

# **BRITISH COLUMBIA REVIEW BOARD**

## **ANNUAL REPORT**

**Fiscal Year:  
April 2019 – March 2020**

*Safeguarding the Rights and Interests of Mentally Disordered Accused Persons  
and of Society with Fairness and Dignity*

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## Letter from the Chair

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October 1, 2020

The Honourable David Eby  
Attorney General  
PO Box 9044  
Stn Prov Gov't  
Victoria BC  
V8W 9E2

Dear Minister:

I am pleased to submit the Annual Report of the British Columbia Review Board (BCRB), established under the *Criminal Code of Canada*, for Fiscal Year 2019 -2020.

Sincerely

A handwritten signature in black ink, appearing to read "Alison MacPhail". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Alison MacPhail  
Acting Chair  
BC Review Board

## Chair's Message

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With the retirement of the longstanding chair of the Board, Bernd Walter, in August 2019, and then the beginning of the coronavirus pandemic in March 2020, this has been a challenging year. I would like to express my utmost appreciation for the dedication of the Board's hardworking staff, in particular the Registrar, Paula Thorburn. As well, it has been my privilege to work with the dedicated Board members whose commitment to the work of the Board has been an enormous support.

We have begun a number of new initiatives, which are expected to be completed in the next fiscal year. These include the development of a new website and a new case management system, updated and accessible practice guidelines and the development of a bench book to support decision-making. I look forward to reporting our results next year.

The education session for all Board members this year addressed key issues in the field of mental disorder and the law, and in particular focused on the assessment of risk. In addition to the session for all members, we have begun regular short education sessions for the alternate chairs who are responsible for the conduct of the hearings, crafting the disposition consistent with the decision of the panel, and writing reasons that reflect the evidence at the hearing and the panel's analysis and rationale for the decision. The sessions included discussion of relevant case law as well as common issues arising at hearings.

In March the onset of the COVID-19 pandemic required us to halt in-person hearings due to safety concerns. All staff were directed to work from home. Planned hearings were unscheduled, and telephone or video conferences were scheduled with the parties to determine whether matters could be resolved without an in-person hearing, pending the implementation of video hearings early in the new fiscal year. The Board has greatly benefited from the collaboration of our stakeholders who helped minimize the negative impact of the pandemic on accused persons under the Board's jurisdiction.

## Overview of the BC Review Board

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The British Columbia Review Board (BCRB) is an independent adjudicative tribunal, established pursuant to Part XX.1 of the *Criminal Code of Canada*. Although created by federal legislation, the British Columbia Review Board operates within the province and its members are appointed by the provincial Cabinet. The BCRB is considered a court of competent jurisdiction and is part of Canada's criminal justice system.

Part XX.1 of the *Code* balances the need to protect society from those few mentally disordered accused who are dangerous with the need to treat mentally disordered offenders fairly, with due process and fundamental fairness. Appeals of BCRB decisions go directly to the BC Court of Appeal, without leave.

The criteria for appointment to the BC Review Board are found in Part XX.1, which requires the board to sit in panels of at least three. Each panel must be chaired by a judge or a person entitled to be appointed as a judge, and must include a psychiatrist and a third member who might have any relevant background.

The Board's mandate is to make and to review dispositions with respect to individuals who have been charged with criminal offences, where the court has rendered a verdict of not criminally responsible (NCR) or unfit to stand trial (UST) on account of mental disorder.

For individuals found to be unfit to stand trial, the Board retains jurisdiction until a court finds that they are fit to stand trial or orders a stay of proceedings. In the interim, the Board must make a disposition that is the least onerous and restrictive to the accused.

For accused persons found not criminally responsible, the Board retains jurisdiction as long as it is of the view that they are a significant threat to public safety. If they are not a significant threat, the board must order that they be discharged absolutely. If they are a significant threat, the Review Board must order the disposition that is the least onerous and least restrictive to the accused, either custody in the Forensic Psychiatric Hospital in Coquitlam or release subject to conditions. In reaching its decision, the board must take into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused.

Other than absolute discharges, dispositions of the BC Review Board are to be reviewed by the board at least once every twelve months. Parties to a hearing typically include the accused, the person in charge of the hospital in which the accused is or may be detained or to which the accused reports, and a representative of the Attorney General. Other persons who have a substantial interest in protecting the interests of the accused may be made a party if the board is of the opinion that it is just.

