

**The Mental Health Care and Treatment
Review Board**

**ANNUAL PERFORMANCE REPORT
2023-24**

Message from the Chair

I am pleased to provide the 2023-24 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 five years of Review Board activities are found in the Report on Performance. Also included in this section is a report on the 2023-24 objectives and indicators as identified in the 2023-26 Activity Plan.

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



Shaylyn Oxner
Chair

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1.0 Overview

Membership

The Review Board is appointed pursuant to subsection 57(1) of the **Mental Health Care and Treatment Act** (the Act). The terms of the appointment are stated at subsections 58(1) and (2) of the Act. Review Board members and their terms are referenced in Appendix A. All current Review Board members have been appointed or re-appointed for terms beginning in August 2023 and September 2023. Prior to this, all Review Board members had terms that had expired; however, many continued their duties until replacement as is permissible under the Act. Despite new appointments to the Review Board, there continues to be a low number of Physician Representative members.

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 subsection 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 issuance of a Certification of Involuntary Admission under paragraph 64(1)(a) of the Act; to review applications made by patients seeking a review of the issuance of a Community Treatment Order (CTO) under paragraph 64(1)(b) of the Act; and to review applications made by a patient alleging the denial of a right under paragraph 64(1)(c) of the Act. The Review Board also completed automatic review hearings initiated by the Health Authority where a Certificate of Involuntary Admission or a CTO 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 2023-24 fiscal year, the Review Board was comprised of eight (8) active members: three (3) lawyers (legal representatives); one (1) physician (physician representative); and four (4) laypeople (public representatives). By the end of the fiscal year, by March 31, 2024, the Review Board was comprised of seventeen (17) members: five (5) lawyers; three (3) physicians; and nine (9) laypeople.

Each hearing is overseen by a three-person Review Panel constituted by each of a legal representative, physician representative, and a public representative. 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.

Location of Hearings

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 2023-24.

Table A: Overview of the Locations of Hearings (2023-2024)

| LOCATION | IN PERSON | TELECONFERENCE |
|---------------------------------|-----------|----------------|
| Eastern Region | - | 35 |
| Central Region | - | 7 |
| Western Region | - | 7 |
| Region not recorded | - | 6 |
| Total Number of Hearings | | 55 |

In 2023-24, the Review Board continued to utilize teleconference services, as it had in past years, to enable efficient and effective hearings. Review Board members make themselves available for hearings as necessary. Given the Review Board was low on membership, the use of teleconferencing allowed for participation in hearings without physical attendance at 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. In the 2023-24 fiscal year total expenses were \$57,033.20, itemized as follows:

| | |
|---------------|-------------------|
| Board Members | \$47,065.70 |
| Psychiatrists | <u>\$9,967.50</u> |
| Total | \$57,033.20 |

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 provincial health authority (PHA), the Review Board has a shared commitment with this 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 the PHA 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-governmental organizations, such as the Canadian Mental Health Association (CMHA-NL) or the consumer group, Lifewise Mental Health Peer Services, 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.

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 going through the normal application process. There is currently no financial requirement for eligibility to receive representation by NLLAC. 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 provincial health authority.

3.0 Report on Performance Progress 2023-24

In 2023-24, 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 facility 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 2023-26 Activity Plan which was developed to include Review Board statistics, and which informs annual objective reporting.

Review Board Activity

Table B: Review Board Activity 2023-24

| Review Board Activity | 2023-24 |
|---|----------------|
| STATUS/NUMBER OF APPLICATIONS | |
| Received ¹ | 152 |
| Summarily Dismissed ² | 1 |
| Application Withdrawn ³ | 5 |
| Applicant Decertified ⁴ | 77 |
| No Hearing Set ⁵ | 28 |
| Hearings ⁶ | 56 |
| RESULTS OF HEARINGS | |
| Certificates upheld | 31 |
| Certificates not upheld | 0 |
| CTOs upheld ⁷ | 21 |
| CTOs not upheld | 0 |
| Decisions not communicated ⁸ | 4 |
| Decisions communicated | 52 |

¹ This represents the total number of applications received during the 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 review board members met in person or via teleconference to hear and decide upon an application.

