

The Mental Health
Care and Treatment
Review Board

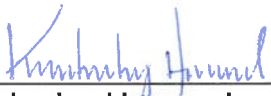
ANNUAL PERFORMANCE REPORT
2020-2021

Message from the Chair

I am pleased to provide the 2020-2021 Annual Performance Report for the Mental Health Care and Treatment Review Board (Review Board) in accordance with the requirements of the **Transparency and Accountability Act** for a Category 3 Government Entity.

This Annual Performance Report provides an overview of the activities of the Review Board. The statistics related to the previous six years of Review Board activities are found in the Report on Performance. Also included in this section is a report on the 2020-2021 objective and indicators as identified in the 2020-23 Activity Plan.

As Chair of the Review Board, my signature is indicative of the entire Review Board's accountability for the actual results reported.



Kimberley Horwood
Chair

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1.0 Overview

Membership

The Review Board is appointed pursuant to Section 57(1) of the **Mental Health Care and Treatment Act** (the Act). The terms of appointment are stated at Sections 58(1) and (2) of the Act. Current Review Board members and their terms are referenced in Appendix A.

Mandate

The Review Board was established in 2007 pursuant to Section 56 of the Act.

The Review Board operates as an independent, quasi-judicial administrative tribunal to conduct review panel hearings under the Act as set out in section 56(1) of the Act. The Review Board's mandate is based on an involuntary psychiatric patient's right to periodic, fair, and timely review of their involuntary status under the Act.

The primary role of the Review Board is to review applications made by patients seeking a review of the issue of Certification of Involuntary Admission under Section 64(1) (a) of the Act, to review applications made by patients seeking a review of the issuance of a Community Treatment Order under Section 64(1)(b) of the Act, and to review applications made by a patient alleging the denial of a right under Section 64(1)(c) of the Act.

In the 2020-2021 fiscal year, the Review Board was comprised of eleven (11) active members: three (3) lawyers (legal representatives); two (2) physicians (physician representatives); and six (6) laypeople (public representatives). Each hearing is overseen by a three-person Review Panel constituted by each of a legal representative, physician representative, and a public representative. All Review Board members have terms that have expired, and not all have continued to be active on the board, despite that they have not yet been formally replaced.

Location of Hearings

The Review Board is available to meet as required; and has met in St. John's and by video conference with members across the province. During the COVID-19 pandemic, all Review Board hearings were conducted by teleconference. The following is an overview of locations in which the Panels heard applications and business was conducted in 2020-2021.

Table A: Overview of the Locations of Hearings (2020-2021)

LOCATION	IN PERSON	TELECONFERENCE (due to COVID-19 restrictions)
Waterford Hospital, St. John's	-	47
Health Sciences Centre, St. John's	-	-
Janeway Hospital, St. John's	-	-
Western Memorial Regional Hospital, Corner Brook	-	5
Central Newfoundland Regional Health Centre, Grand Falls-Windsor	-	-
Sir Thomas Roddick Hospital, Stephenville	-	-
St. Clare's Hospital, St. John's	-	-
James Paton Memorial Hospital, Gander	-	-
Bonavista Health Centre	-	-
Sub-total	-	-
Total Number of Hearings		52

While Panel members are located across the province, most clients are located in St. John's and Review Board members make themselves available as necessary. In 2020-2021, the Review Board utilized teleconference and telehealth services to enable efficient and effective hearings. This service has encouraged increased capacity building, networking and a collaborative approach by connecting with any of the above as a second site. This was particularly useful during the COVID-19 restrictions, when in-person hearings were not possible. Further, it also increased efficiency with respect to cancellations and/or changes in hearings dates or times, and unavailability of board members in certain regions.

Financial

The Review Board is not required to have audited financial statements. In the 2020-2021 fiscal year total expenses were \$75,348.40, itemized as follows:

Board Members	\$ 56,748.40
Psychiatrists	<u>\$ 18,600.00</u>
Total	\$ 75,348.40

The current Review Board's expenses increased in comparison with last fiscal year's expenses, however the Review Board heard many more hearings. This change is largely due to the increase in hearings in 2020-2021. The Review Board's expenses in 2019-2020 were \$41,607.95. In 2019-2020 there were 34 hearings, whereas in 2020-2021 there were 52 hearings.