Those who are declared to be unfit to stand trial must be represented by counsel at hearings, and most accused persons found not criminally responsible are also represented by counsel. At each hearing, evidence from the accused's psychiatrist and treatment team is considered, along with any other evidence which may be adduced. Following deliberation by the panel that conducted the hearing, a written disposition and the written reasons for that disposition are issued.

Hearings must occur within statutory timelines (45 or 90 days from the initial determination by the court), as well as annually, and mandatorily on the occurrence of certain events which affect an accused person's liberties. The disposition may be communicated orally after the hearing, but in all cases a written disposition will be provided to the parties within two business days. Written reasons will be provided to the parties within 45 days, and in respect of unfit accused who are sent back to court, within two weeks.

Most Review Board hearings are conducted at the Forensic Psychiatric Hospital (FPH) in Coquitlam. Where the accused is living in the community on conditions, the hearing may be held at the community forensic clinic nearest to their residence or other suitable place. The Criminal Code allows video hearings with the consent of the accused.

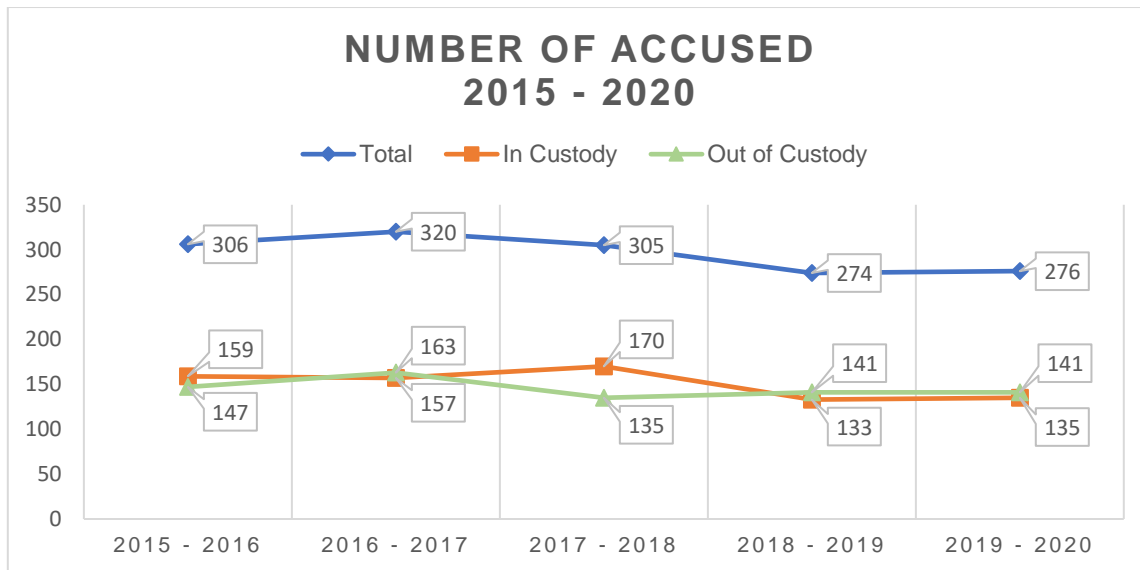
Review Board hearings are open to the public. Persons interested in attending a Review Board hearing should notify the Registry so that arrangements can be made to authorize their entry to the Forensic Psychiatric Hospital or other location.

Victims are entitled under the *Criminal Code* and the *Canadian Victims Bill of Rights* to receive notice of hearings, and file a victim impact statement, to be considered at the hearing. Victims, as all members of the public, are entitled to attend Review Board hearings. They may also read their victim impact statement at a hearing.

