

The Mental Health
Care and Treatment
Review Board

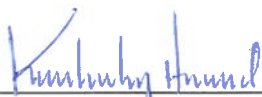
ANNUAL PERFORMANCE REPORT
2022-2023

Message from the Chair

I am pleased to provide the 2022-2023 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 2022-2023 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. Review Board members and their terms are referenced in Appendix A. All Review Board members have terms that have expired. While it is permissible under the Act to continue their duties until replacement, not all have continued to be active on the board, despite that they have not yet been formally replaced. This has been the case for several years now, as there have not been any new appointments in over six years, despite requests from the Review Board based on a low number of Legal Representatives and Physician Representatives currently active on the Review Board.

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 individuals seeking a review of the issue of a 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. The Review Board also completes automatic review hearings initiated by the Health Authority where a Certificate of Involuntary Admission or a Community Treatment Order has been renewed and thereafter where it has been in effect for a lengthy period, as prescribed under Sections 33 and 53 of the Act.

At the start of the 2022-2023 fiscal year, the Review Board was comprised of ten (10) active members: three (3) lawyers (legal representatives); two (2) physicians (physician representatives); and five (5) laypeople (public representatives). By the end of the 2022-2023 fiscal year, as of March 31, 2023, the Review Board was comprised of eight (8) active members: three (3) lawyers (legal representatives); one (1) physicians (physician representatives); and four (4) 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.

Location of Hearings

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 2022-2023.

Table A: Overview of the Locations of Hearings (2022-2023)

LOCATION	IN PERSON	BY VIDEOCONFERENCE
Waterford Hospital, St. John's	-	42
Health Sciences Centre, St. John's	-	-
Janeway Hospital, St. John's	-	-
Western Memorial Regional Hospital, Corner Brook	-	4
Central Newfoundland Regional Health Centre, Grand Falls-Windsor	-	2
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		48

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 2022-2023, the Review Board utilized teleconference and telehealth services to enable efficient and effective hearings. This was particularly useful during the continued COVID-19 restrictions, when in-person hearings were not possible. Given that the Review Board was low on membership, it also allowed the Review Board to participate without having to physically attend hearings, which would otherwise have been an impediment to operating within our strict, and short, mandated timelines.

Financial

The Review Board is not required to have audited financial statements. Based on financial information provided by the Department of Health and Community Service (HCS), Mental Health and Addictions Division, in the 2022-2023 fiscal year total expenses were \$110,255.18, itemized as follows:

Board Members	\$ 93,342.68 *
Psychiatrists	\$ 16,912.50
Total	\$ 110,255.18

* The 2022-2023 Review Board's expenses for Board Members increased in comparison with the previous fiscal year's expenses due to a deferred payment for an obligation from 2021-2022. If averaged over the past three years, the cost of operations would be in line with previous years.

Cost of operations in 2020-2021 was \$75,348.40; in 2021-2022 was \$39,682.65; and in 2022-2023 was \$110,255.18. The 3-year average is \$75,095.41, which is in line with the historical operating cost.

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; on other matters as required by the Minister; and performing the other functions that are prescribed by the regulations.

2.0 Highlights and Partnerships

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 may accompany the applicant to the hearing, though they rarely attend.

Legal Aid NL

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

3.0 Report on Performance

Progress 2022-2023

In 2022-2023, 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 subject 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/legal counsel, 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 helps to promote these resources to the population generally, which contributes to a more accountable mental health system.

In circumstances where Certificates of Involuntary Admission and Community Treatment Orders are in place for a lengthy period, the Act calls for an automatic review hearing, which is initiated by the health authority and undertaken by the Review Board.

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 2016-2023

Review Board Activity	2022-2023	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017
STATUS/NUMBER OF APPLICATIONS							
Received ¹	134	138	126	84	143	112	129
Summarily dismissed by Chair ²	1	2	1	2	11	4	2
Application Withdrawn ³	1	6	0	0	0	0	0
Applicant Decertified ⁴	74	70	63	40	58	52	57
No hearing set ⁵	10	8	10	8	22	29	31
Hearings ⁶	48	52	52	34	52	27	39
RESULTS OF HEARINGS							
Certificates upheld/confirmed	40	40	50	22	42	18	24
Certificates not upheld/not confirmed	0	0	2	2	3	3	1
Community Treatment Orders upheld/confirmed	7	11	0	9	6	6	11
Community Treatment Orders not upheld	1	0	0	1	1	0	2
Decision not communicated (decertified after hearing but before decision)	0	1	0	0	0	0	0
Decision communicated	48	51	52	34	50	26	38

¹ This represents the total number of applications received during the fiscal year 2022-2023. 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 2022-2023

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 2022-2023 fiscal year.

Table C-1: Number of applications received

Review Board Activity	2022-2023	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017
NUMBER OF APPLICATIONS REC'D							
Applications Received	134	138	126	84	143	112	129

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	2022-2023	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017
NUMBER OF HEARINGS SCHEDULED (i.e. CONVENED)							
Hearings scheduled	122	128	115	74	111	79	96

Indicator #3 – Number of hearings held/reviews completed

Of the 122 hearings that were scheduled, 48 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	2022-2023	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017
NUMBER OF HEARINGS HELD/REVIEWS COMPLETED							
Hearings held/reviews completed	48	52	52	34	52	27	39

Indicator #4 – Number of certificates upheld/cancelled

Of the 48 matters that proceeded to a hearing, 47 of the involuntary certificates/CTOs were upheld and one certificate was cancelled.

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

Review Board Activity	2022-2023	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017
INVOLUNTARY CERTIFICATE/CTO NUMBER UPHELD/CANCELLED							
Certificates upheld	47	51	50	22	42	18	24
Certificates cancelled	1	0	2	2	3	3	1

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 2022-2023, all but ten decisions rendered were communicated to the parties within the prescribed timeframe of three clear days.