Administrative support and expenses are provided by the Department of Health and Community Services (HCS), Mental Health and Addictions Division.

The further duties and responsibilities of the Review Board include reporting annually to the Minister on its operations and on other matters as required by the Minister and performing the other functions that may be prescribed by the regulations.

2.0 Highlights and Partnerships

During 2020-2021, the Review Board participated in a seminar and general discussion with experts in the area of mental health care and treatment legislation, arranged by HCS. The participants represented interested parties and various stakeholders in mental health care and treatment; it was designed to examine the different regimes used in mental health care and treatment across the country, and to use this to invoke a discussion on progressive efforts to refine mental health care and treatment legislation across the country, and in particular, in Newfoundland and Labrador. The Review Board is committed to working with stakeholders and HCS toward regularly reviewing its programs and services to ensure we are implementing best methods.

While the Review Board operates as an entity independent of HCS and the regional health authorities (RHAs), the Board has a shared commitment with these organizations in an effort to provide the most effective care to those with mental health issues.

The Review Board does require interaction at the point of application with senior administrators of RHAs and the acute psychiatric care teams in order to fulfill its mandate. Other entities/persons with which the Review Board has a shared commitment include:

Client Representatives

The client representative role is defined by the Act as a "person, other than a rights advisor, who has reached the age of 19 years and who is mentally competent and available who has been designated by, and who has agreed to act on behalf of, a person with a mental disorder and, where no person has been designated, the representative shall be considered to be the next of kin, unless the person with the mental disorder objects."

Non-government organizations, such as the Canadian Mental Health Association (CMHA-NL) or the consumer group, Consumers Health Awareness Network Newfoundland and Labrador (CHANNAL), have supportive, less formal roles.

Rights Advisors

Persons appointed by the Minister pursuant to Section 13 of the Act to give advice and assistance to persons subjected to certificates of involuntary

admission and community treatment orders. Rights advisors also explain the certification process, assist with applications to the Review Board, and accompany the applicant to the hearing.

Newfoundland and Labrador Legal Aid Commission (NLLAC)

Persons who are subject to certificates of involuntary treatment or community treatment orders are able to access legal advice and assistance from the NLLAC as a matter of right, without having to go through the normal application process. There is currently no financial criteria for eligibility to receive representation by NLLAC. The role of counsel is integral to the hearing in assisting the Panels with clear and relevant evidence from the Applicant and effectively cross examining the regional health authority.

3.0 Report on Performance

Progress 2020-2021

In 2020-2021, Review Board Panels were convened as needed. Panels consist of three members, including a Legal Representative (lawyer), who is Chair of the Panel and whose duty it is to oversee the hearing; a Physician Representative (doctor); and a Public Representative, the majority of whom have professional and/or personal experience in mental health care and treatment. The Panels reviewed applications by clients who were subjected to involuntary admission to a psychiatric facility or applications in respect of renewal of certificates of involuntary admission, or persons who were the subject of community treatment orders or renewals thereof, or who were allegedly denied rights resulting from involuntary admissions. Decisions of the Review Board were communicated directly to applicants and/or their representatives and to the admitting psychiatric facility.

The Review Board provided clients subject to a certificate of involuntary admission with a mechanism to access a review of the issuance of a certificate of involuntary admission. It also provided a means by which a person subject to a community treatment order could access a review of the issuance or renewal of such an order.

The Review Board acts as a check and balance within the mental health system, spans the continuum of care from community/primary care to facility based/tertiary/emergency care, and contributes to more informed citizens and a more accountable mental health system. The Review Board supports the Provincial Government's strategic direction of "Better Care for Individuals" through improved accessibility of services by monitoring decisions made within the mental health system and encouraging more appropriate use of available resources, as is evident in the objective statement.

This Annual Activity Report supports the 2020-2023 Activity Plan which was developed to include Review Board statistics, and which informs annual objective reporting.

