



# Mental Health Review Board

ANNUAL REPORT

2021-2022

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## Message from the Chair

I am pleased to present the Annual Report of the British Columbia Mental Health Review Board (Board) for the fiscal year April 1, 2021 to March 31, 2022, submitted in accordance with s. 59.2 of the *Administrative Tribunals Act*.

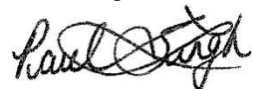
This Annual Report captures the important work of the Board in service of vulnerable youth and adults in British Columbia.

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. This fiscal year, the Board has continued with virtual hearings and has strived to continue to provide a safe and procedurally fair hearing process within statutory timelines under the *Mental Health Act*.

In January 2021, the British Columbia Representative for Children and Youth released a report entitled, *Detained: Rights of Children and Youth Under the Mental Health Act*, which included a recommendation directed at the Board to "pilot a new Review Board hearing process for children and youth that centres around 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 has prioritized its implementation this fiscal year.

The Board also underwent a change in its leadership this fiscal year. Ning Alcuitas-Imperial served as chair from February 2021 to December 2021 and Jacqueline Beltgens as acting chair from December 2021 to June 2022. I wish to thank both chairs for their exceptional service and leadership during this period of transition. I also wish to thank the Board's members and staff for their dedication and commitment to serve British Columbians who require our services. It is a privilege to work with them.

Paul Singh



Chair, Mental Health Review Board

## 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 should be 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 practical access to a review of their detention.

After the hearing, the review panel must determine whether all four criteria set out in the *Mental Health 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 criteria is not met, the patient must be discharged from involuntary detention. 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 including intake of applications, scheduling hearings, and hearing administration. Hearings are scheduled within statutory deadlines and in consultation with patients, facilities, doctors, and legal representatives. The Board staff 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 scheduling hearings, rendering decisions, and providing written reasons are established by section 25 of the *Mental Health Act*, and are as follows:

1. The hearing shall commence 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 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 to keep Board members safe. In November 2020, the Board began to schedule its hearings by default as videoconference hearings via the Zoom platform. 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. This practice was adopted and encouraged by the facilities and the treating physicians to ensure children and youth were provided additional care and sensitivity. The Board continued to work with stakeholders to ensure that the technological capacity to hold videoconference hearings was in place throughout the province.

In terms of working conditions, Board staff were provided an opportunity to work remotely 5 days per week on a permanent basis, with the expectation that they would attend certain mandatory meetings in-person at the Board's offices with appropriate safety measures in place.

### Stakeholder Relations

The Board continued to maintain a strong relationship with the Mental Health Law Program, the Ministry of Health (Mental Health and Substance Use), Health Authorities across the province, 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.

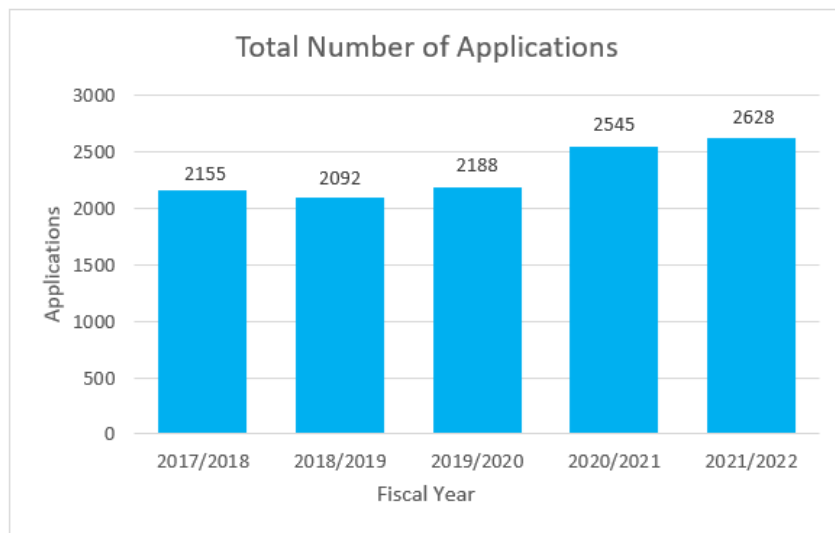
### Initiatives

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 around 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.

