, a dozen complaints a month by participants in the hearing process. Some complaints are from advocates who are complaining about facilities not complying with disclosure. Other complaints are from facilities complaining about advocates not picking up disclosure or meeting with clients in a timely manner. Some complaints are about panel members. Some complaints are by patients that they did not receive a fair hearing. The Board chair investigates all complaints, and for those complaints made by patients, grants the patient a new hearing when it is fair and reasonable in the circumstances.

COMPLAINTS FROM THE OFFICE OF THE OMBUDSPERSON



More complaints are being filed about the Board with the Office of the Ombudsperson. This past year, one complaint resulted in an investigation which raised administrative fairness issues. By way of remedy, the Board Chair agreed to add content to Information Sheets sent to patients and improve hearing procedures to accommodate what information patients can submit as evidence. The Board Chair required the member who was the subject of the complaint to attend procedural fairness training and incorporated these lessons into a training program for all Board members.

OPERATING IN DARKNESS REPORT

On November 29, 2017, the Community Legal Assistance Society issued a report titled "Operating in Darkness: BC's Mental Health Act Detention System" which raises serious access to justice issues for those detained under the *Mental Health Act*. The report made a number of recommendations to the Board. Over the past three years, our Board has taken the following steps to implement these recommendations.

Recommendation	Actions Taken
Create a rule that patients have the right to wear clothes during review panel hearings.	**Completely addressed** ✓ The Board created Rule 23(2): A patient may wear attire of the patient's choosing during a hearing. Facilities must not prevent patients from wearing attire of their choosing at a hearing unless they can demonstrate that there is a health and safety risk or that it is not possible in the circumstances.
Eliminate former Rule 7.1 that precludes detainees who have cancelled a hearing from requesting a hearing until the next certification period.	**Completely addressed** ✓ The Board eliminated this preclusion and instead permits patients to request another hearing within the same certification period despite a previous cancellation pursuant to Rule 12(3).
Address the process and timelines for rescheduling postponed hearings.	**Partially addressed** The Board has committed to firm timelines for rescheduling postponed hearings in Rule 21(3) to ensure that patients have access to timely hearings following postponement. However, this is not happening in practice. More needs to be done in the area of compliance. Consider stopping the practice of a using a consensus model for scheduling hearings.
Address the process for implementing *Mental Health Act*, s. 25(1.1).	**Partially addressed** The Board has created Rule 13, which establishes a patient notification process and a requirement for facilities to submit a case note when a s. 25(1.1) hearing is scheduled. The Board issued a new Practice Direction – Mandatory Review Process and updated the Extended Leave Review Panel Hearing Directive. However, a number of questions and issues remain about the Board's process surrounding s. 25(1.1) reviews for extended leave patients. For example, should the Board continue to provide patients with the option of waiving their right for a mandatory file review?
Establish timelines for detaining facilities and mental health teams to conduct prehearing disclosure.	**Partially addressed** The Board has established timelines and a process for facilities and mental health teams to conduct prehearing disclosure in Part 4 of the rules. The MHRB has also produced a Practice Direction to provide disclosure guidance to facilities. These are significant and positive steps to establish a reasonable timeline for disclosure to take place. However, there is an issue with compliance on both sides. Some facilities are not disclosing or disclosing late. Some advocates are not picking up disclosure or reviewing it in a timely manner. There is also an issue around consistency among Board members in how the Board should handle breaches of disclosure. The Practice Direction on Disclosure expressly allows for discretion among Board members on dealing with breaches of disclosure. This is a training issue.

Ensure that panel members grant patients a reasonable recess to review evidence presented by detaining facilities that did not form part of the pre-hearing disclosure.	**Completely addressed** ✓ The Board has established Rule 17, which requires that panels must give detainees a reasonable recess to review evidence that was not disclosed in advance of the hearing.
Amend the Rules of Practice and Procedure or produce policies or guidelines to address bias and the apprehension of bias among review panel members.	**Completely addressed** ✓ The Board created a Code of Conduct and clear standards. The Chair holds members accountable to these standards through a complaints process and performance reviews. When a bias or conflict of interest issue is raised at the hearing, the panel will address it as a preliminary matter. The Hearing Handbook provides the following guidance to members on process and the threshold for establishing bias: 1. When an allegation of bias is made against a panel member, hear submissions from both parties before making a ruling 2. Mere suspicion of bias is not sufficient to establish bias, a real likelihood or probability of bias must be demonstrated. There must be some evidence to demonstrate the member would not decide fairly, impartially and with an open mind. 3. Contact the Board office if additional information or guidance is required. The Board office has information about a patient's history of applications and hearings, including past panel assignments. 4. If the panel rules that the panel member is not biased and denies a recusal application, the hearing continues. 5. If the panel rules that a panel member is biased, it is without quorum and the hearing must be postponed.
Stop the practice of funding detaining facilities to prepare and present expert evidence and participate in review panels or start providing equivalent funding to detainees.	**No Actions Taken** ✗ The Board agrees that this practice should stop. We have raised this issue multiple times over the past three years. No action has been taken by government. We understand that unless the case presenter is on salary with a Health Authority or paid via pre-approved sessional funding, presently, there is no other vehicle to reimburse the presenter for their time. We propose establishing an MSP billing code for physicians who are case presenters. This is consistent with best practices across the administrative justice sector in other provinces such as Alberta and Ontario.
Improve initial training and ongoing professional development for review panel members.	**Partially addressed** – On November 6, 2018, the Board held the first mandatory one-day training session for members on procedural fairness. The session was presented by representatives of the *Office of the Ombudsperson, Prevention Initiatives*. All members were required to participate. In October 2018, the Board created a hearing handbook for members that was updated in January 2020 and is intended as a procedural fairness roadmap to navigate any issues that arise in the hearing process. The Board has also

