

# Mental Health Review Board

## 2017/2018 ANNUAL REPORT

June 2018



## MANDATE

Our mandate 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*. We have a duty to give patients fair, timely, and independent reviews of their loss of liberty.

## VALUE STATEMENTS

### **Procedural Fairness of Hearings**

We will conduct procedurally fair hearings. We will ensure that patients have a meaningful opportunity to be heard. Our decisions will be independent, reasonable, timely, and issued with clear and logical reasons.

### **Patient-Oriented Service Excellence**

We will deliver services that are, at all times, accessible and in the best interests of patients. We will exhibit the highest standards of public service integrity and professionalism. Our services will be fair, inclusive, and effective. At every stage of our process, we will be responsive, flexible, and sensitive to the needs of the vulnerable public who seek our services. We will continually improve how we deliver our services to ensure that we are fulfilling our legislative mandate.

### **Public Confidence and Accountability**

We will be leaders in administrative justice that reflects best practices across Canada. We will be accountable and transparent. We will be financially responsible and balance our budget.

### **Innovation**

We will strive to develop new efficiencies and innovative solutions in delivering our services.

# Table of Contents

Message from the Chair _____	1
Board Team _____	2
Independence and Accountability _____	3
Board Operations _____	4
Strategic Direction and Operating Environment _____	6
Board Metrics _____	7
Financial Disclosure _____	14

## Message from the Chair

I am pleased to present the Annual Report of the British Columbia Mental Health Review Board for the fiscal year April 1, 2017 to March 31, 2018, submitted in accordance with s. 59.2 of the *Administrative Tribunals Act*. I am accountable for the results as reported.

Our Board is moving forward with a number of innovative initiatives and improvements to our operations and services. During this transition, our Board is guided by the following values:

- Procedural Fairness of Hearings
- Patient-Oriented Service Excellence
- Public Confidence and Accountability
- Innovation

I was appointed as Acting Chair in September 2017. I am honored to be appointed as Chair in March 2018 and to lead our Board to the highest standards of adjudicative integrity and accountability. I would like to thank our Board staff and adjudicators for their hard work and professionalism during this year of transition. Our Board staff has embraced our mandate and values, and put in extra effort in a year filled with changes to their work.



Diana Juricevic  
Chair  
June 1, 2018

## Board Team

### BOARD MEMBERS

Currently, there are 77 members, including the Chair, on the Board, all appointed in accordance with the *Mental Health Act* and the *Administrative Tribunals Act*. In terms of gender diversity, there are 45 female and 32 male members. The details and the biographies of the members can be found on the Crown Agencies and Board Resourcing Office [website](#).

The Board members are independent decision-makers. The members hold a variety of professional backgrounds, including legal and medical, with expertise in mental health. Members work with staff to ensure that timely, fair and professional services are delivered.

### PROFESSIONAL STAFF

Our Staff are a vital part of the organization and provide support and service to the Board members as well as the general public. Our Staff are an integral part of our professional team and the operation of the Board:

#### **Registrar**

Lisa Wong

#### **Manager of Finance and Operations**

Andrea Nash

#### **Board Staff**

Laura Weninger

Surindar Jhavar

Charlotte Richardson

Amber Martell (partial year)

Jackson Runkle

Johanna Barbosa (partial year)

## Independence and Accountability

The Mental Health Review Board (the “Board”) is an independent decision-making body. Similar to other administrative tribunals in British Columbia, we are like a court and cannot take direction from government on our decision making authority in individual cases even though we are publicly funded. One of the reasons we are independent of government in our decision making authority is because provincial health facilities are a party on every application and give evidence at every hearing. Our decisions can only be overturned on appeal to the BC Supreme Court.

While we are independent of government in our decision making authority, the Board, through the Chair, is accountable to the Attorney General on matters relating to the administration of the Board. These matters include budget, performance management, remuneration, and other areas of accountability. While the government does not make or rescind appointments based on the decisions issued by Board members, the government must hold us to account to the highest standards of adjudicative integrity. Our Board is committed to working with government under this accountability relationship, while at the same time, maintaining the independence of the administrative tribunal.