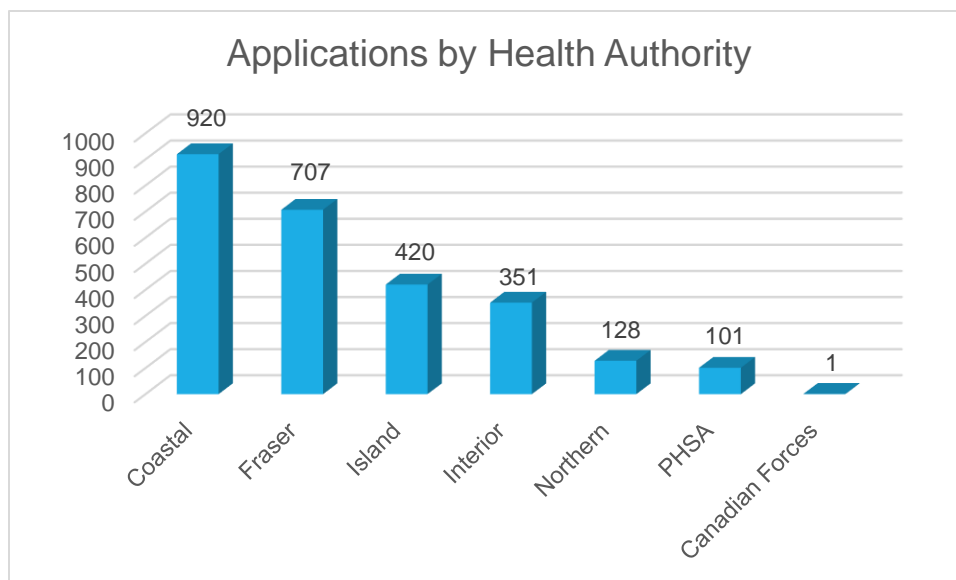
For all other initiatives, the Board welcomes the opportunity to continue to carry out its role under the *Mental Health Act*.

## Applications

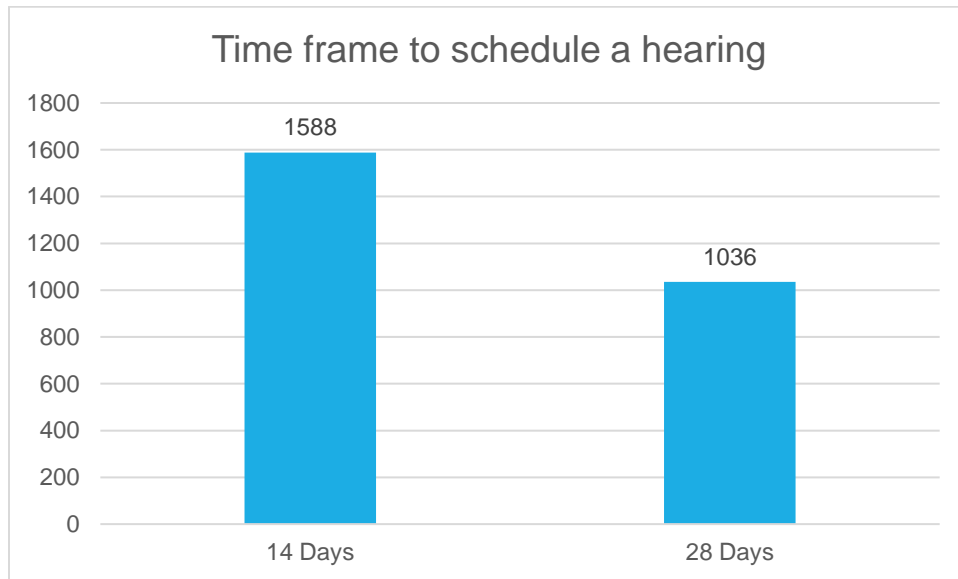
The Board has no control over the number of applications it receives in any given year. In this fiscal year, the Board received a total of 2,628 applications. This represents an increase of 3% from 2020/2021 when 2,545 applications were received. The trendline is towards an increasing volume of applications, and the Board expects its caseload to continually increase in future years.



