

BRITISH COLUMBIA REVIEW BOARD

ANNUAL REPORT

**Fiscal Year:
April 2020 – March 2021**

*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

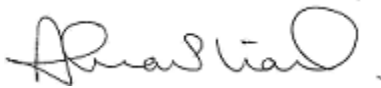
February 16, 2022

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 2020 -2021.

Sincerely



Alison MacPhail
Chairperson
BC Review Board

Chair's Message

Over the past year I have benefitted from both the stellar staff at the Board and the extraordinarily committed Board members.

As a result of the pandemic making it unsafe to hold in person hearings, we stopped scheduling in person hearings on March 16, 2020 and staff began to work almost entirely from home. This was facilitated by the Board's transition to electronic documents in 2016 so that communication and distribution of documents was already largely electronic. The Registry already had telework agreements in place, so staff were able to transition to full-time remote work without impacting service provided to our panel members, stakeholders and accused persons.

The early part of 2020 was occupied with planning to permit the Board to continue its hearings through the use of video conferencing. Until we were able to schedule hearings, we held frequent case management meetings with the parties to RB hearings to make appropriate dispositions in the absence of the parties attending a hearing, either through expanded use of the provisions in the Code to extend the previous disposition for a period up to 24 months from the last in person hearing, as well as through hearings in the absence of the parties, that is, paper hearings.

On May 6, 2020 the Board was able to return to the scheduling of hearings, using the Microsoft Teams platform. This was only possible as a result of the tremendous support we received from TTIOD staff, as well as the tireless work of all RB staff, but Theresa Newport, Acting Executive Coordinator in particular, to ensure that the necessary technology was available to Board members, our accused and other parties, and to ensure that everyone was trained and the necessary connections were tested. While there were ongoing technical challenges, the Board was able to resume its regular scheduling of all matters by video in the fall of 2020.

During the pandemic there has been a significant decrease in the number of cases coming from the courts with a 43% decline in our intake numbers. We attribute this to the courts having to implement their own COVID protocols and video proceedings. We anticipate this will reverse itself in the next fiscal year.

The registry worked with colleagues at TTIOD and PHSA to research and plan technological improvements to the set up of the Board's main hearing room located at FPH. We expect these improvements to be in place early in the next fiscal year. As the technology

improves and parties become accustomed to using it, we foresee an opportunity to increase our use of video hearings in the future to improve access to justice, particularly with regard to accused persons in the community who may otherwise have to travel several hours to an in-person hearing location. The Criminal Code does require the agreement of the accused to proceed with a video hearing. As well, the Board has supported the development of a research project to evaluate participants' experience with video. Once this project receives ethics approval from BCMHSUS Research Committee it is expected that the project can be completed in the next fiscal year.

Some of our challenges with moving effectively to video hearings would benefit from changes to the Criminal Code of Canada, our enabling legislation. On behalf of Review Boards across Canada, and together with the Chair of the Ontario Review Board, the Hon Mr. Justice Richard Schneider, I coordinated a submission to the federal Minister of Justice, the Hon David Lametti, recommending changes to the Code to make the Review Board process more efficient. Unfortunately, that submission has not to date led to any Criminal Code changes to facilitate the use of video conferencing or other efficiencies. I continue to meet with my provincial and territorial colleagues to discuss issues of common interest.

At the same time as the Board transitioned to conducting its hearings by video, we embarked on the previously scheduled development of a new case management system to replace our existing system. This was required as our existing system was no longer supported. Changes to the system were not possible and it became necessary for staff to create manual systems in order to complete work and track data.

Although in person meetings have not been possible over the past year, we have continued to hold regular professional development sessions by video with the alternate chairs to review key legal and practical issues facing the board. As well we have held three professional development sessions with the full board on matters ranging from the changes necessitated by COVID to understanding the changing law in relation to the issue of fitness to stand trial.

Other initiatives have proceeded more slowly than expected, in large part due to the need to address the challenges related to the move to video rather than in person hearings. These include the development of a new website, new procedure guidelines and a bench book to support Review Board decision-making. These are now expected to be completed in the next fiscal year.

Overview of the BC Review Board

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.