	updated our member training manuals to reflect the updated *Rules of Practice and Procedure*. We also created a new orientation program for members. The orientation package including the training manual, hearing handbook and other relevant materials such as a decision template and a decision criteria worksheet. New members are required to observe two hearings as part of their training. The Board has recently created four new training videos. The Board needs to start peer-based learning and mentoring initiatives. The Board needs to identify and offer ongoing training per year in a webinar format that is easily accessible to Board members and keeps costs down.
Establish clear hearing procedures in which parties are permitted a full opportunity to present their case.	**Completely addressed** ✓ The new Rules of Practice and Procedure address several components of hearing procedures to ensure that parties are permitted a full opportunity to present their case. For example, the Board established Rule 24(4), which requires the panel to give parties an opportunity to call witnesses, cross-examine the witnesses of opposing parties, introduce evidence, and make submissions. These hearing procedures are set out in the Hearing Handbook.
Address the issue of observers and support people attending review panel hearings.	**Partially addressed** — The Board has established Rule 23(10), which permits observers to attend the hearing with prior approval of the Board or with approval of the panel at the commencement of the hearing. Need to do more around consistency in application and enforcement.
Establish parameters for detaining facilities to ensure that hearings take place in appropriate physical locations.	**Completely addressed** ✓ The Board has established Rule 20(4), which requires facilities to provide a physical space that is private, adequate in size to accommodate all panel members and participants, and appropriate for the proper conduct of the hearing. Guidance is also provided to Board members on how to address non-compliance.
Address consistent interpretation of the legal criteria for detention.	**Partially addressed** — This has been addressed through a new decision template, decision criteria worksheet, training manual, hearing handbook, and new training videos. More work needs to be done.
Develop a consistent and transparent policy regarding the internal process for reviewing the draft reasons of review panel members	**Partially addressed** — The Board follows the decision review process that is set out in the Court of Appeal decision in Shuttleworth v. Ontario. The Board has established a complaints process to address any issues that arise with non-compliance.
Publish anonymized review panel	**Partially addressed** — The Board has collected anonymized decisions. They will be published on the

decisions.	website before the end of the year.
Provide information to patients regarding their options for challenging review panel decisions when delivering written reasons for the decision.	**Completely addressed** ✓ The Board provides patients with a new one page hand out with information on Appeal, Review, and Complaint Procedures along with written reasons for the review panel decision. This handout has been recently updated to address administrative fairness issues raised by the Office of the Ombudsperson.
Comply with the legal obligation to produce an annual report.	**Completely addressed** ✓ As required by the *Administrative Tribunals Act*, the Board produced a 2017/18 Annual Report, the first in many years. The new case management system established this year will enable better collection and reporting of statistics
Produce rules, policies, guidelines, or practice directions to address inconsistencies in procedures and the substantive application of the *Mental Health Act*.	**Partially addressed** ▬ Progress is set out in this annual report. More work needs to be done.

Call for Reform

It is clear that things need to change. Many of the *indicia* of access to justice appear to have shown no improvements. Some of them appear to be trending in the wrong direction. Despite the fact that the number of involuntary admissions has been steadily increasing for more than a decade[1], this annual report appears to show:

- More patients should be applying for hearings based on the number of involuntary admissions
- Patients requesting hearings are not always getting them
- Patients requesting advocates are not getting legal representation
- Disclosure problems are resulting in hearing delays and lengthier hearings
- Parties are challenged and frustrated by the process
- Money is being wasted on hearings that do not proceed

These are systemic issues that undermine the ability of patients to receive fair, timely, and independent reviews of their loss of liberty. At its core, is the Mental Health Act.