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



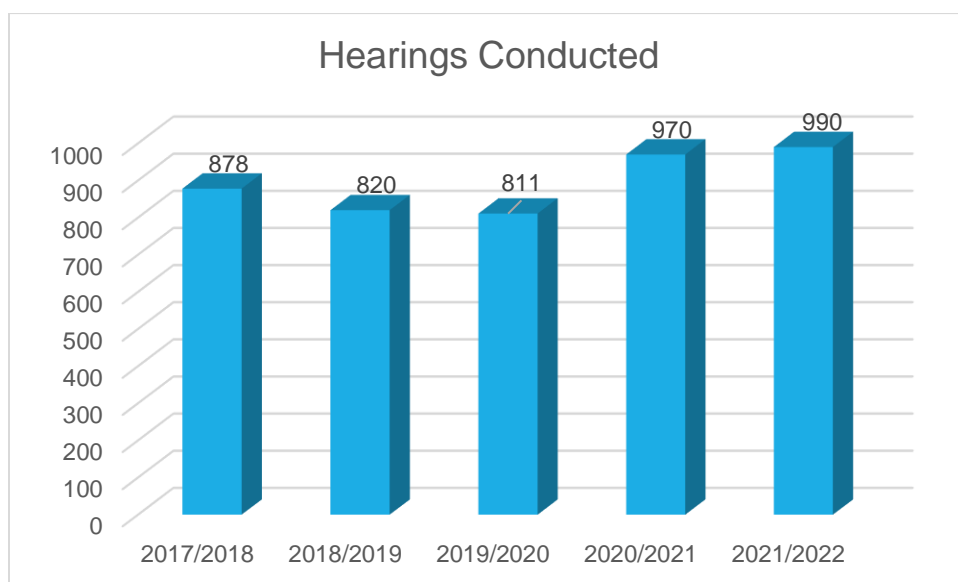
Under the *Mental Health Act*, patients are entitled to a hearing before the Board within 14 days or 28 days of certification, depending on the length of certification. The majority of applications received require the Board to schedule a hearing within 14 days.



Not all applications proceed to a hearing. Of the 2628 applications received this fiscal year: 878 were withdrawn by the patient; 588 patients were decertified prior to a hearing; 36 patients were ineligible for a hearing at the time of their application; and 126 applications were cancelled for other reasons, usually because the patient did not attend their scheduled hearing.

## Hearings

Each application received by the Board can result in more than one hearing being scheduled. Hearings can be postponed multiple times for many reasons and, on occasion, the hearing can take place months after 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 is rescheduled with the same participants and panel members. This fiscal year, 990 hearings were conducted.

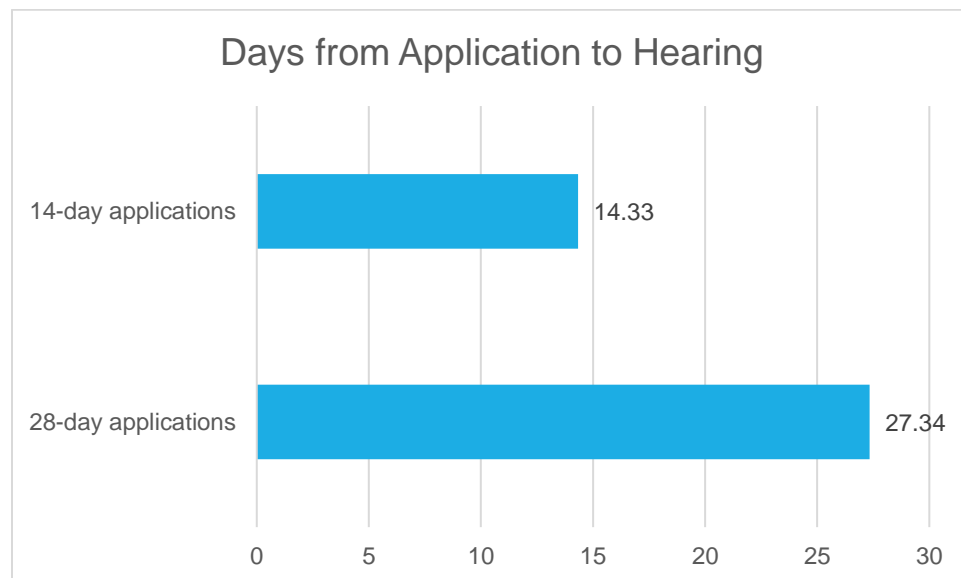




### Scheduling Timelines for Hearings

Patients who were entitled to hearings within 14 days on average received their hearing within 14.33 days. Patients who were entitled to a hearing within 28 days on average received their hearing within 27.34 days.

