



Mental Health Review Board

ANNUAL REPORT

2022-2023

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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, 2022 to March 31, 2023, 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.

Our Board remains 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.

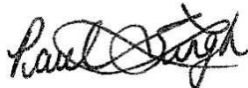
In January 2021, the British Columbia Representative for Children and Youth released a report entitled, *Detained: Rights of Children and Youth Under the Mental Health Act*, which included a recommendation directed at the Board to “pilot a new Review Board hearing process for children and youth that centers 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. As part of this commitment, the Board has employed a Navigator, who, commencing May 1, 2023, will work to assess the needs of children and youth applicants. The Navigator will be the point person for all communications and coordination of children and youth applicant hearings from the time of filing of the application for hearing to the conclusion of the hearing. The Navigator will have ongoing communication with the applicant and participants regarding the process steps, the Board’s Rules of Practice and Procedure, the incorporation of any children and youth protocols and practices, and the implementation of any reasonable accommodations including cultural, spiritual, emotional, language-related, and technical.

I would like to thank the many organizations, community members, health authorities, and advocates for their ongoing participation and input over the past year on developing improved processes for children and youth appearing before the Board.

I would also like to thank our Board staff and members for their hard work and professionalism. They espouse our commitment to public service, and it is a great privilege to work with them. Together, we are proud to serve British Columbians.

Paul Singh



Chair, BC 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 *Mental Health 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.

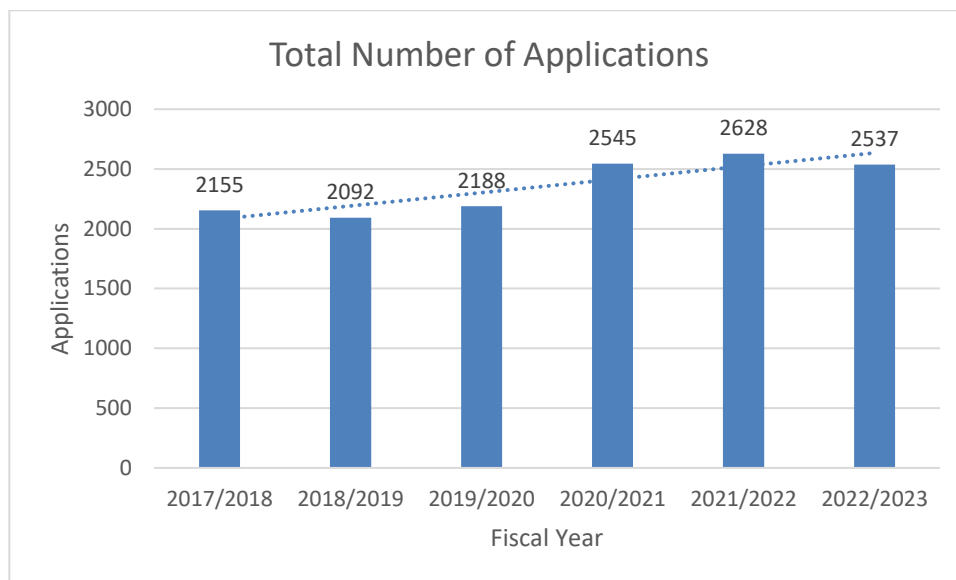
The Board reports on a fiscal year basis which is consistent practice across the administrative justice sector.