Review Board Activity – Comparison by Fiscal Year

Table B: Review Board Activity by Fiscal Year from 2014-2021

Review Board Activity	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017	2015-2016	2014-2015
STATUS/NUMBER OF APPLICATIONS							
Received ¹	126	84	143	112	129	139	154
Summarily dismissed by Chair ²	1	2	11	4	2	4	5
Application Withdrawn ³	63	40	58	52	57	57	77
Applicant Decertified ⁴							
No hearing set ⁵	10	8	22	29	31	37	41
Hearings ⁶	52	34	52	27	39	41	31
RESULTS OF HEARINGS							
Certificates upheld/confirmed	50	22	42	18	24	33	21
Certificates not upheld/not confirmed/decision not communicated	2	2	3	3	1	0	8
Community Treatment Orders upheld/confirmed	0	9	6	6	11	2	2
Community Treatment Orders not upheld	0	1	1	0	2	5	0
Panel lacking jurisdiction	0	0	0	0	0	0	0
Decision communicated	52	34	50	26	38	40	34

¹ This represents the total number of applications received during the fiscal year 2020-2021. There were none carried over from the previous fiscal year.

² An application is summarily dismissed by the Chair pursuant to section 65 of the Act if the application was found to be frivolous, vexatious or not in good faith, or if the matter had been considered within the previous 30 days.

³ An application might be withdrawn by the applicant for a number of reasons, but it means the applicant changed their mind and decided against a review hearing.

⁴ Decertification means the Applicant was either discharged, or remains as a voluntary patient, after the hearing date was set but before the hearing took place.

⁵ “No hearing set” means that the applicant was discharged or decertified prior to the scheduling of the hearing.

⁶ “Hearings” means that review board members met in person or used communications technology to hear and decide upon an application.

Annual Objectives 2020-2021

By March 31, 2021, 2022, and 2023, the Review Board will have reviewed applications under the Act to ensure the conditions for issuing or renewing certificates are appropriate and to ensure the Review Board's compliance with the requirements of the legislation, particularly concerning Section 64(1)(c) an application by a person detained in a facility alleging a denial of a right set out in section 11 or 12.

Objective: Reviewed applications under the Act.

Indicators:

- Number of applications received from mental health services
- Number of panels convened
- Number of hearings held/reviews completed
- Number of certificates upheld/cancelled
- Number of decisions communicated
- Timeliness of panels convened, hearings held and decisions rendered
- Annual reports provided

Indicator #1 – Number of applications received from mental health services

The number of applications received by HCS increased in the 2020-2021 fiscal year.

Table C-1: Number of applications received

Review Board Activity	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017	2015-2016	2014-2015
NUMBER OF APPLICATIONS REC'D							
Applications Received	126	84	143	112	129	139	154

Indicator #2 – Number of panels convened

This means that a Panel was appointed and a date for the hearing was scheduled. The number of hearings scheduled will always be lower than the number of applications received. This occurs where the applicant is decertified prior to the hearing date, making the application unnecessary; or, where the application was summarily dismissed by the Chair if a hearing occurred and a decision was rendered within 30 days of receiving the application.

Table C-2: Number of hearings scheduled (i.e. convened)

Review Board Activity	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017	2015-2016	2014-2015
NUMBER OF HEARINGS SCHEDULED (i.e. CONVENED)							
Hearings scheduled	115	74	111	79	96	98	108

Indicator #3 – Number of hearings held/reviews completed

Of the 115 hearings that were scheduled, 52 of them actually proceeded to a hearing. Some of the reasons for the variation in the number of hearings scheduled versus hearings actually held include that patients are decertified prior to the hearing date, or the applicant might withdraw his or her application.

Table C-3: Number of hearings held/reviews completed

Review Board Activity	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017	2015-2016	2014-2015
NUMBER OF HEARINGS HELD/REVIEWS COMPLETED							
Hearings held/reviews completed	52	34	52	27	39	41	31

Indicator #4 – Number of certificates upheld/cancelled

Of the 52 matters that proceeded to a hearing, 50 of the involuntary certificates/CTOs were upheld and two of the certificates were cancelled.

Table C-4a: Number of involuntary certificates/CTOs upheld/cancelled

Review Board Activity	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017	2015-2016	2014-2015
INVOLUNTARY CERTIFICATE/CTO NUMBER UPHELD/CANCELLED							
Certificates upheld	50	22	42	18	24	33	21
Certificates cancelled	2	2	3	3	1	0	8

Of the 52 Applications for Review of the Involuntary Certificates/CTOs that a Panel considered, 50 of them were upheld, and two were cancelled.