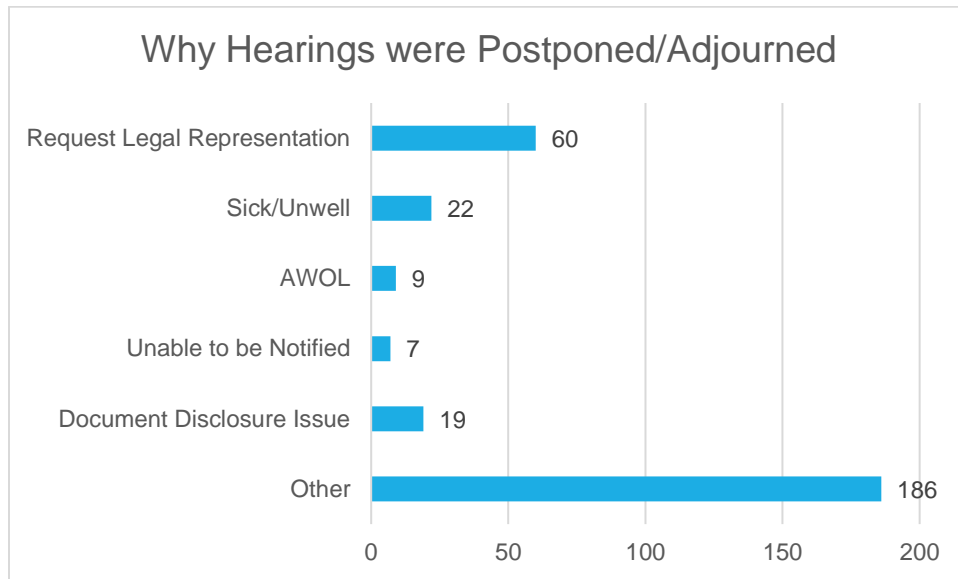
14-day and 28-day application hearings that did not take place within their deadline were usually due to postponements or adjournments for patients to obtain representation.



### Postponements of Hearings

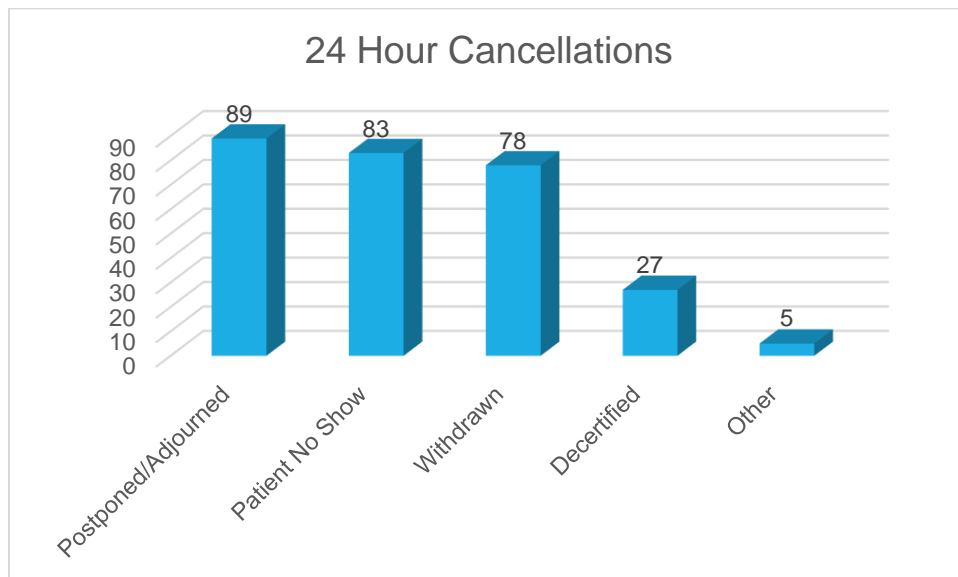
From a procedural fairness perspective, the Board is concerned with any process that delays a patient's access to justice. From an operational perspective, cancellations or postponements are costly in cancellation fees and staff time. The Board is working with stakeholders to explore solutions to reduce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

This fiscal year: 303 hearings were postponed or adjourned; 60 hearings were postponed so that patients could obtain legal representation; 22 hearings were postponed as patients were too medically or psychiatrically unwell to proceed; 9 hearings were postponed when patients were absent without leave; 7 hearings were postponed because patients were unable to be notified of their hearings; and 19 hearings were postponed for document disclosure issues. Hearings were postponed for other, non-disclosed reasons in 186 cases as the Board does not require patients to provide reasons for requesting a postponement in cases where they provide at least 48 hours notice prior to the hearing.