# BCRB Statistical Report for Fiscal Year 2019-20

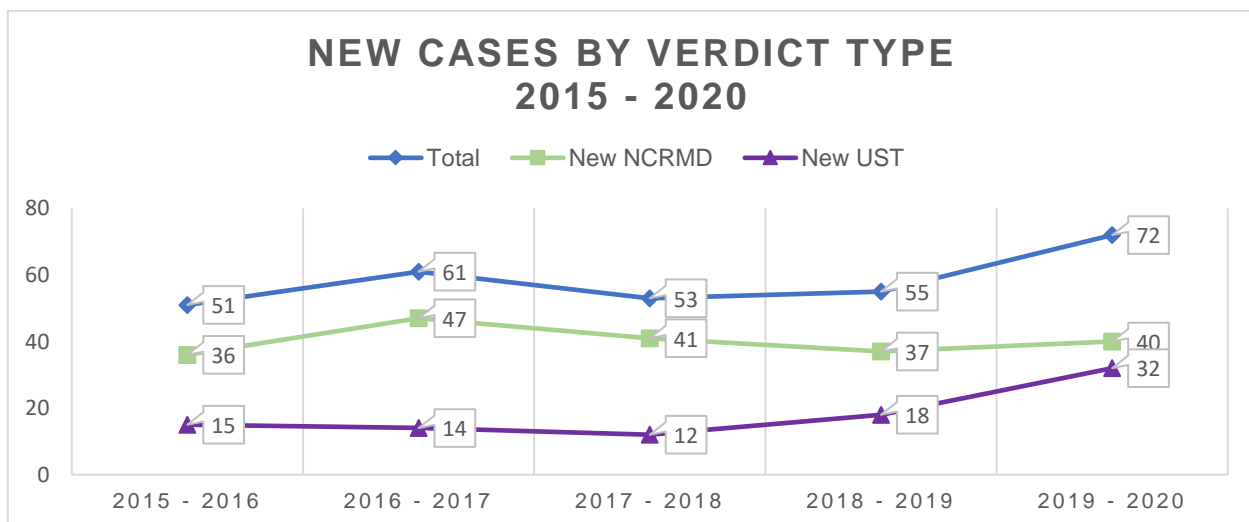
## 1. Number of Accused under BC Review Board Jurisdiction

The total number of accused under the Board’s jurisdiction has declined in the last five years. There are slightly more accused supervised in the community than in custody at the Forensic Psychiatric Hospital.