## Board Operations

### **Purpose and Process**

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 Mental Health Review Board provides an alternative process for reviewing detention decisions. Nonetheless, the patient can still apply to court with or without going through the Board.

A patient is informed by the health professionals, soon after admission, of the right to a review panel hearing. The patient may apply for a review panel hearing by completing a Form 7. The patient can also request free legal and advocacy services to exercise these 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 as are used in the initial certification decision. The review panel hearing offers the vast majority of patients their only practical access to a full, fair and thorough external 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 criterion is not met, the patient must be discharged from involuntary status. The review panel applies this legal test on a balance of probabilities.

All Board members including the Chair are appointed by the Attorney General in accordance with the *Mental Health Act* and the *Administrative Tribunals Act*. Currently, the Board has 77 members living in various locations throughout the province. 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. Each review panel must include a medical practitioner, a legal member who is usually a lawyer, and a person who is neither a medical practitioner nor a lawyer. The legal member is usually designated to chair the panel.

The Board staff is involved in all aspects of processing an application and scheduling a hearing. Board staff schedule hearings within statutory deadlines and in consultation with patients, facilities, doctors, and legal representatives. They are a dynamic team who find solutions for problems that arise after a hearing is

scheduled, distribute reasons for a determination, process invoices for Board members and case presenters, and support the adjudication of mandatory reviews.



## Strategic Direction and Operating Environment

Our Board is committed to service excellence. This past year, the Board moved from the Ministry of Health to the Ministry of Attorney General. In consultation with stakeholders and colleagues in the Ministry of Attorney General, the Ministry of Health, and the Ministry of Mental Health and Addictions, the Board is moving forward with a number of initiatives to improve services. Some of these initiatives include:

- Restructuring the Board to ensure effective service delivery;
- Improving the Form 7 to simplify the application process for patients;
- Seeking feedback from stakeholders and government to modernize the *Rules of Practice and Procedure*;
- Implementing appropriate measures to reduce the budget deficit;
- Creating a new remuneration policy in accordance with the Treasury Board Directive 1/17 and the Ministry of Attorney General remuneration policy framework;
- Utilizing the appropriate technological solutions to improve Board operations;
- Proactively responding to the [Community Legal Assistance Society report](#), entitled, “Operating in Darkness: BC’s Mental Health Act Detention System”, released to the public in November 2017;
- Working with the Ministry of Attorney General on the tribunal co-location project; and
- Creating and implementing a new [Code of Conduct](#) for Board members.

Since being appointed, the Chair has also been working proactively with the Office of the Ombudsperson, Prevention Initiatives, to improve the quality of adjudication and procedural fairness of hearings. Our Board is committed to offering a procedurally fair hearing, issuing well-reasoned decisions, and communicating them in a respectful, timely, and responsive way. We will continue to find and employ innovative ways to continually improve our operation in support of these goals.

The Board will continue to work with stakeholders, the Ministry of Attorney General, the Ministry of Health, and the Ministry of Mental Health and Addictions, to ensure that the Board fulfils its mandate and provides access to justice services that are fair, timely, and effective.

We welcome feedback from our stakeholders. We welcome every opportunity to improve our services, and remedy shortfalls in a timely and constructive manner.

## Board Metrics

### PERFORMANCE STANDARDS

Performance standards keep us focused on providing the public with fair, effective, and timely services. Having standards means that we know when and where we need to improve. Performance measures for the Board regarding the scheduling of hearings, making determinations, and providing written reasons for determinations are established by the *Mental Health Act*, section 25, and are as follows:

1. The hearing shall begin within 14 or 28 days after the day the Board receives the application, unless the patient requests a postponement.
2. The review panel must issue a determination no later than 48 hours after the hearing is completed.
3. The review panel must issue its reasons for its determination no later than 14 days after the determination has been issued.

Hearings are conducted at up to 26 venues throughout the province, including in hospitals and community mental health clinics. Due to the nature of the applications, the majority of hearings are held in hospitals.

Going forward, we will establish and monitor a set of key performance measures that objectively measure and demonstrate to the public how well we are fulfilling our mandate. Our focus will be on ensuring the procedural fairness of hearings and the highest standards of adjudicative integrity.