#### Cancellations within 24 Hours

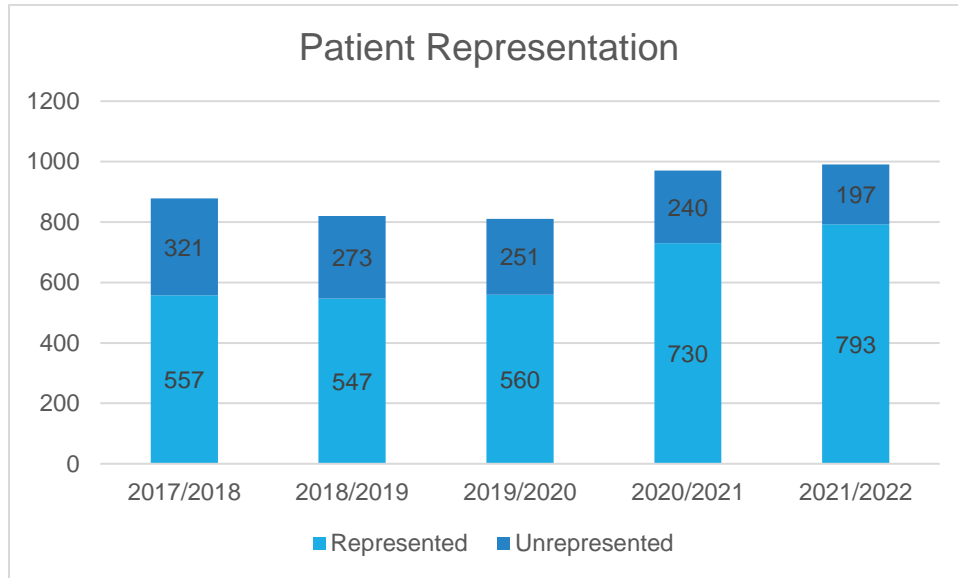
Hearings that are cancelled within 24 hours of the scheduled hearing incur costly cancellation fees. This fiscal year, 282 hearings were cancelled within 24 hours of the scheduled hearing. Of those cancelled hearings, 89 were due to postponement/adjournments, 83 were due to a patient not attending, 78 were due to a patient withdrawing their application, and 27 were due to a patient being decertified.



#### Patient Representation

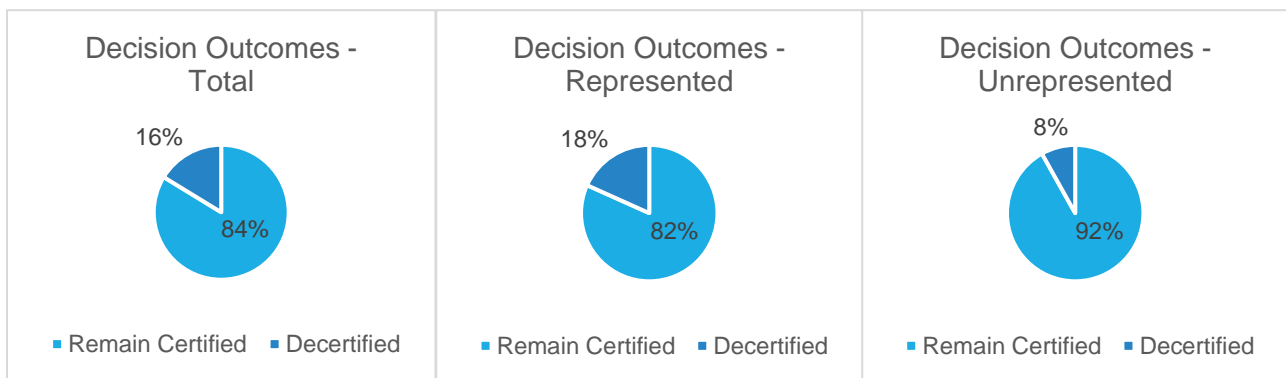
Of the 990 applications that proceeded to a hearing, 793 patients were represented by a legal advocate or legal counsel at a hearing. 781 of these patients were represented through the Mental Health Law Program (MHLP) which is operated by the Community Legal Assistance Society and 12 patients were represented by privately hired counsel. Patients were self-represented or represented by a non-legal advocate, such as

a family member or friend, in 197 hearings. The Board continues to work with the Ministry of the Attorney General and the MHLP to ensure that barriers are reduced to accessing legal representation and access to justice.