The Ombudsperson of British Columbia issued a report on March 7, 2019 entitled "Committed to Change: Protecting the Rights of Involuntary Patients under the Mental Health Act". The report makes 24 recommendations, all of which have been accepted in principle by government and health authorities and focus on three key areas:

- Increasing oversight and accountability by conducting regular compliance audits, setting 100 percent compliance targets and increasing public reporting about involuntary admissions.
- Training staff and physicians regarding the necessity of form completion and the codification of standards for compliance with the Mental Health Act.
- Third and most importantly, the Ministry of Attorney General has committed in principle to develop an independent rights advisor service that would work in designated facilities in the province and provide advice to patients about the circumstances of their detention and their options if they disagree with the detention or a related decision.

Provinces that already have a legislated rights advisor include Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick and Newfoundland and Labrador.[2]

In February 2017, Canadian Bar Association BC Branch issued a report entitled "Agenda for Justice" calling for a series of legislative reforms, aimed at improving the justice system, including changes to the Mental Health Act. In November 2017, the Community Legal Assistance Society issued its report "Operating in Darkness: BC's Mental Health Act Detention System" raising serious access to justice issues for those

[1] Ombudsperson's Special Report No. 41, Committed to Change: Protecting the Rights of Involuntary Patients under the Mental Health Act, March 2019 ("Ombudsperson's Special Report"), p. 15
[2] Ombudsperson's Special Report, p. 84, footnote 158.

detained under the Mental Health Act. I report elsewhere on our Board's progress in implementing the recommendations in this report.

Notwithstanding the improvements that our Board has made, it does not go far enough. More substantive and systemic reforms are needed to ensure that the system meets the needs of the people it was intended to serve. In British Columbia, the mental health system appears to be interacting with people with mental health problems in an adversarial way by removing their rights rather than in a voluntary way that promotes autonomy and collaboration in the recovery process. We need to ask why and take a hard look at what is going on. I support a public and independent inquiry into the Mental Health Act to address the following issues:

1. Analysis and recommendations related to the Mental Health Act in light of the human rights focus of international instruments like the UN Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child, and the UN Declaration on the Rights of Indigenous Peoples.
2. The role of including principles and rights into the Mental Health Act, including principles focused on protections to avoid discriminatory application of the Act.
3. Consideration of how the current statute disenables or enables increasing rates of detention.
4. Analysis and recommendations related to any racial disparities in the use of the Act (i.e. does the application of the Act lead to disproportionate rates of detention among racialized minorities or Indigenous Peoples?).
5. Consideration of how the statute and regulations can be more responsive to trauma-informed practice and cultural safety.
6. Assessing whether the Act aligns with the latest evidence and best practice in applying models of assessment of capacity, consent, and decision-making.
7. Determining if the current definition of a "mental disorder" and the balance of the Act are fit for purpose in relation to substance use disorder and the ongoing public health crisis related to opioid poisonings.
8. Analysis of how the provisioning of independent rights advice could improve outcomes when people are subjected to the Act.
9. Exploration of how components of the legislation could be used to significantly reduce the number of detentions under the Act and improve monitoring and the availability of data related to the application of the legislation.
10. Identify interfaces with other relevant statutes in BC and identify opportunities for harmonization and avoidance of sequential application of legislation in the detention of individuals.
11. In light of the Province's review of the Police Act, critically examine the role of police and the use of police vehicles in apprehending and conveying people to a designated facility.
12. Consider how to strengthen existing and add new safeguards to enable patients to challenge detention and to protect from arbitrary treatment.

13. Methods through which the diversity and representation on the Mental Health Review Board could be increased and include the perspectives of people with lived experience of mental health and substance use problems.
14. Exploration of how to statutorily improve care planning and aftercare, especially in the context of suicide prevention.
15. A systemic evaluation of the efficacy of extended leave

A number of jurisdictions have completed timely and independent reviews of their existing mental health laws. There is an active review underway in Scotland and a recently completed review in England. New Zealand has also recently commissioned a government inquiry into mental health and addiction. It is time for British Columbia to do the same. The more we learn, the better we can act in the interest of all British Columbians.

Our Team

BOARD MEMBERS

Board members are independent decision-makers. They hold a variety of professional backgrounds. They are lawyers, doctors, psychologists, social workers, and counsellors with expertise in mental health. Our members and staff work together closely to ensure that timely, fair and professional services are delivered.

The Board currently has a complement of 92 members, including the Chair, who are all appointed in accordance with the *Mental Health Act* and the *Administrative Tribunals Act*. Our Board promotes diversity and inclusion in its membership and is leading the province's Access to Justice initiatives. The biographies of the members can be found on the Crown Agencies and Board Resourcing Office website.

PROFESSIONAL STAFF

Our staff are an integral part of our professional team and organization:

Manager of Finance and Operations
Andrea Nash

Board Staff
Johanna Barbosa (part-time)
Karly Betsworth
Shannon Drummond (partial year)
YJ Lin (partial year)
Jacqueline Nash
Charlotte Richardson (return from maternity and parental leave)
Laura Weninger

ORGANIZATION CHART