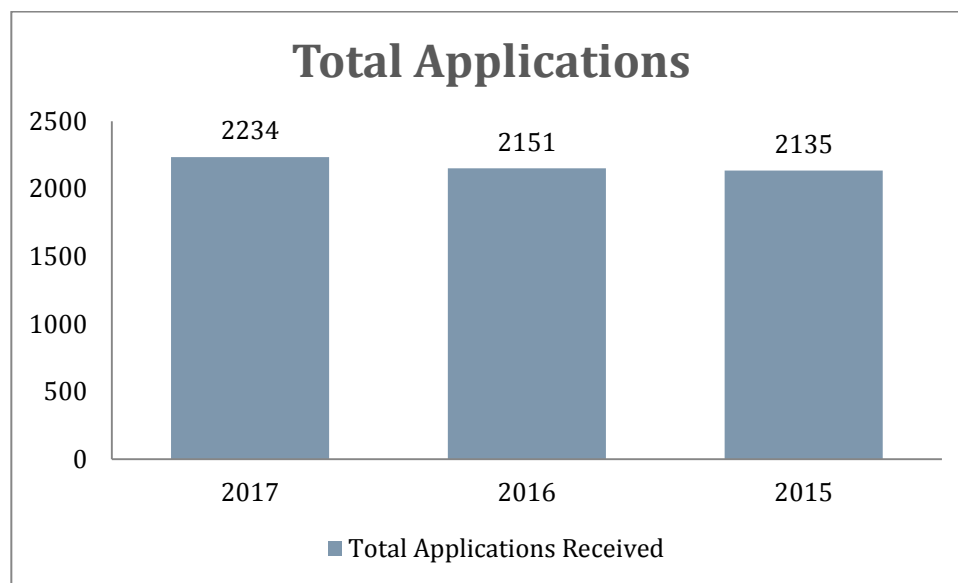
Work is underway to move towards a new electronic case management system to streamline our work and easily generate statistics about our operations.

## CURRENT STATISTICS

The Board has traditionally collected statistics on a calendar year basis, rather than on a fiscal year basis. We are continually improving the collection of data and retention of records to ensure consistency and quality in our reporting.

### Caseload

The Board has no control over the number of applications it receives or the number of hearings that it is required to schedule and convene in any given year. Caseloads have been steadily increasing over the past three years. This past calendar year, the Board received a total of 2234 applications, 875 of which proceeded to a hearing on the merits. This represents a small increase in the number of applications that proceeded to hearing from the previous two years.

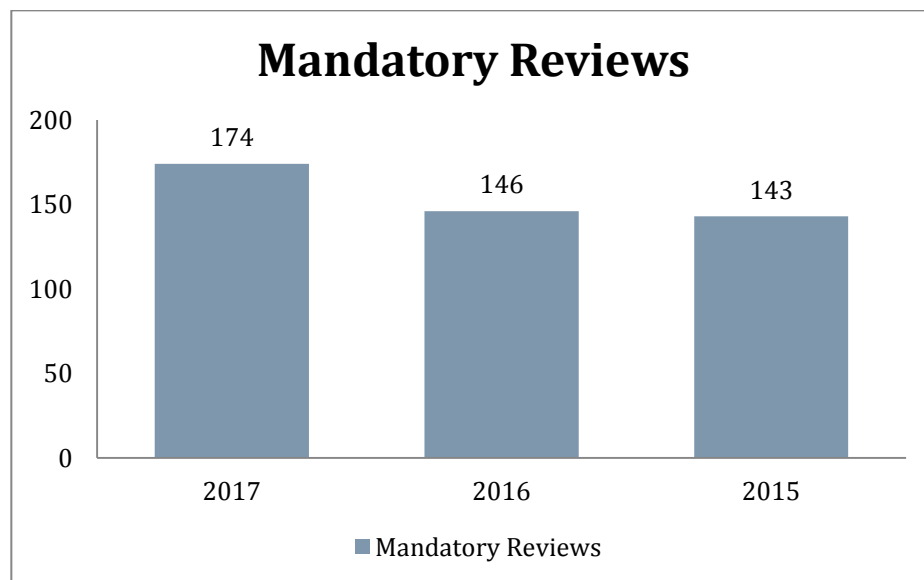


## Mandatory Reviews

The mandatory review process is another way for review panel hearings to occur.