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

Review Board Activity	2022-2023	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018	2016-2017
DECISIONS COMMUNICATED							
Decisions communicated within 3 clear days	38	44	48	34	50	27	36

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

Table C-5b: Timelines 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					
	2022-2023	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018
0-1 Clear Day	5	23	21	9	15	7
2 Clear Days	11	13	16	8	17	9
3 Clear Days	12	8	11	17	17	10
More than 3 Clear Days	10	7	4	0	1	0
Total	48	51	52	34	50	26

The Review Board was successful in meeting the legislative requirements in respect of the timeliness of rendering and delivering its decisions in respect of 37 hearings; ten hearings had decisions that were distributed beyond the prescribed timeframe.

The below table encompasses those decisions that were rendered outside the 3-day prescribed timeframe.

These included situations of complex issues and longer hearings that were outside the norm for a review hearing, and outside what would be contemplated under the legislation as it relates to reasonable timeframes for the provision of a decision. In those circumstances, the timeframes were reasonable. However, the primary reason for delayed decisions related to difficulties with the government-issued devices, along with unavailability of board members due to vacancies in the Review Board roster.

Table C-5c: Timelines of Delayed Decisions (beyond 3-day timeframe)

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					
	2022- 2023	2021- 2022	2020- 2021	2019- 2020	2018- 2019	2017- 2018
4 Clear Days (1 day delay)	1	3	1	0	1	0
5 Clear Days (2 days delay)	4	0	0	0	0	0
6 Clear Days (3 days delay)	0	2	0	0	0	0
More than 6 Clear Days	5	2	3	0	0	0
Total Delayed	10	7	4	0	1	0

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 (1 as shown in Table B) together with the number of applicants decertified before hearing (74 as shown in Table B). The total that did not proceed for this reason is 75.

Table C-6a: Applications Withdrawn/Applicant Decertified

Length Of Notice Provided for Withdrawn Applications/Decertifications 2022-2023	
Less than 24 hours before hearing	24
More than 1 day before hearing	51

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 within HCS.

Table C-6b: Timelines in Appointing Panels and Setting Hearing Dates 2022-2023
Timeliness in Appointing Panels and Setting Hearing Dates Per Sections 66(2)
and 67(2) of the Act
By Number (2022-2023)

Same Day as Application Received or Next Day	113
1 Clear Day after Application Received	9
2 Clear Days after Application Received	2
3 Clear Days after Application Received	0
More than 3 Clear Days after Application Received	0
Total	124

In 2022-2023, all Panels were appointed, and all hearing dates were set, within the legislative requirements.

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					
	2021-2022	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018
1 to 4 clear days	15	78	88	33	24	19
5 to 10 clear days	105	50	28	44	87	63
11 clear days or more	4	0	0	0	0	0
Total	124	128	116	74	111	82

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

Four hearings out of the 124 scheduled were beyond the legislated 10-day time frame for the provision of a hearing, however, in three of those four circumstances, the patient was decertified before the hearing took place, so there was only one occasion where a patient was late in receiving their hearing.

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 2022-23, 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. Community-based mental health programs are highly effective at assisting those with mental health issues where there is regular participation. The challenge is when there is an unwillingness to participate, or a lack of insight as to the benefits of such programs, both of which are so prevalent in mental health issues. This is why Community Treatment Orders are so effective when they are able to be used, however, the criteria make them of limited use in many cases where community-based treatment options would work; the legislative criteria for a Community Treatment Order mandates that Community Treatment Orders are only available in circumstances where there have been three involuntary admissions within the previous two years, or if the individual has previously been subject to a Community Treatment Order. This is a narrow class of individuals. There are many circumstances where individuals would benefit from Community Treatment Orders, but don't meet the prerequisite criteria. In saying that, the Review Board is also mindful that Community Treatment Orders carry an obligation of mandatory treatment, so they ought not to be used lightly. The Review Board is a participant in ongoing discussions within this province and across the country related to this issue, aimed at finding an effective balance for the criteria and implementation of Community Treatment Orders, for overall betterment of mental health programs in this province.

Procedural Matters

All applications, including those upheld, summarily dismissed, or rescheduled, require administrative preparations for Panels. The following represent the most prominent benefit and the single biggest challenge for the Review Board in 2022-2023:

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 2022-2023, 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 many vacancies for both Legal Representatives and Physician Representatives on the Review Board. All of the current members of the Review Board have terms which expired years ago.

Board members are permitted to act beyond their appointed term, as 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.

However, this does not address the issue that many of the Review Board members who are still listed on the roster are no longer carrying on their duties. The Review Board has communicated the need for additional membership and renews its request. Review Board members are appointed for three-year terms, however, there have not been any new appointments for over five years. This represents a challenge to the Review Board's operation.

Out of 18 positions currently listed as "active" on the Mental Health Care and Treatment Review Board, only 8 individuals are currently involved in hearings: three legal representatives; one physician representative; and four public representatives. It is understood the remaining physician wishes to conclude his term, but has remained until new appointments are made to ensure the Review Board can meet its legislated mandate. Should the physician resign, then the Review Board would not be able to meet its legislated mandate, and all review hearings would cease.

Appendix A: Board Members 2022-2023

MENTAL HEALTH CARE AND TREATMENT ACT REVIEW BOARD MEMBERS

2022-2023

**indicates inactive Board Member*

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	Frankie O'Neill	April 12, 2018
* Public Representative	Patricia Mercer	April 12, 2018
Public Representative	Elaine Dobbin	November 1, 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	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

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