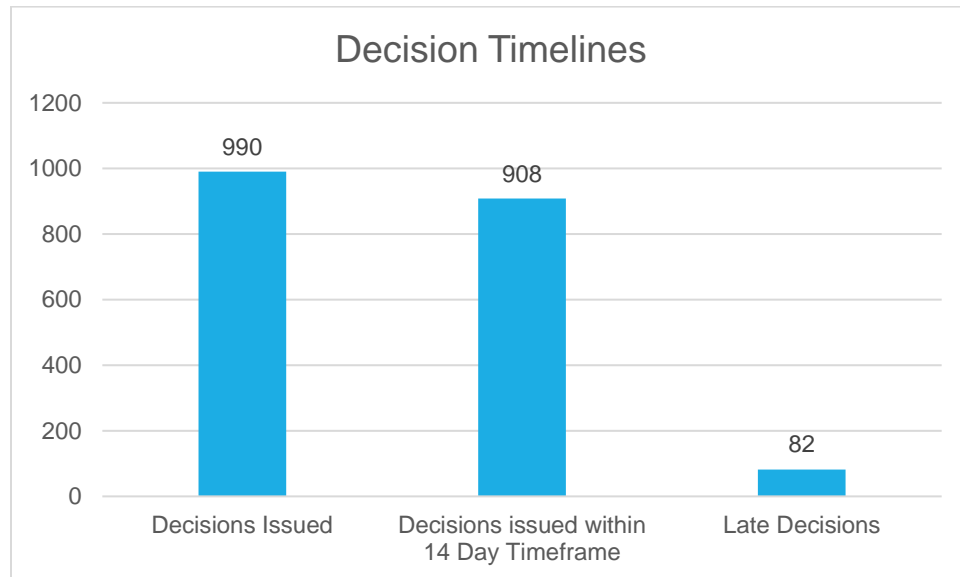
### Hearing Outcomes

Of the hearings that proceeded to a review panel for determination, patients were detained (ie. their certification was upheld) in 829 cases (84% of the time) and decertified in 161 cases (16% of the time). Patients represented by a legal advocate or legal counsel were detained in 648 cases (82%) and decertified in 145 cases (18%). Unrepresented patients were detained in 181 cases (92%) and decertified in 16 cases (8%).



## Decision Timelines

The statutory timeline under the *Mental Health Act* for issuance of written reasons for a panel's determination is 14 days after the hearing. This fiscal year, of the 990 reasons issued, 92% of the Board's reasons were issued within the statutory timeline, with an average issuance time of approximately 6 days.



## 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 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 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.

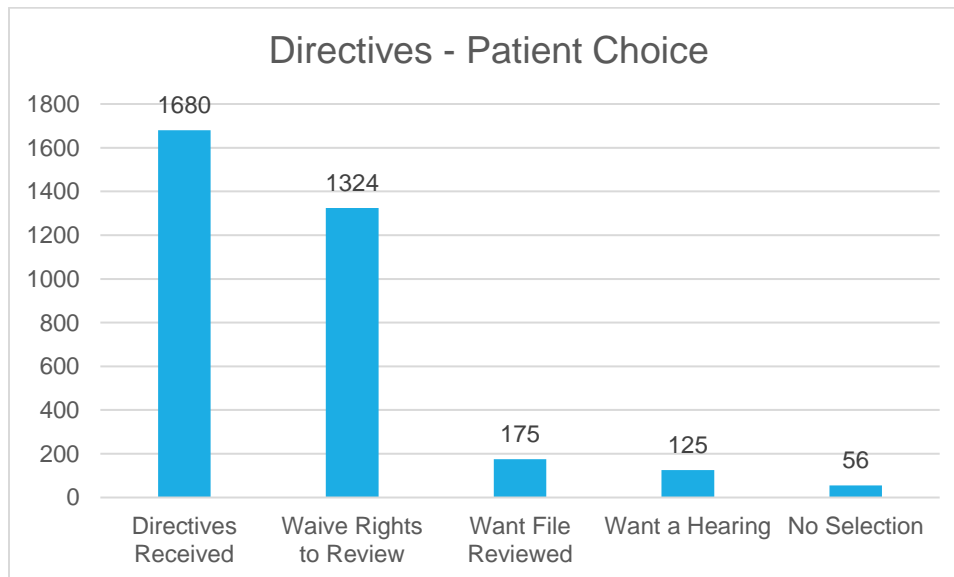
Facilities must give written notice to the Board of any patient who has been on leave or transferred to an approved home under Section 37 or 38 of the *Mental Health Act* for 12 or more consecutive months and a review panel hearing has not been requested or held within that period by way of the Extended 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.