Indicator # 5 – Number of decisions communicated

There is a requirement that the Applicant receive the Panel’s decision within three clear days of the completion of the hearing. In 2020-2021, all but four decisions rendered were communicated to the parties within the prescribed timeframe of three clear days. These were situations of complex issues, and lengthy hearings, that were outside the norm for a review hearing, and outside what would be contemplated under the legislation. In those circumstances, the timeframes were reasonable.

Table C-5a: Number of Decisions Rendered and Communicated

Review Board Activity	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017	2015-2016	2014-2015
DECISIONS COMMUNICATED							
Decisions communicated	52	34	50	26	38	40	34

This represents a diligent and continued effort by the Review Board to ensure legislative compliance, and that the applicant receives his/her decision without undue delay.

Table C-5b: Delay of Decisions Rendered and Delivered

Delay of Decisions Rendered and Delivered Per Section 71(2) of the Act by Number						
Number of days following hearing - decision rendered	Decisions Rendered and Delivered					
	2020-2021	2019-2020	2018-2019	2017-2018	2016-2011	2015-2016
4 Clear Days (1 day delay)	1	0	1	0	0	0
5 Clear Days (2 days delay)	0	0	0	0	0	0
6 Clear Days (3 days delay)	0	0	0	0	0	0
More than 6 Clear Days	3	0	0	0	3	3
Total	4	0	1	0	3	3

Indicator #6 – Timeliness of Panels convened, hearings held and decisions rendered

The functioning of the Board is impacted by the withdrawal of applications and the notice provided for withdrawals. Lack of sufficient notice may create unnecessary burdens and missed opportunities for Board Members. However, it is recognized, given the nature of mental illness, that there will be occasions when little notice can be provided. The below data is comprised of the number of applications withdrawn (7)

together with the number of applicants decertified before hearing (56 as shown in Table B. The total that did not proceed for this reason is 63.

Table C-6a: Applications Withdrawn/Applicant Decertified

Length Of Notice Provided for Withdrawn Applications/Decertifications 2020-2021	
Less than 24 hours before hearing	25
More than 1 day before hearing	38

The Act provides specific timelines to guide the review process and this has provided parameters for the information collected. Specifically, Panels must be appointed within two clear days of the receipt by the Board Chair of the Application, and the hearing dates must be set within two clear days of referral of the Application to the Panel Chair. To effectively meet the time requirements of the Act, it is typical for Panels to be struck, hearing dates set, and notices sent out to participants, from a common administrative centre.

Table C-6b: Timeliness in Appointing Panels and Setting Hearing Dates 2020-2021

Timeliness in Appointing Panels and Setting Hearing Dates Per Sections 66(2) and 67(2) of the Act By Number (2020-2021)	
Same Day as Application Received or Next Day	105
1 Clear Day after Application Received	8
2 Clear Days after Application Received	3
3 Clear Days after Application Received	0
More than 3 Clear Days after Application Received	0
Total	116

In 2020-2021, all Panels were appointed, and all hearing dates were set, within the legislative requirements.

Hearings must be held within ten clear days of the receipt of the Application by the Board Chair.

Table C-6c: Timeliness of Hearings Scheduled to be Heard

	Timeliness of Hearings Scheduled to be Heard Per Section 67(1) of the Act by Number					
Number of Days from Receipt of Application to Hearing	Number of Applications					
	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017	2015-2016
1 to 4 clear days	88	33	24	19	10	17
5 to 10 clear days	28	44	87	63	86	84
11 clear days or more	0	0	0	0	0	0
Total	116	74	111	82	96	101

The Review Board was successful in having all hearings in 2020-2021 scheduled to be heard within the time frame of the legislative requirements.

Decisions must be rendered and delivered within three clear days from the conclusion of the hearing.

Table C-6d: Timeliness of Decisions Rendered and Delivered

	Timeliness of Decisions Rendered and Delivered Per Section 71(2) of the Act by Number					
Number of Days After Hearing to Rendered Decision	Decisions Rendered and Delivered					
	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017	2015-2016
1 Clear Day	21	9	15	7	26	22
2 Clear Days	16	8	17	9	5	8
3 Clear Days	11	17	17	10	7	7
More than 3 Clear Days	4	0	1	0	0	3
Total	52	34	50	26	38	40

The Review Board was successful in meeting the legislative requirements in respect of the timeliness of rendering and delivering its decisions in respect of 48 hearings; four hearings had decisions that were distributed beyond the prescribed timeframe.