Stakeholder Relations

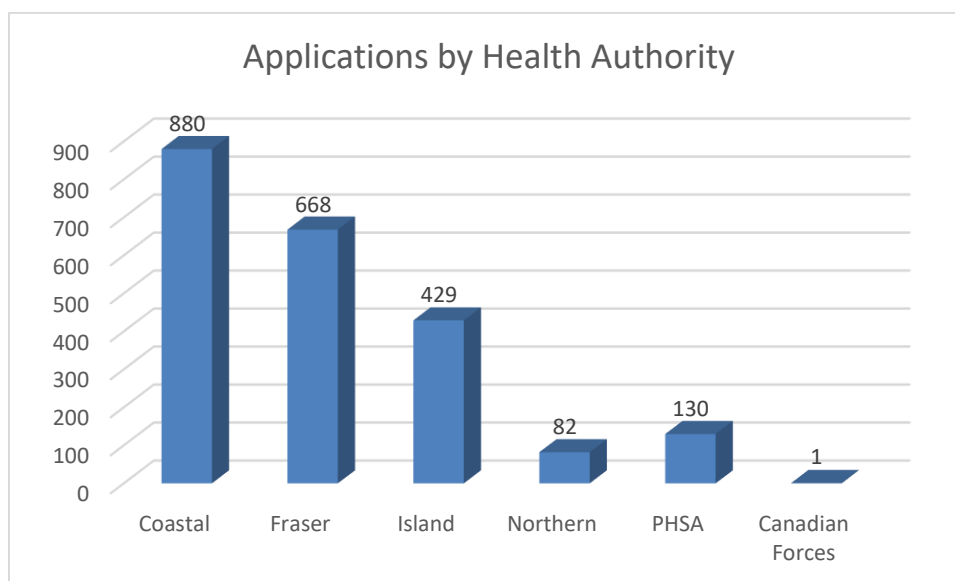
The Board continues to maintain strong relationships with stakeholders including the Mental Health Law Program, the Ministry of Health (Mental Health and Substance Use), Health Authorities across the province, and the Ministry of the Attorney General. These relationships ensure the Board's ability to explore innovative ways to improve its services, to find solutions to ongoing concerns, and to ensure the highest quality of adjudication.

Applications

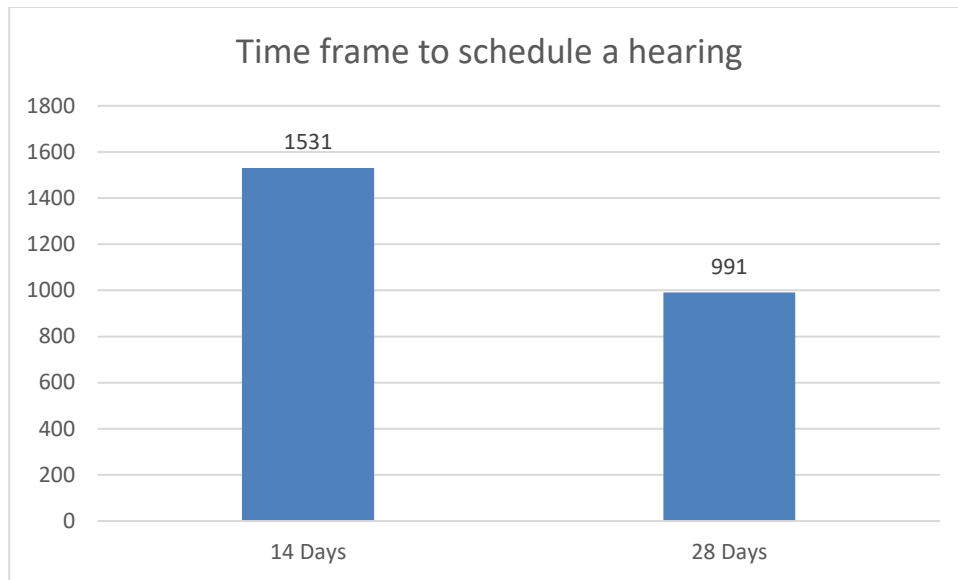
The Board has no control over the number of applications it receives in any given year. In this fiscal year, the Board received a total of 2537 applications. The overall trendline is toward an increasing volume of applications, and the Board expects its caseload to continually increase in future years.



In terms of geographic regions, the majority of the applications are from the Vancouver Coastal Health Authority (35%) and Fraser Health Authority (26%).