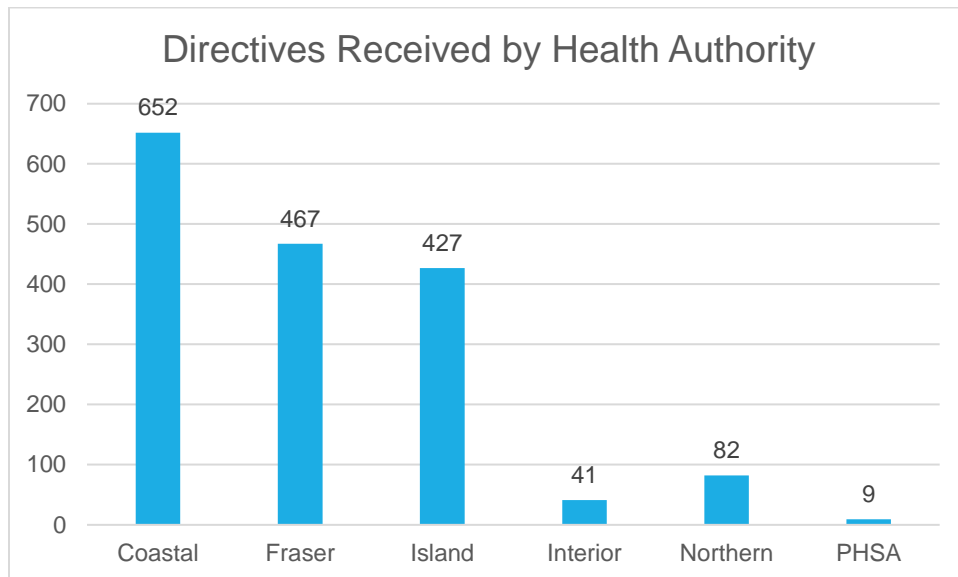
The Directive allows patients to provide their guidance to the Board on whether they wish to proceed with a mandatory review of their treatment records, or to waive the right to have the records reviewed. The Directive also serves as a reminder to facilities to advise patients of their rights. The Directive 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

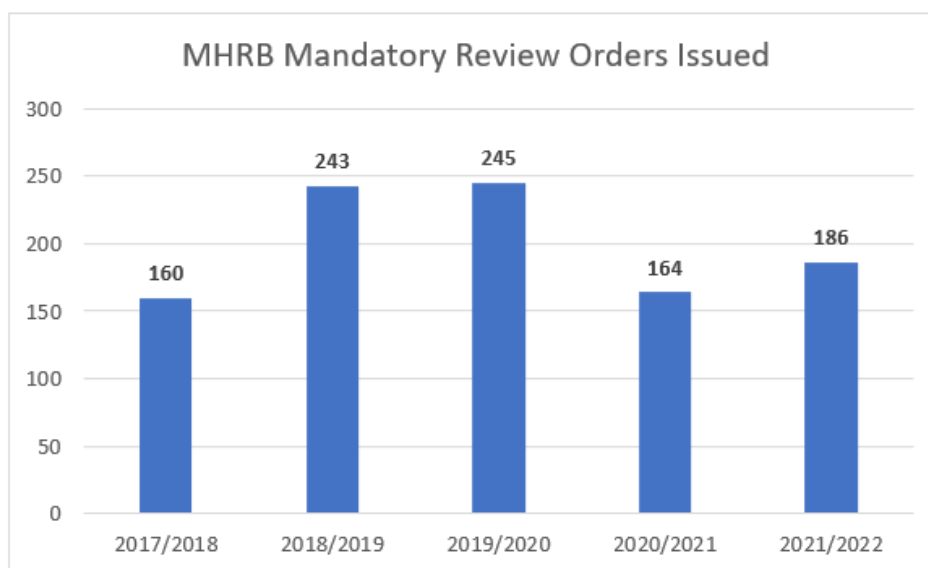
Facilities must provide treatment records when requested by the Board. The Board asks for treatment records when a patient does not fill out the Directive, or a patient fills out the Directive and wants their file reviewed. The Board Chair assesses the treatment records to determine whether there is 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**”).