The Board is required by statute to review the treatment records of any patient who has been involuntarily detained for more than twelve months, and who has not requested or had a review panel hearing. The Board Chair conducts a mandatory review of the patient's records to determine if there is a reasonable likelihood that the patient would be discharged following a review panel hearing. In such circumstances, the Board Chair must order that a hearing be held. This provides a statutory guarantee that the file of each involuntary patient will be reviewed on an annual basis.

There has been a steady increase in the number of mandatory reviews over the past three years. The Board has been improving the screening process for mandatory reviews. This includes creating safeguards to ensure that all mandatory review files are received, reviewed in a timely manner, and that adequate reasons are provided for the decision of whether to order a hearing in the circumstances.

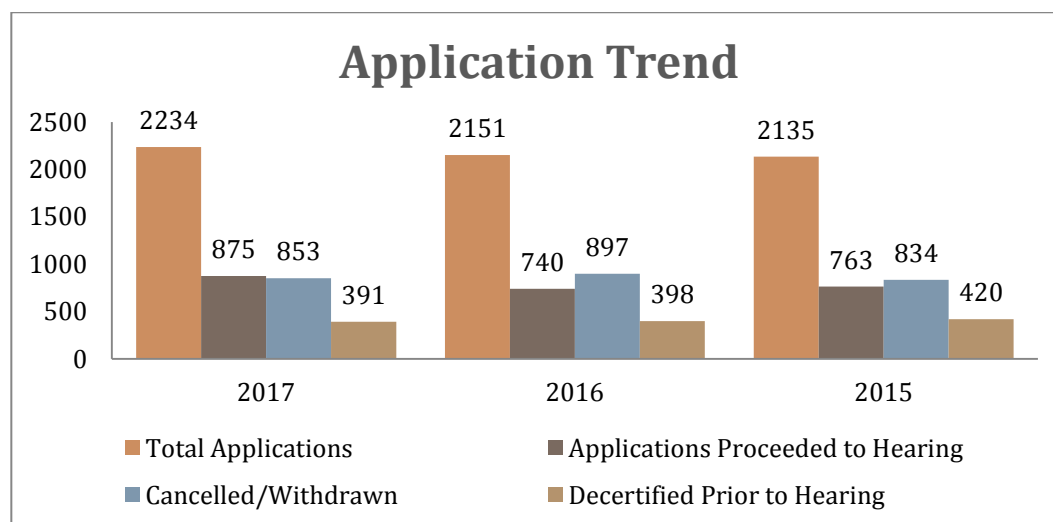


## Hearing Cancellations

The cancellation rate for review panel hearings in British Columbia was 38% last year. This is comparable to the rates from the previous two years of 42% and 39%, respectively.

Calendar Year	Applications proceeded to hearings		Cancelled or Withdrawn by patients		Decertified prior to hearing		Others		Total Applications
	#	%	#	%	#	%	#	%	
2017	875	39%	853	38%	391	18%	115	5%	2234
2016	740	34%	897	42%	398	19%	116	5%	2151
2015	763	36%	834	39%	420	20%	118	6%	2135

Hearings may not proceed for a number of reasons. First, the patient may be decertified prior to the hearing, which makes the application moot. Second, the patient may cancel the hearing notwithstanding certification. Third, the patient may be “on the move” which may necessitate a postponement and rescheduling of a hearing at a later date. This may arise in circumstances when a patient is transferred to another location in the province. When it is not possible to proceed with the hearing by way of video conference, the hearing may be postponed. In other circumstances, the patient may become an outpatient and lose contact prior to the hearing. When the outpatient facility is unable to locate a patient prior to a hearing, a warrant may be issued which may necessitate a postponement.