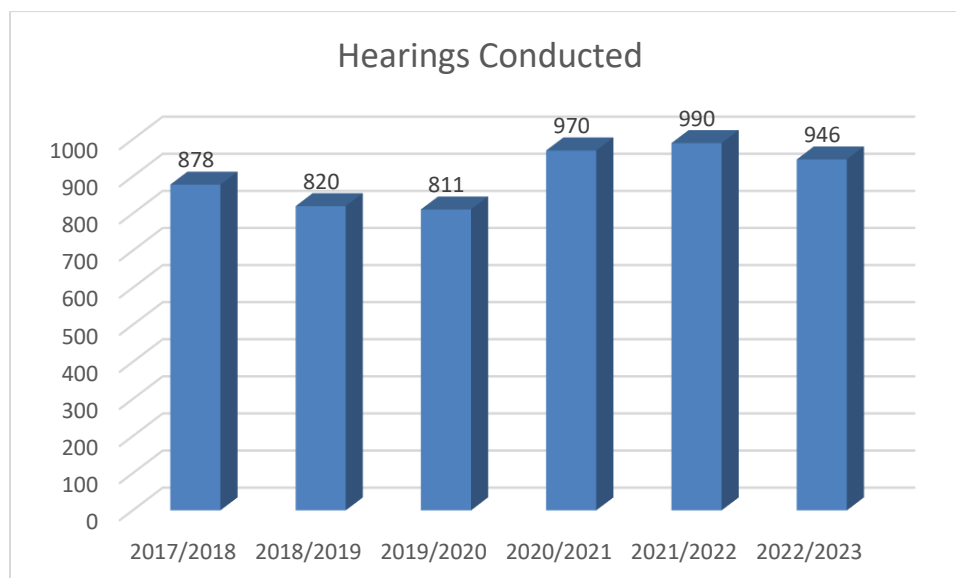
Under the *Mental Health Act*, patients are entitled to a hearing before the Board within 14 days or 28 days of certification, depending on the length of certification. The majority of applications require the Board to schedule a hearing within 14 days.



Not all applications proceed to a hearing. Of the 2537 applications received this fiscal year: 899 were withdrawn by the patient; 516 patients were decertified prior to a hearing; 29 patients were ineligible for a hearing at the time of their application; and 109 applications were cancelled for other reasons, usually because the patient did not attend their scheduled hearing. An additional 20 applications remained open at the time of data collection.

Hearings

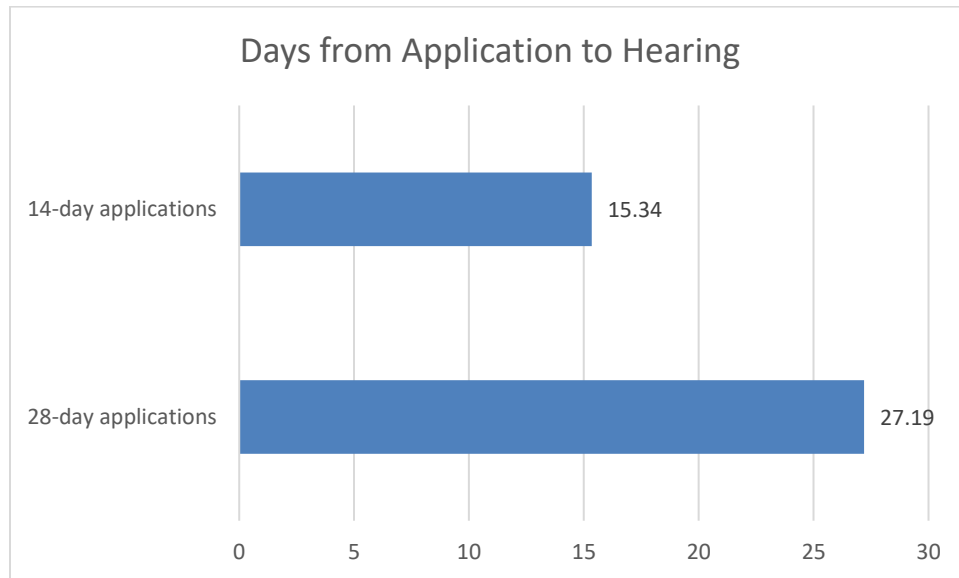
Each application received by the Board can result in more than one hearing being scheduled. Hearings can be postponed multiple times for many reasons and, on occasion, the hearing can take place months after the application is received. Hearings are considered adjourned when the hearing has already been 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, 946 hearings were conducted.