This fiscal year, the Board received 1,680 Directives from the Health Authorities, primarily from the Vancouver Coastal, Fraser, and Island Health authorities. Of the 1680 Directives received, 1324 of patients waived their right to a file review. 125 patients requested a hearing, and 175 patients requested a file review. A file review was also conducted on the remaining 56 patients who did not expressly waive their statutory right to a review (i.e. did not make a selection on the Directive). The Board observed an increase in the overall number of Directives, the number of Directives requesting a file review, and the number of Directives requesting hearings.





There were 186 Mandatory Review Orders issued by the Board, 29 of which ordered a hearing. 2 of those cases proceeded to a hearing. 16 patients were decertified after the order was issued, and 11 patients elected not to proceed to a hearing.



## 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.

While the number of applications received, and the number of hearings conducted exceeded historic norms and would normally result in highly elevated expenditure, the lack of travel costs during this fiscal year partially 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 an increase in the cost per hearing this fiscal year due to an increase in costs associated with judicial reviews of Board decisions that were not seen in previous years.

<b>Fiscal Year</b>	<b>Hearings Proceeded</b>	<b>Adjudication Cost</b>	<b>Cost Per Hearing</b>
<b>2021/22</b>	990	\$2,043,535	\$2,064
<b>2020/21</b>	970	\$1,829,696	\$1,886
<b>2019/20</b>	811	\$1,668,763	\$2,057
<b>2018/19</b>	820	\$1,563,657	\$1,846
<b>2017/18</b>	878	\$1,642,653	\$1,866

<b>Adjudication Cost</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>
Member Fees & Comm Fees	1,174,380	1,113,031	1,200,973	1,346,742	1,417,466
Case Presenter Fees	377,458	364,407	384,556	477,029	523,977
Members Travel	90,152	81,809	82,080	18	0
Judicial Reviews	0	0	0	0	89,884
Interpreters	663	4,410	1,154	5,907	12,207
<b>Total</b>	<b>\$1,642,653</b>	<b>\$1,563,657</b>	<b>\$1,668,763</b>	<b>\$1,829,696</b>	<b>\$2,043,535</b>

### Cost Per Application

The cost per application encompasses all areas of expenditures from the early stage of receiving the application to post hearing administration. Costs per application have remained relatively stable over the past five fiscal years.

<b>Fiscal Year</b>	<b>Total Applications</b>	<b>Total Cost</b>	<b>Cost Per Application</b>
<b>2021/22</b>	2,628	\$2,778,099	\$1,057
<b>2020/21</b>	2,545	\$2,489,529	\$978
<b>2019/20</b>	2,188	\$2,516,128	\$1,149
<b>2018/19</b>	2,092	\$2,420,841	\$1,157
<b>2017/18</b>	2,155	\$2,021,567	\$938



## Operating Costs

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	503,993	544,000	40,007
Employee Benefits	127,090	137,900	10,810
Hearing Costs	1,953,651	1,687,000	(266,651)
Members Fees	1,417,466		
Case Presenter Fees	523,977		
Travel Costs	0		
Interpreters	12,207		
Judicial Reviews	89,884	0	(89,884)
Travel (Management and Employee)	0	0	0
Information Services – Operating	69,236	65,000	(4,236)
Office and Business Expenses	4,572	4,100	(472)
Other Expenses (Contractor)	29,673	60,000	30,327
<b>TOTAL COST</b>	<b>2,778,099</b>	<b>2,498,000</b>	<b>(280,099)</b>

## Our Team

### Board Members

Board members are independent decision-makers. They are dedicated and highly qualified and have 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.

At the end of this fiscal year, the Board had 85 members, including the Chair. The 85 members live in various locations throughout the province and included 30 legal members, 23 medical members, and 32 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.

### 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

Shannon Drummond

Jacqueline Nash

Charlotte Richardson

Danyka Wadley

Laura Weninger

# Organizational Chart