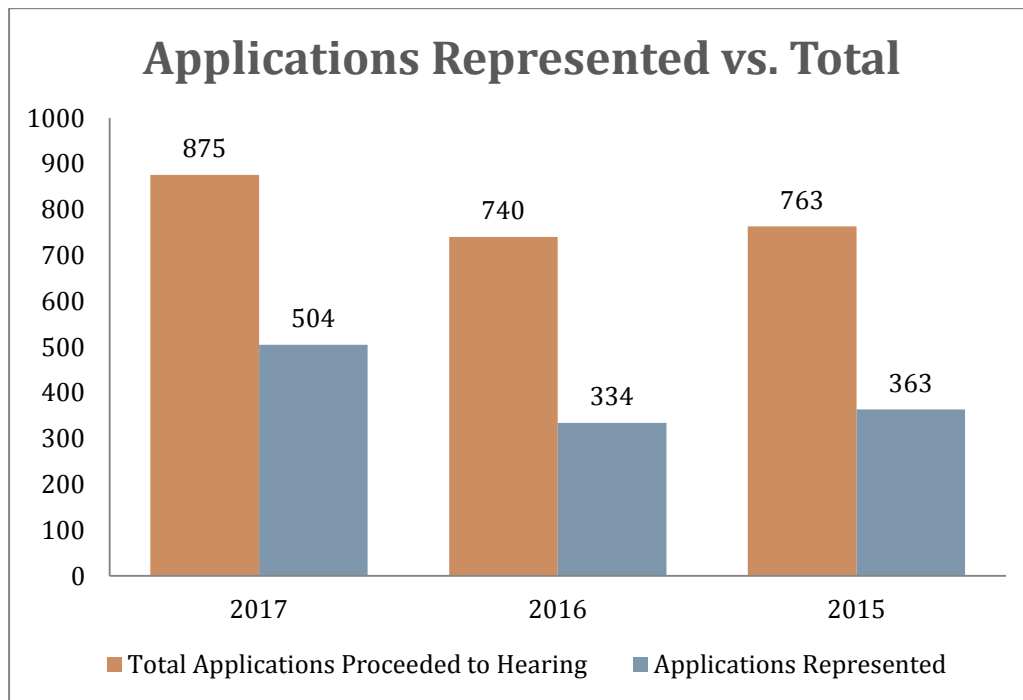


The Board is actively working on ways to reduce the number of hearing cancellations and withdrawals. This past year, for the first time, the number of applications that proceeded to a hearing exceeded the number of cancellations and withdrawals.