Scheduling Timelines for Hearings

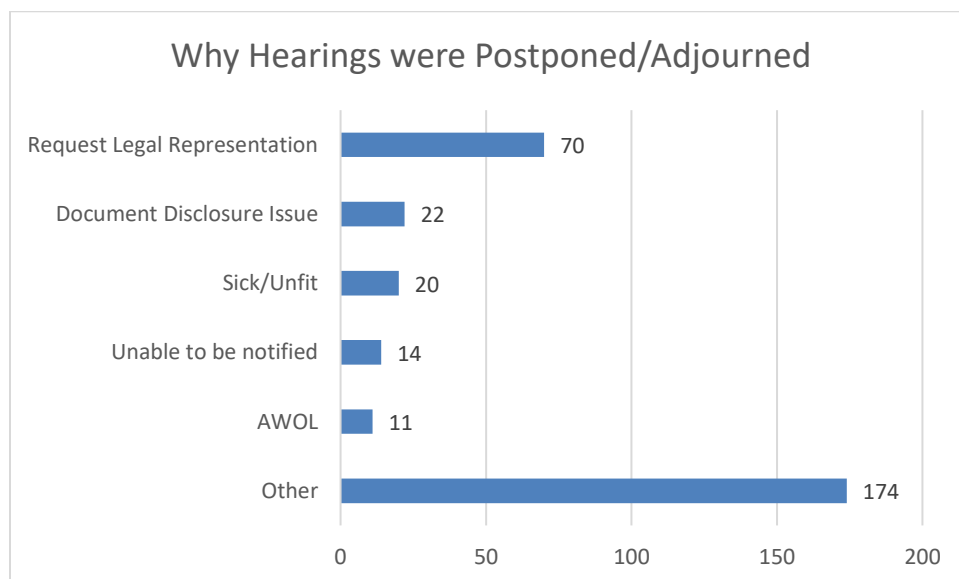
Patients who were entitled to hearings within 14 days on average received their hearing within 15.34 days. Patients who were entitled to a hearing within 28 days on average received their hearing within 27.19 days.

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.



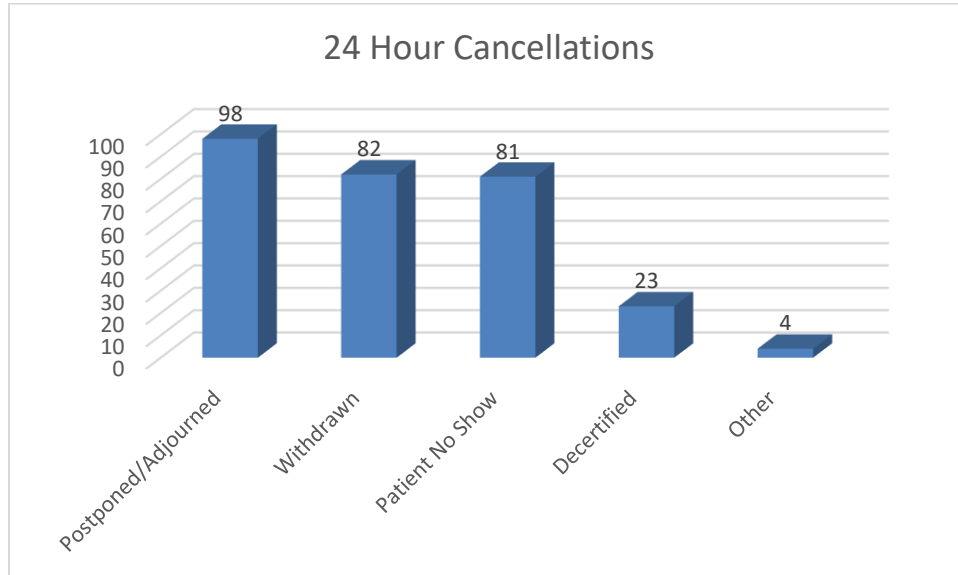
Postponements of Hearings

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, 311 hearings were postponed or adjourned. Of those, 70 hearings were postponed so that patients could obtain legal representation; 22 hearings were postponed for document disclosure issues; 20 hearings were postponed as patients were too medically or psychiatrically unwell to proceed; 14 hearings were postponed because patients were unable to be notified of their hearings; and 11 hearings were postponed when patients were absent without leave. Hearings were postponed for other, non-disclosed reasons in 174 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.