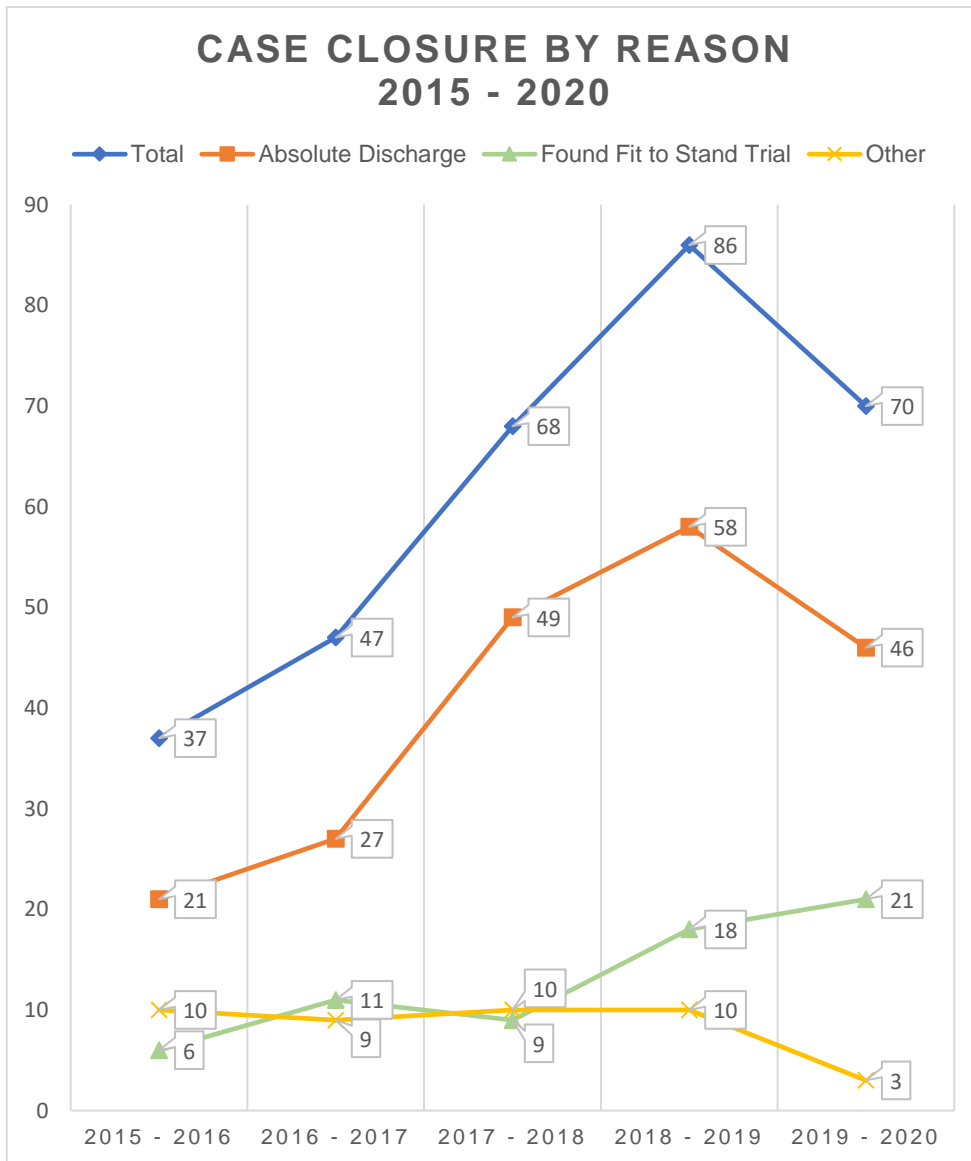
## 2. Breakdown of New Cases

New cases that are deferred by the court to the Board include both not criminally responsible (NCR) accused, as well as accused who have been found unfit to stand trial (UST). In the past year, new cases increased from 55 to 72, largely as a result of a substantial increase in UST verdicts.



### 3. Case Closure by Reason

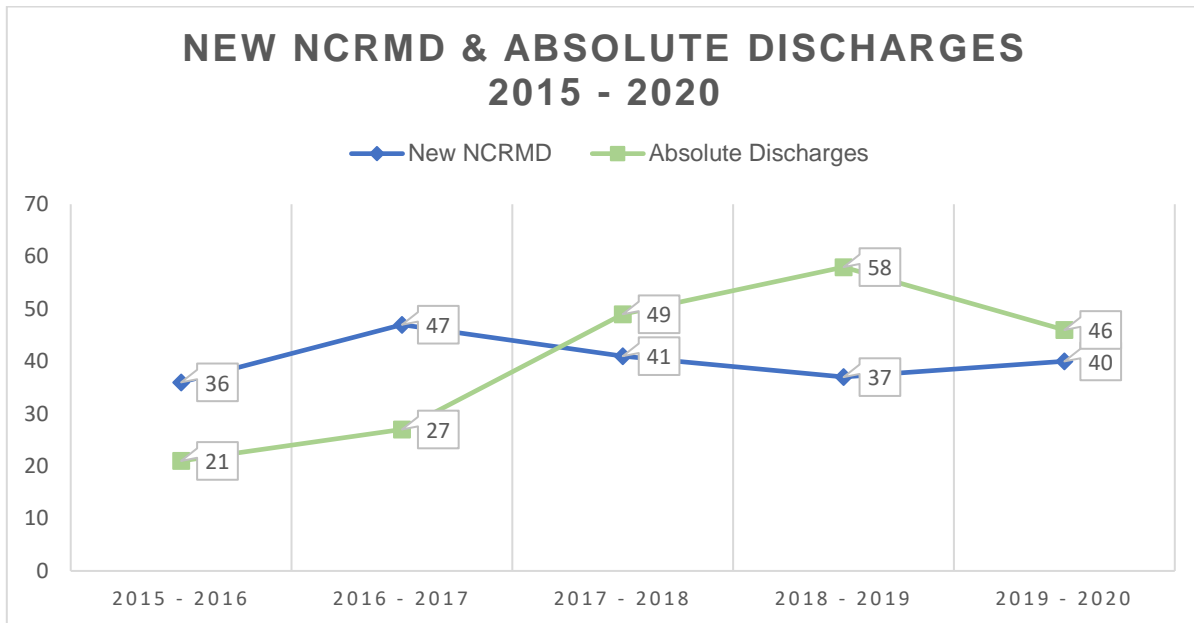
This graph indicates that the main reasons for case closure are absolute discharge (in the case of NCR accused) or matters where an unfit accused has been returned to court, and subsequently found to be fit. Besides these, a case may be closed due to death, interprovincial transfer, charges being stayed, an appeal, or a consolidated verdict.