⁸ A decision was not communicated if the Applicant was decertified after a hearing, but before a decision was made.

Annual Objectives 2023-24

By March 31, 2024, the Mental Health Care and Treatment Review Board will have reviewed all submitted applications to ensure the conditions for issuing or renewing certificates are appropriate.

Objective: Reviewed applications under the Act.

Indicators:

- Number of applications received
- Number of hearings scheduled
- Number of hearings held
- Number of certificates upheld/cancelled
- Number of decisions communicated
- Timelines of hearings scheduled, hearings held, and decisions rendered
- Annual reports provided

Indicator #1 – Number of applications received

HCS received 152 applications in the 2023-24 fiscal year.

Table C-1: Number of applications received

| Review Board Activity | 2023-24 |
|-----------------------|---------|
| Applications Received | 152 |

Indicator #2 – Number of hearings scheduled

This means that a Panel was appointed a date and 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.

The number of hearings scheduled in the 2023-24 fiscal year has remained the same as the previous year, however, the ratio of applications received and hearings scheduled has changed. From June 2023 until September 2023, the Review Board was unable to schedule

and hold hearings as there were no Physician Representatives active who were active on the Review Board to complete the requisite Panel.

Table C-2: Number of hearings scheduled

| | |
|------------------------------|----------------|
| Review Board Activity | 2023-24 |
| Hearings Scheduled | 123 |

Indicator #3 – Number of hearings held

Of the 123 hearings that were scheduled, 56 of them proceeded to a hearing. Some of the reasons for the variation in the number of hearings scheduled versus hearings held include that patients are decertified prior to the hearing, or the applicant might withdraw their application.

Table C-3: Number of hearings held

| | |
|------------------------------|----------------|
| Review Board Activity | 2023-24 |
| Hearings held | 56 |

Indicator #4 – Number of certificates and CTOS upheld/cancelled

Of the fifty-six (56) matters that proceeded to a hearing, fifty-two (52) of the involuntary certificates/CTOs were upheld, zero (0) involuntary certificates/CTOs were cancelled, and four (4) decisions were not communicated as the applications were decertified before the decision was given.

Table C-4: Number of certificates and CTOS upheld/cancelled

| | |
|------------------------------------|----------------|
| Review Board Activity | 2023-24 |
| Certificates/CTOs upheld | 52 |
| Certificates/CTOs cancelled | 0 |
| Decisions not communicated | 4 |

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 2023-24, twenty-two (22) decisions rendered were not 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 | 2023-24 |
|--|---------|
| Decisions communicated within 3 clear days | 30 |

The Review Board was successful in meeting the legislative requirements in respect of thirty (30) hearings; twenty-two (22) 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 expected timeframes for the provision of a decision. In those circumstances, the timeframes were reasonable. However, the primary reason for delayed decisions related to the unavailability of board members and vacancies in the Review Board roster.

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

| Delay of Decisions Rendered and Delivered Per Subsection 71(2) of the Act by Number | |
|--|---------|
| Number of days following hearing – decision rendered | 2023-24 |
| 4 Clear Days (1 day delay) | 12 |
| 5 Clear Days (2 days delay) | 3 |
| 6 Clear Days (3 days delay) | 2 |
| More than 6 Clear Days | 5 |
| Total Delayed | 22 |

Indicator #6 - Timelines of hearings scheduled, hearings held, and decisions rendered

The below data is comprised of the number of applications withdrawn (5) together with the number of applicants decertified before the hearing (77 as shown in Table B). The total that did not proceed for this reason is 82.

Table C-6a: Applications Withdrawn/Applicant Decertified

| Length of Notice Provided for Withdrawn Applications/Decertification | |
|---|----|
| 2023-24 | |
| Less than 24 hours before hearing | 34 |
| More than 24 hours before hearing | 48 |

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 Review 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 timeline 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 2023-24

| Timelines in Appointing Panels and Setting Hearing Dates Per Subsections 66(2) and 67(2) of the Act by Number (2023-24) | |
|--|------------|
| Same Day as application received or Next Day | 101 |
| 1 Clear Day after application received | 9 |
| 2 Clear Days after application received | 4 |
| 3 Clear Days after application received | 2 |
| More than 3 Clear Days after application received | 4 |
| No hearing scheduled ⁹ | 17 |
| Date not recorded ¹⁰ | 3 |
| Total | 140 |

The Review Board was able to meet the legislated timeline for appointing panels and setting hearing dates for most, but not all, applications that were received in the 2023-24 year. Delays in setting hearing dates were most often caused by the unavailability of panel members. In particular, during the period of June 2023 until September 2023, there were no physician members on the Review Board and so Panels could not be struck.