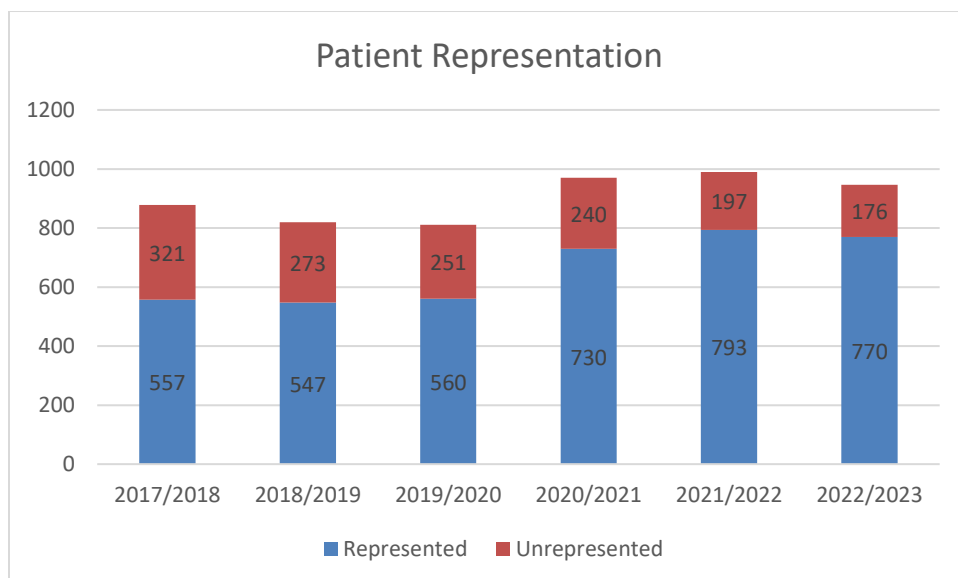
Cancellations within 24 Hours

Hearings that are cancelled within 24 hours of the scheduled hearing incur costly cancellation fees. This fiscal year, 288 hearings were cancelled within 24 hours of the scheduled hearing. Of those cancelled hearings, 98 were due to postponement/adjournments, 82 were due to a patient withdrawing their application, 81 were due to a patient not attending, and 27 were due to a patient being decertified.