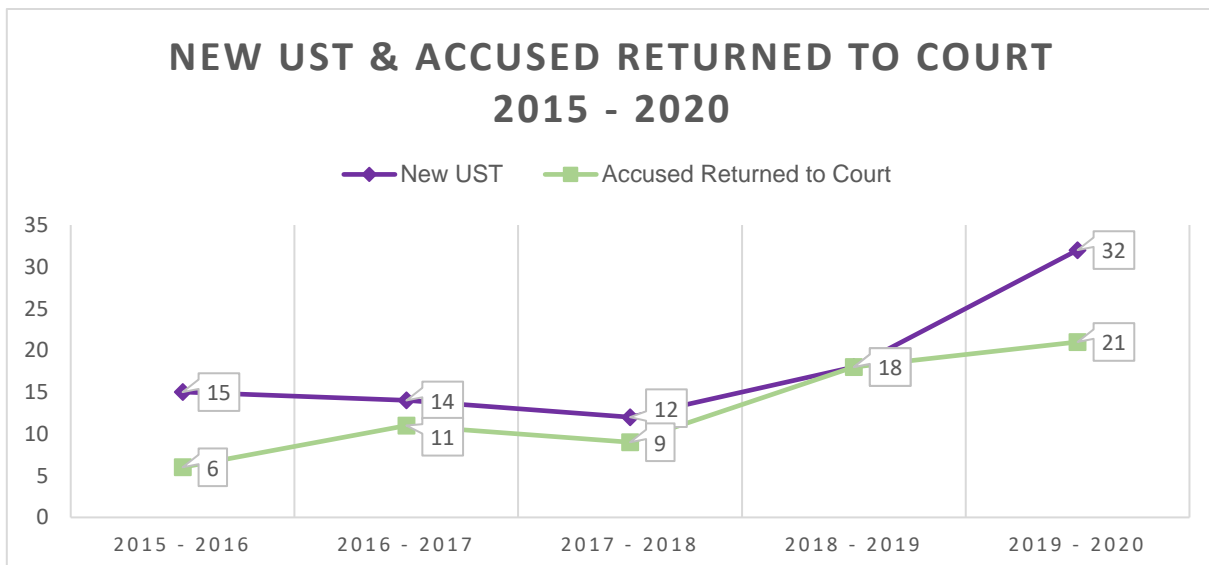


#### 4. New and Closed Cases

This graph shows the new NCR accused, as well as cases that have been closed as a result of an absolute discharge. In 2019-20, there were slightly more NCR cases closed than coming into the system, thus reducing the number of NCR accused under Review Board jurisdiction.

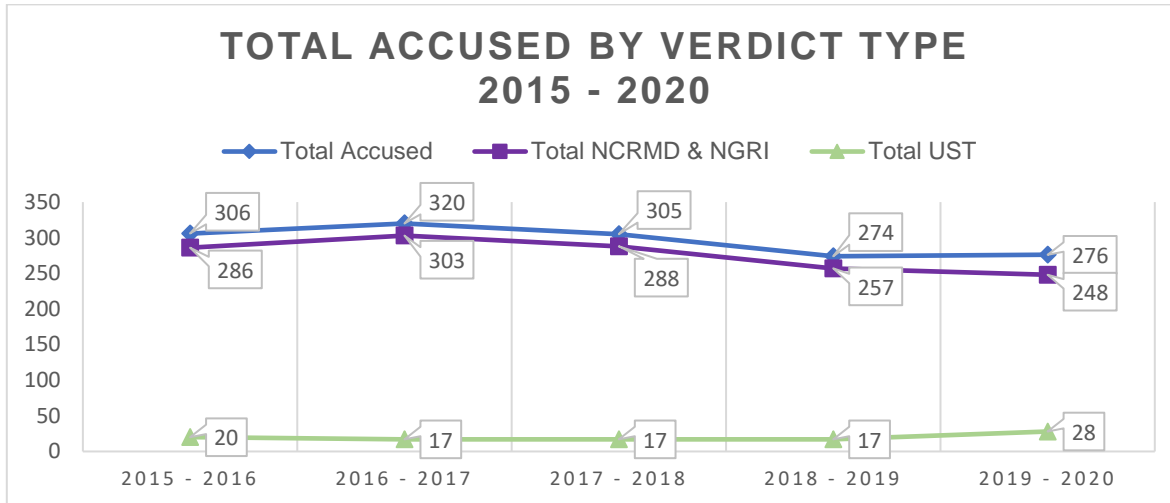


The next graph shows the number of new unfit accused, as well as the number of accused where the Board was of the opinion that the accused was fit to stand trial and ordered the accused to be sent back to court for trial of the issue. In 2019-20, there was a substantial increase in the number of new unfit accused. The number of accused returned to court also increased, but at a lower rate, thus increasing the number of unfit accused under Review Board jurisdiction.