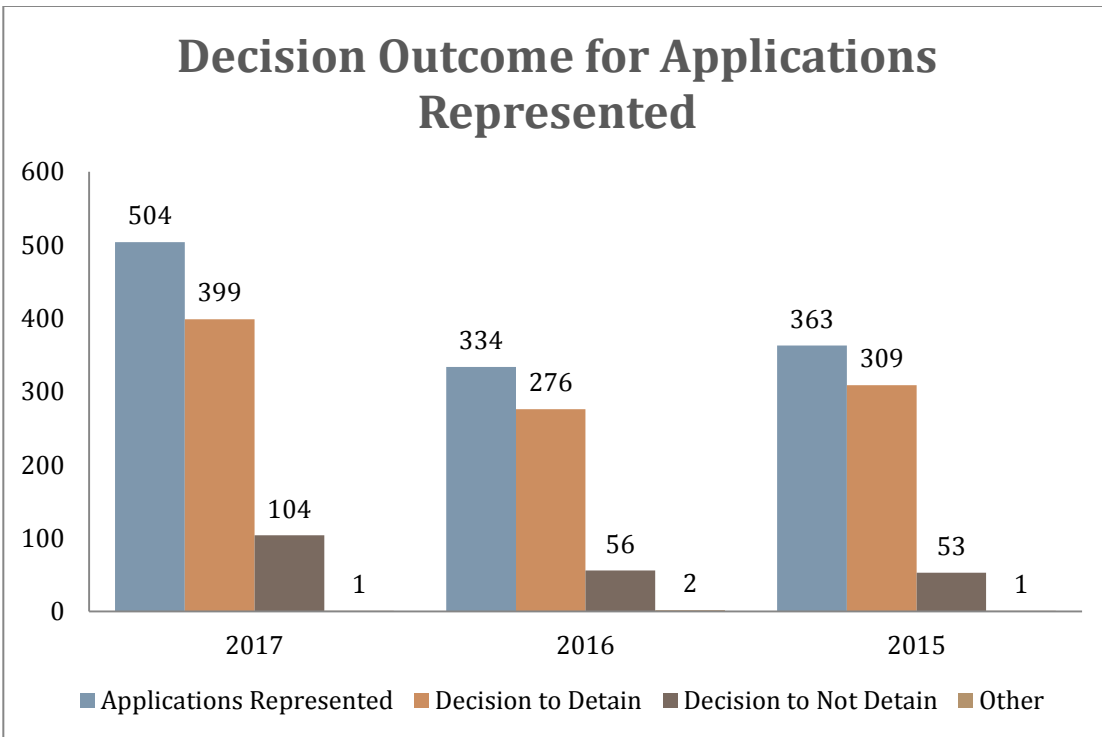
## Legal Representation

It is widely accepted that people with mental disabilities benefit from some form of legal representation during legal proceedings. To fulfil its mandate, the Board is committed to ensuring that patients have meaningful access to legal representation during review panel hearings.

Calendar Year	Applications represented		Decision Outcome						Total Applications Proceeded to Hearing
	#	%	Detained		Not Detained		Other		
			#	%	#	%	#	%	
2017	504	58%	399	46%	104	12%	1	0%	875
2016	334	45%	276	37%	56	8%	2	0%	740
2015	363	48%	309	40%	53	7%	1	0%	763



This past year, there was an increase of approximately 10% in the number of patients who had legal representation. Last year, 58% of the patients had legal representation, compared to 45% in 2016 and 48% in 2015.

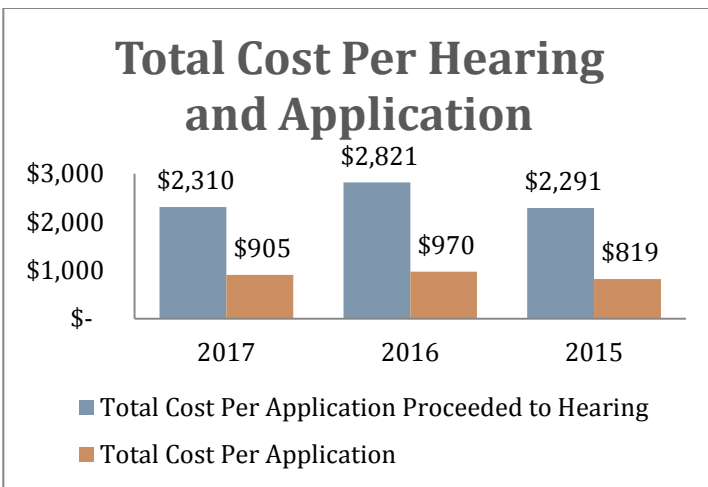


Last year, 20% of patients who were represented by legal advocates during hearings received a favorable decision not to continue their detention. This represents an increase from 16% in 2016 and 14% in 2015.

#### Cost per Hearing

Our Board is actively working on ways to reduce the cost of each hearing to levels that existed a few years ago.

Year	Applications Proceeded to Hearing	Total Applications	Actual Cost (Fiscal Year Basis)	Total Cost Per Hearing	Total Cost Per Application
2017	875	2,234	\$ 2,021,568	\$ 2,310	\$ 905
2016	740	2,151	\$ 2,087,397	\$ 2,821	\$ 970
2015	763	2,135	\$ 1,747,983	\$ 2,291	\$ 819



Last year, the Board reduced the total cost per application that proceeded to a hearing by 18% from average levels in 2016. This figure is still marginally higher than levels in 2015.

#### FUTURE STATISTICS

To improve transparency and accountability, the Board aims to generate statistics about the following:

- Cost per hearing by geographic location
- Number of applications/hearings per capita of involuntary patient population
- Hearing cancellation rate by facility
- Patient reasons for cancellation
- Patient discharge rate by facility
- Length of time to hearing and resolution for cases that proceed
- Legal representation on outcome of cases heard

The Board does not yet have the capacity to record and report on this information. With a new case management system, the Board will endeavor to report on such data in future years. Together, these future metrics will hold us accountable to the public and assist our Board in identifying opportunities for continuing innovation and improvements.



## Financial Disclosure

I am pleased to present a reduction in the budget deficit for our fiscal year 2017-2018. Upon my appointment as Acting Chair in September 2017, I inherited a budget deficit of \$528,000. I have reduced the budget deficit by 50% in six months.