⁹ “No hearing scheduled” means an application was received and subsequently cancelled before a hearing was scheduled.

¹⁰ “Date not recorded” means an application was received and a hearing was set, but the date the hearing was set has not been recorded due to clerical error

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

| Timelines of Hearings Scheduled to Be Heard Per Subsection 67(1) of the Act by Number | |
|--|---|
| Number of days from Receipt of Application to Hearing | Number of Applications 2023-24 |
| 1 to 4 clear days | 32 |
| 5 to 10 clear days | 75 |
| 11 clear days or more | 9 |
| Total | 116 |

Hearings must be held within ten clear days of the receipt of the Application by the Review Board Chair. Nine (9) hearings were beyond the legislated 10-day timeframe for the provision of a hearing.

Indicator #7 – Annual 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 2023-26 Activity Plan indicates that each year the objective will remain the same.

This report has been prepared to meet this indicator for the 2023-24 fiscal year.

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 CTOs 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 CTO mandates that CTOs 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 CTO. This is a narrow class of individuals. There are many circumstances where individuals would benefit from CTO, but don't meet the prerequisite criteria. In saying that, the Review Board is also mindful that CTOs 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 CTOs, 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 2023-24:

Hearing Process

The Review Board hearing process is well developed under the Act. In 2023-24, no complaints were received by the Review Board as to its processes, and most stakeholders are aware of the Review 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 multiple vacancies for Physician Representatives on the Review Board.

At the start of the 2023-24 fiscal year, all members of the Review Board had expired terms. Board members are permitted to act beyond their appointed term, as was resolved by an amendment to subsection 58(1) of 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 were no longer carrying out their duties through their long-extended terms. At the beginning of the 2023-24 year, only 8 individuals were involved in hearings, and of those 8 there was only one physician representative. The sole physician representative resigned from the Review Board in June 2023, meaning the Review Board was unable to meet its legislated mandate, and all review hearings ceased until September 2023 when new physicians were appointed to the Review Board.

All of the current members of the Review Board were appointed or re-appointed in the 2023-24 fiscal year. Review Board members are appointed for three-year terms. However, there continues to be vacancies for physician representatives.

Appendix A: Review Board Members 2023-24

MENTAL HEALTH CARE AND TREATMENT REVIEW BOARD MEMBERS 2023-24

| Position | Name | Term Expiry |
|--------------------------|----------------------|--------------------|
| Chairperson – Lawyer | Shaylyn Oxner | August 16, 2026 |
| Member – Lawyer | Christopher Forbes | August 16, 2026 |
| Member – Lawyer | Kathleen Healey | September 13, 2026 |
| Member – Lawyer | LeeAnn Montgomery | September 13, 2026 |
| Member – Lawyer | Ian Wallace | September 13, 2026 |
| Physician Representative | Dr. Susan Dalton | September 14, 2026 |
| Physician Representative | Dr. Joy Tilley | August 16, 2026 |
| Physician Representative | Dr. Leslie Wheeler | September 13, 2026 |
| Public Representative | Jackie Compton-Hobbs | August 16, 2026 |
| Public Representative | Amelia Curran | August 16, 2026 |
| Public Representative | Colleen Galgay | August 16, 2026 |
| Public Representative | Charlotte Gardiner | August 16, 2026 |
| Public Representative | Ashley Gosse | August 16, 2026 |
| Public Representative | Chad Perrin | August 16, 2026 |
| Public Representative | Glenn Roil | August 16, 2026 |
| Public Representative | Abigail Sheppard | August 16, 2026 |
| Public Representative | Jerry Vink | August 16, 2026 |

Mental Health Care and Treatment Review Board

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