Indicator # 7 – Yearly Reports Provided

Reports are provided annually, and data provided by fiscal year to allow for ease of reference and monitoring of trends and/or areas of increased activity within the Review Board's purview.

The 2020-23 Activity Plan indicates that each year the objective will remain the same. Therefore, the annual objective will remain the same for 2020-21, measured by:

Indicators:

- Number of applications received from mental health services
- Number of panels convened
- Number of hearings held/reviews completed
- Number of certificates upheld/cancelled
- Number of decisions communicated
- Timeliness of panels convened, hearings held and decisions rendered
- Annual reports provided

4.0 Challenges and Opportunities

Community Resources

The Review Board emphasizes that for some applicants, the lack of community resources continues to be a deterrent to proceeding with options other than continued certification. Increasing awareness of the need for a continuum of treatment services and continuing to prevent the unnecessary detention of applicants, as well as ensuring the safety of applicants and/or the community, is an ongoing challenge for the Review Board.

Procedural Matters

All applications, including those upheld, summarily dismissed, or rescheduled, require administrative preparations for Panels. Given the consistent trend in the number of applications and cancellations, the following procedural matters continue to represent opportunities and challenges for the Review Board in 2020-2021 and into 2020-2021; this is a matter that the sub-committee of the Review Board may help address and increase awareness.

Hearing Process

The Review Board hearing process is well developed under the **Act**, which was proclaimed on October 1, 2007, and the proclamation of Part IV, Community Treatment

Orders on January 1, 2008. In 2020-2021, no complaints were received to the Review Board as to its processes, and most stakeholders are aware of the Board processes.

Review Board Composition

It remains difficult to maintain a full contingent of Legal Representatives and Physician Representatives on the Review Board. Currently, there are vacancies for both Legal Representatives and Physician Representatives on the Review Board. The Review Board requires additional members to fill the Legal Representative and Physician Representative positions. This is becoming somewhat urgent in order for the Review Board to continue to operate successfully and to continue to achieve its objective within the legislative framework.

The issue of the carryover of board members to continue in their capacities when their term has officially ended until reappointment was resolved by an amendment to section 58(1) the Act, (assented to on December 22, 2012) as follows:

- s. 58(1.1) Where the term of a member expires, he or she continues to be a member until reappointed or replaced.

The noted amendment continues to assist the Board's functioning and continuity.

Appendix A: Board Members 2020-2021

MENTAL HEALTH CARE AND TREATMENT ACT REVIEW BOARD MEMBERS

2020-2021

Position	Name	Term Expiry ⁷
Chairperson – Lawyer	Kimberley Horwood	April 12, 2018
Member – Lawyer	Christina Kennedy	May 16, 2020
Member – Lawyer	Ian Wallace	May 16, 2020
Member – Lawyer	Geoffrey Aylward	April 13, 2018
Physician Representative	Dr. Robert Young	April 12, 2018
Physician Representative	Dr. Christopher Heughan	April 12, 2018
Physician Representative	Dr. Peter Blackie	April 12, 2018
Physician Representative	Dr. Joan Kranenka	April 12, 2018
Physician Representative	Dr. Theodora (Ted) Rosales	May 16, 2020
Public Representative	Gerald Warren	April 12, 2018
Public Representative	Brenda Stamp	April 12, 2018
Public Representative	Frankie O'Neill	April 12, 2018

⁷ All Review Board Members have expired terms, yet continue to carry out their duties until reappointed or replaced, as is permitted under section 58(1.1) of the Act.

Position	Name	Term Expiry⁷
Public Representative	Patricia Mercer	April 12, 2018
Public Representative	Elaine Dobbin	November 1, 2018
Public Representative	Noreen Careen	May 16, 2020
Public Representative	Sandra McKellar	May 16, 2020
Public Representative	Chad Perrin	May 16, 2020
Public Representative	Abigail Sheppard	May 16, 2020
Public Representative	Jerry Vink	May 16, 2020
Public Representative	Jerry Young	May 16, 2020

Review Board

HCS

Confederation Building, 1st Floor, West Block

P.O. Box 8700

St. John's, NL A1B 4J6

Telephone: 709-729-3658 Fax: 709-729-4429

www.gov.nl.ca/health