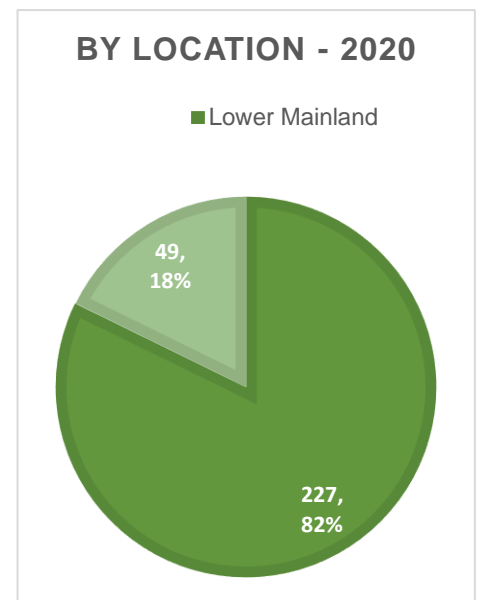
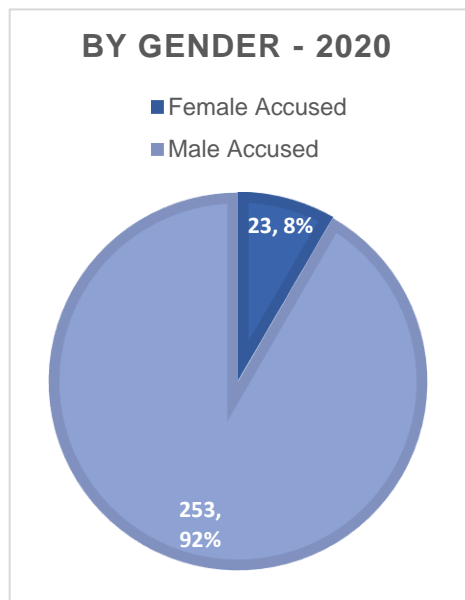
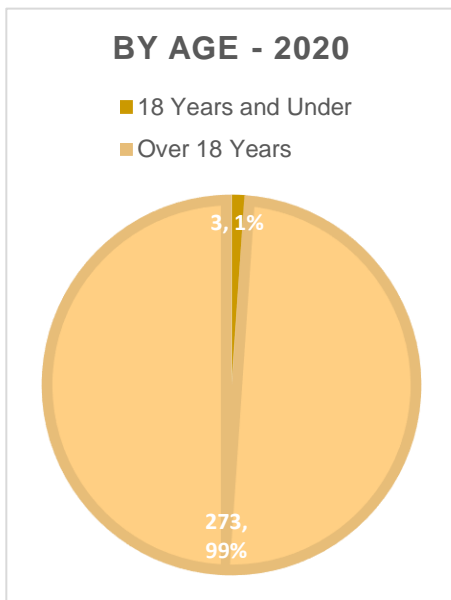
## 5. Total Accused by Verdict Type

This graph tracks the total accused under the Board’s jurisdiction, broken down by verdict type. The NCRMD and historical (pre-1992) not guilty by reason of insanity (NGRI) verdicts have been combined. While unfits are a relatively small portion of the cases under our jurisdiction, there has been a significant change in this last year.