BOARD OPERATING COSTS			
DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
<b>Salaries</b>	<b>296,025</b>	<b>407,000</b>	<b>110,975</b>
<b>Employee Benefits</b>	<b>71,692</b>	<b>99,000</b>	<b>27,308</b>
<b>Member Fees and Costs Associated with Hearings</b>	<b>1,644,173</b>	<b>1,220,000</b>	<b>(424,173)</b>
<b>Professional Services</b>	<b>776</b>	<b>0</b>	<b>(776)</b>
<b>Information Services</b>	<b>226</b>	<b>1,000</b>	<b>774</b>
<b>Office and Business Expenses</b>	<b>8,676</b>	<b>21,000</b>	<b>12,324</b>
<b>TOTAL COST</b>	<b>2,021,568</b>	<b>1,748,000</b>	<b>(273,568)</b>

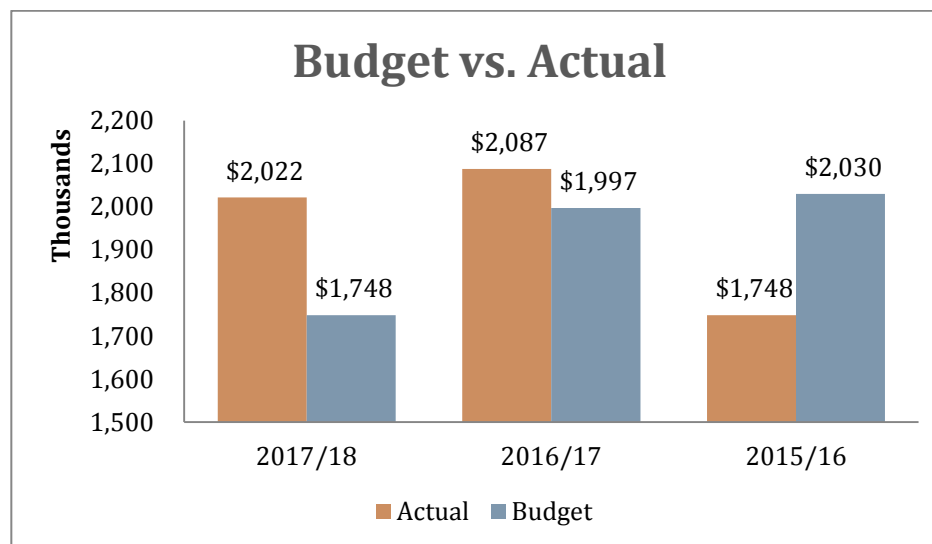
The Board is committed to a balanced budget. The Board has stabilized actual expenditures and is actively working on ways to save money through efficiencies and innovation in service delivery. Since September 2017, the Board no longer flies members to hearings and is actively recruiting local members across the province. The Board seeks local members for review panel hearings. When appropriate, Board members may attend review panel hearings by way of video conference. The goal is to eliminate the deficit and balance the budget over the coming years.

## TRENDS AND OPPORTUNITIES

I am currently restructuring the Board to ensure that we are fulfilling our mandate and providing services to the public to the highest standards of adjudicative integrity. Over the next fiscal year, we will be onboarding a new case management system, refreshing our information systems, and co-locating with other tribunals to a new location in Vancouver. We are also exploring a new scheduling model that aims to reduce the number of unnecessary hearing cancellations. Our restructuring efforts will put financial pressure on the Board next year. The long term forecast is positive and will result in operational savings over subsequent years.

Over the past three years, the budget allocation for the Board has been reduced while actual expenditures have climbed. We will be in a better position next year to provide the Ministry of Attorney General, and other stakeholders, with a reliable estimate of cost-per-case expenditures.

Year	Budget	Actual	Variance Between Actual and Budget	Budget Variance in comparison to 2015/16
2017/18	\$ 1,748,000	\$ 2,021,567	(\$ 273,568)	(\$ 282,000)
2016/17	\$ 1,997,000	\$ 2,087,397	(\$ 90,397)	(\$ 33,000)
2015/16	\$ 2,030,000	\$ 1,747,983	\$ 282,017	\$ -



Appendix A – Organizational Chart