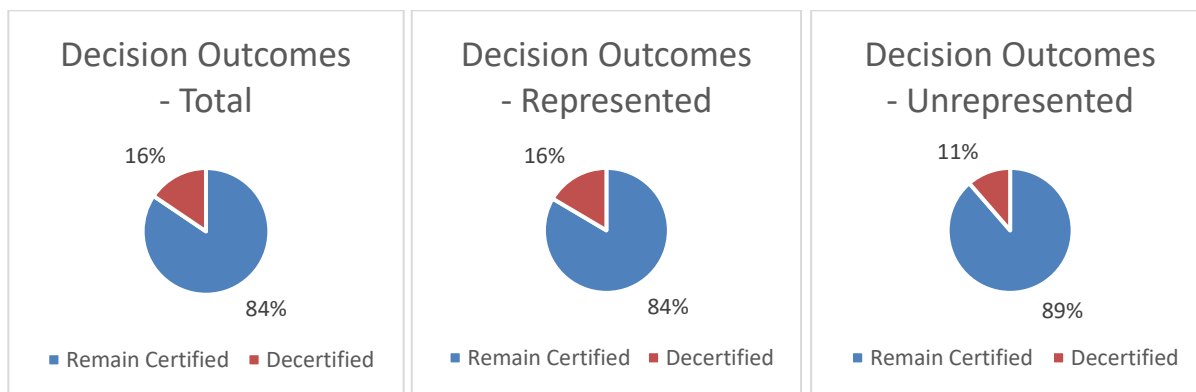
Patient Representation

Of the 946 applications that proceeded to a hearing, 770 patients were represented by a legal advocate or legal counsel at a hearing. 765 of these patients were represented through the Mental Health Law Program (MHLP) which is operated by the Community Legal Assistance Society and 5 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 176 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 (i.e. their certification was upheld) in 799 cases (84% of the time) and decertified in 147 cases (16% of the time). Patients represented by a legal advocate or legal counsel were detained in 643 cases (84%) and decertified in 127 cases (16%). Unrepresented patients were detained in 156 cases (89%) and decertified in 20 cases (11%).



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, the average issuance time for the 946 reasons issued by panels was approximately 7 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.

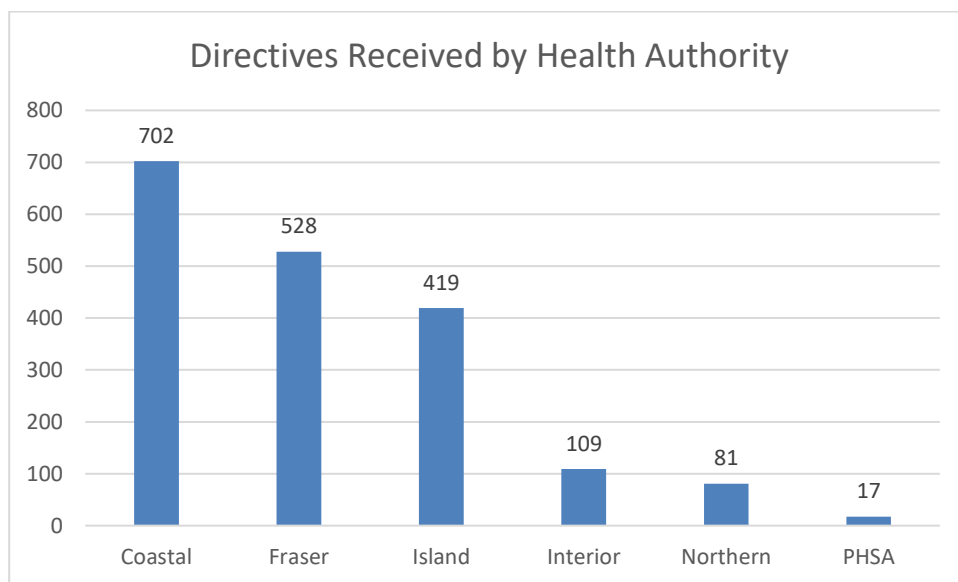
Facilities must give written notice to the Board of any patient who has been on leave or transferred to an approved home under Section 37 or 38 of the *Mental Health Act* for 12 or more consecutive months and a review panel hearing has not been requested or held within that period by way of the Extended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

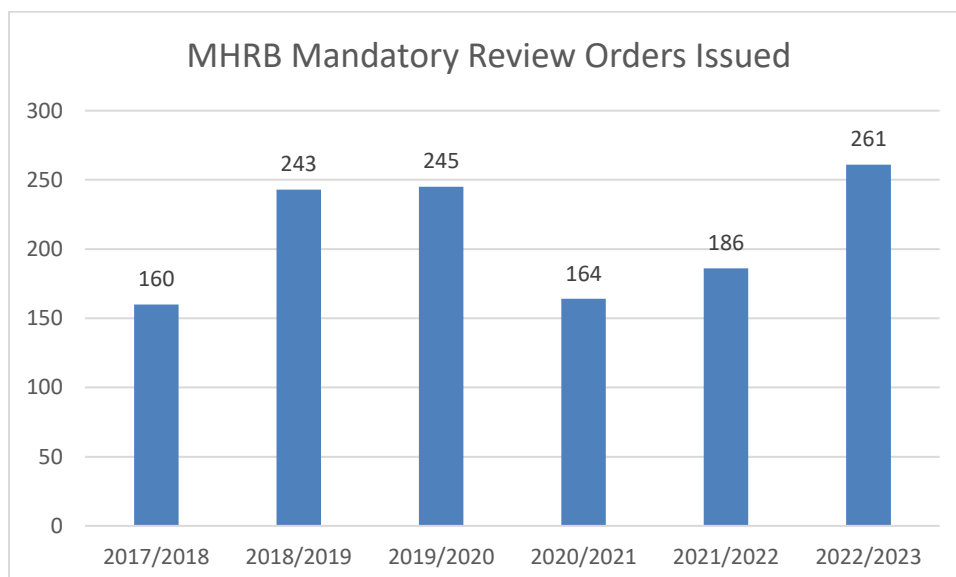
- request to have their file reviewed,
- waive their right to have their file reviewed, or
- request a review panel hearing