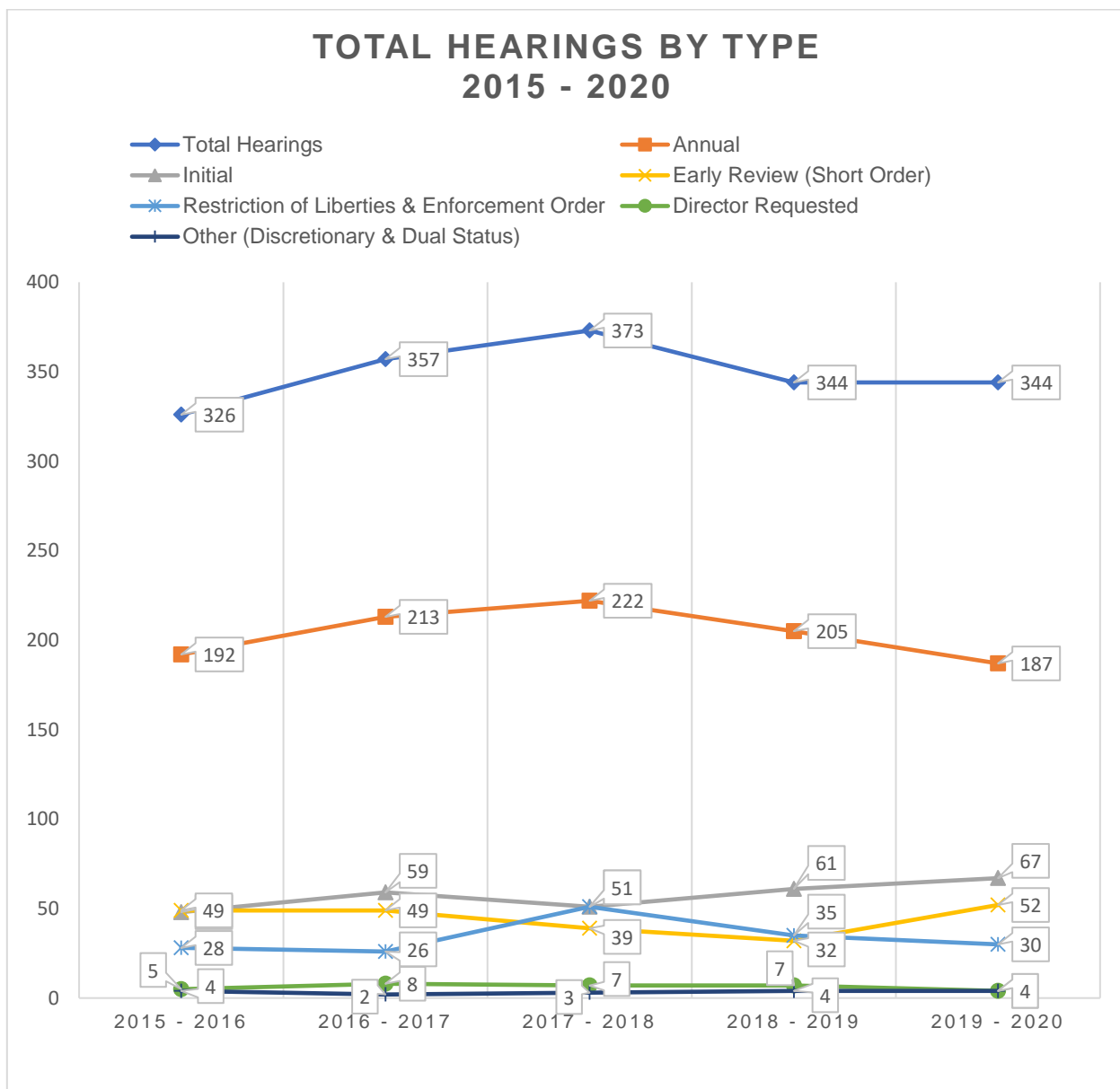
## 6. Accused Demographic Breakdown

The demographic breakdown of Review Board accused has remained relatively stable over the last five years. Most accused under the Board’s jurisdiction are male, over 18, and live in the Lower Mainland.



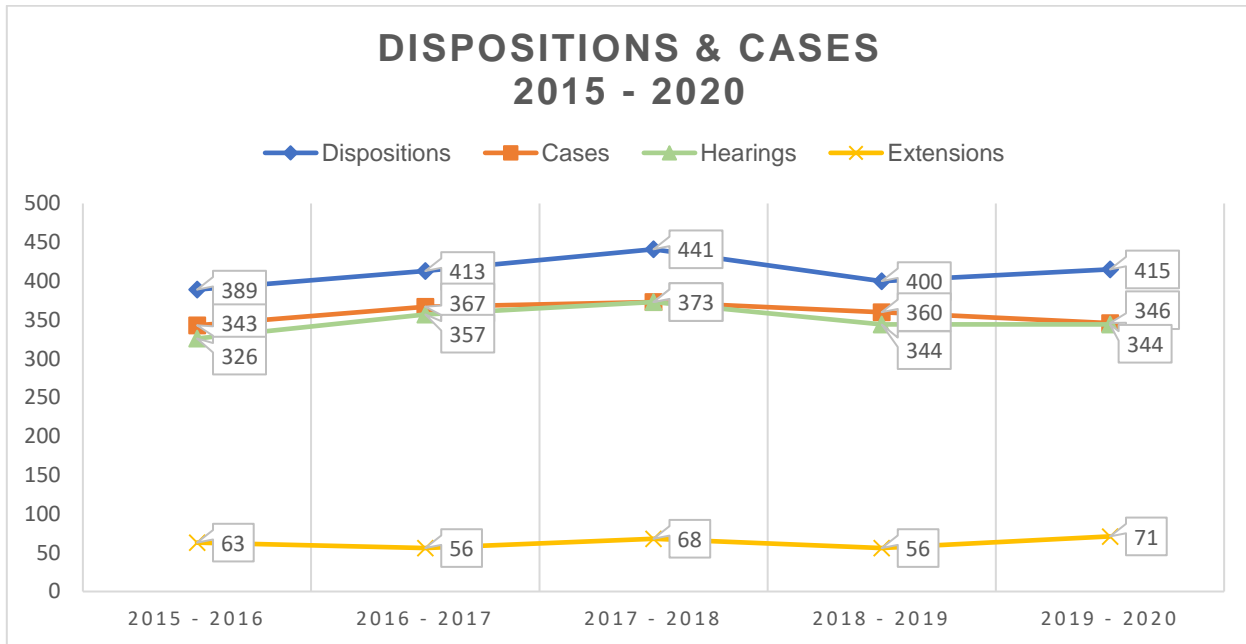
## 7. Total Hearings by Type

This chart shows the total number of hearings in a year, as well as the breakdown by type. Although the majority of hearings are held annually, in some cases the Board orders that the next hearing be prior to the normal 12 months (known as short orders). Additional hearings are also held where the accused’s liberty has been restricted by the Director for more than seven days, or where the court has ordered that an accused be returned to custody for breach of their release conditions. Early hearings may also be held at the request of the Director, or in the discretion of the Board. This means that the total number of hearings is often more than the total number of accused under the Board’s jurisdiction.



## 8. Dispositions and Cases

This graph depicts the number of dispositions (hearings and extensions) versus the number of cases under Review Board jurisdiction. The number of cases is made up of the number of accused persons under Board jurisdiction at the end of 2017-18 and the number of new accused deferred by the court to the Board in 2018-19. Because cases are sometimes reviewed more than once per year, the total case number is not always an accurate reflection of workload.



## BCRB Members & Staff at March 31, 2020

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### PANEL MEMBERS

#### Acting Chair

- Alison MacPhail

#### Vice Chair

- Barry L. Long

#### Alternate Chairs

- Ingrid Friesen
- Brenda L. Edwards
- John Threlfall
- James Deitch
- Michelle Lawrence
- Steven Boorne
- David Renwick, QC

#### Psychiatrists

- Dr. Peter Constance
- Dr. Ronald Stevenson
- Dr. Linda Grasswick
- Dr. Werner Pankratz
- Dr. Jeanette Smith
- Dr. Todd Tomita
- Dr. Sam Iskander
- Dr. Rakesh Lamba
- Dr. Sandi Culo

#### Public Members

- Dr. Kim Polowek
- Paula Cayley
- Alan Markwart
- Dr. Lynda Murdoch
- Jeremy Berland
- Dr. Chris Webster
- Penny Acton

### REGISTRY STAFF

#### Registrar

- Paula Thorburn

#### Executive Coordinator

- Theresa Newport

#### Scheduling Coordinator

- Perveen Sidhu
- Samuel Wallace

#### Dispositions and Reasons Coordinator

- Jasmeen Boparai

#### Evidence Coordinator

- Linh Mai

#### Intake and Notifications Coordinator

- Alexandra Allen

## BCRB Budget & Expenditure Overview: Fiscal Year 2019-20

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<b>FY 2019/20 Delegation</b>	<b>FY 2019/20 Expenditures</b>	<b>FY 2019/20 Variance</b>
\$1,533,000	\$1,611,705	(\$78,705)

### **SIGNIFICANT VARIANCE EXPLANATIONS 2019-2020:**

Over expenditures were due to a combination of unbudgeted costs for a new case management system, additional costs for board members travelling from Victoria, slightly fewer hearings per day, and unbudgeted costs for maternity leave and STIIP.