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 1856 Directives from the Health Authorities, primarily from the Vancouver Coastal, Fraser, and Island Health authorities. Of the 1856 Directives received, 1464 patients waived their right to a file review. 151 patients requested a hearing, and 184 patients requested a file review. A file review was also conducted on the remaining 57 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 261 Mandatory Review Orders issued by the Board, 40 of which ordered a hearing. 4 of those cases proceeded to a hearing. 19 patients were decertified after the order was issued, and 17 patients elected not to proceed to a hearing.



Financial Disclosure

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.

Prior to the start of the pandemic in March 2020, hearings were generally conducted in-person. Since then, hearings have been conducted virtually, subject to exceptions for children and youth hearings and case-by-case accommodations necessitating in-person hearings.

The charts below show the number of applications received by the Board, the number of hearings conducted and the hearings costs over the span of five years. The costs associated with hearings start from the time an application is received through to post hearing administration. We provide two important measures, the cost per application and the cost per hearing. While the number of applications received and the number of hearings conducted continue to increase, which would normally result in elevated expenditures, the lack of travel costs due to virtual hearings has partially offset the costs.

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 little 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, travel costs and judicial reviews. Over the past five years, the cost per hearing has been relatively stable despite annual increases in the physician's sessional rates, and cost associated with training and orientation of new members.

Fiscal Year	Hearings Proceeded	Adjudication Cost	Cost Per Hearing
2022/23	946	\$2,006,842	\$2121
2021/22	990	\$2,043,535	\$2,064
2020/21	970	\$1,829,696	\$1,886
2019/20	811	\$1,668,763	\$2,057
2018/19	820	\$1,563,657	\$1,846

Adjudication Costs	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Member Fees & Comm Fees	1,174,380	1,113,031	1,200,973	1,346,742	1,417,466	1,429,082
Case Presenter Fees	377,458	364,407	384,556	477,029	523,977	531,337
Members Travel	90,152	81,809	82,080	18	0	710
Judicial Reviews	0	0	0	0	89,884	34,244
Interpreters	663	4,410	1,154	5,907	12,207	11,469
Total	\$1,642,653	\$1,563,657	\$1,668,763	\$1,829,696	\$2,043,535	\$2,006,842

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 years.

Fiscal Year	Total Applications	Total Cost	Cost Per Application
2022/23	2,537	\$2,795,583	\$1,102
2021/22	2,628	\$2,778,099	\$1,057
2020/21	2,545	\$2,489,529	\$978
2019/20	2,188	\$2,516,128	\$1,149
2018/19	2,092	\$2,420,841	\$1,157

Operating Costs

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	558,746	544,000	(14,746)
Employee Benefits	147,998	137,900	(10,098)
Hearing Costs	2,006,842	1,687,000	(259,842)
Members Fees	1,429,082		
Case Presenter Fees	531,336		
Travel Costs	710		
Judicial Reviews & Interpreters	45,713	60,000	
Travel (Management and Employee)	807	0	(807)
Information Services – Operating	73,086	65,000	(8,086)
Office and Business Expenses	8,104	4,100	(4,004)
Other Expenses	0	0	0
TOTAL COST	2,795,583	2,498,000	(297,583)

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 71 members, including the Chair. The members live in various locations throughout the province and included 23 legal members, 23 medical members, and 24 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

Vanessa Starkey

Charlotte Richardson

Laura Weninger

Organizational Chart