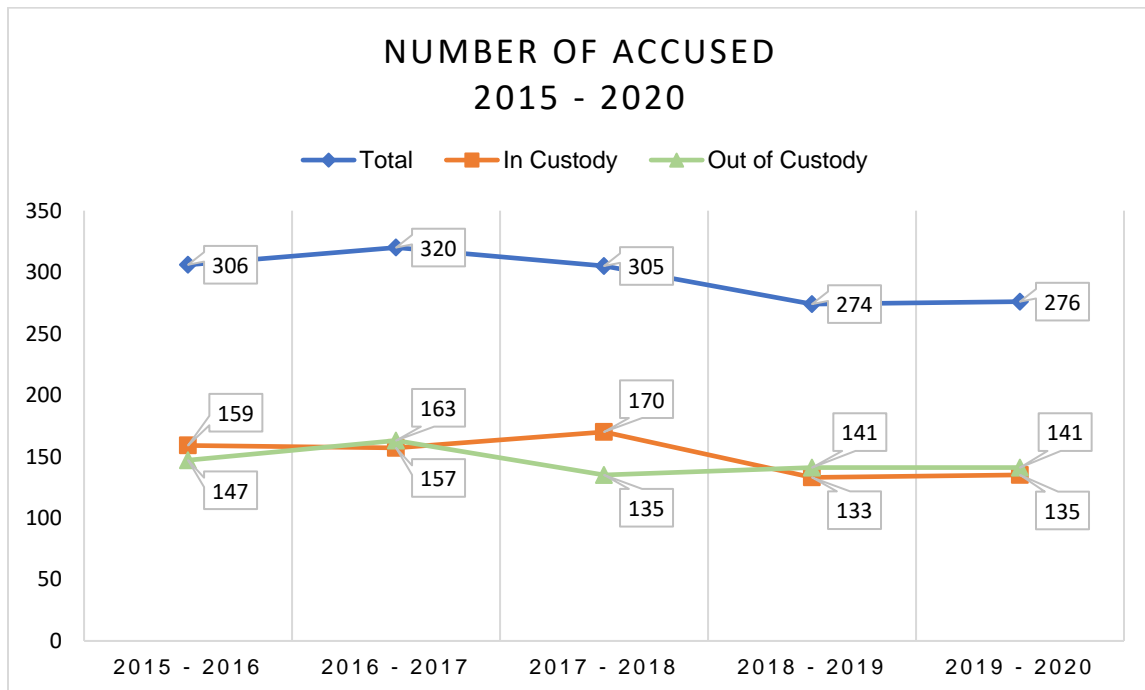
Review Board hearings are open to the public. Persons interested in attending a Review Board hearing should notify the Registry so that arrangements can be made to authorize their entry to the Forensic Psychiatric Hospital or other location.

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 2020-21

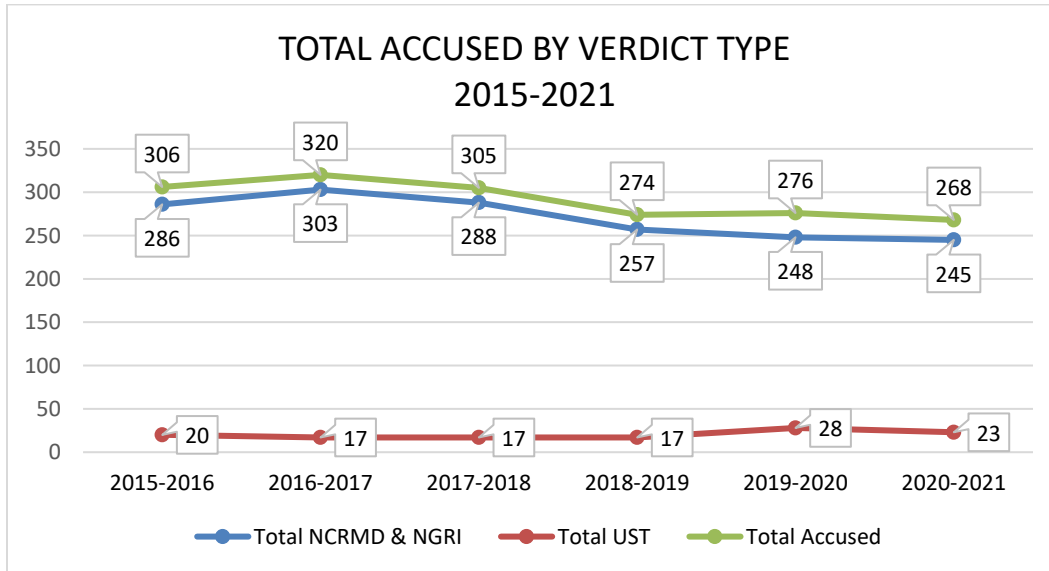
1. Number of Accused under BC Review Board Jurisdiction

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



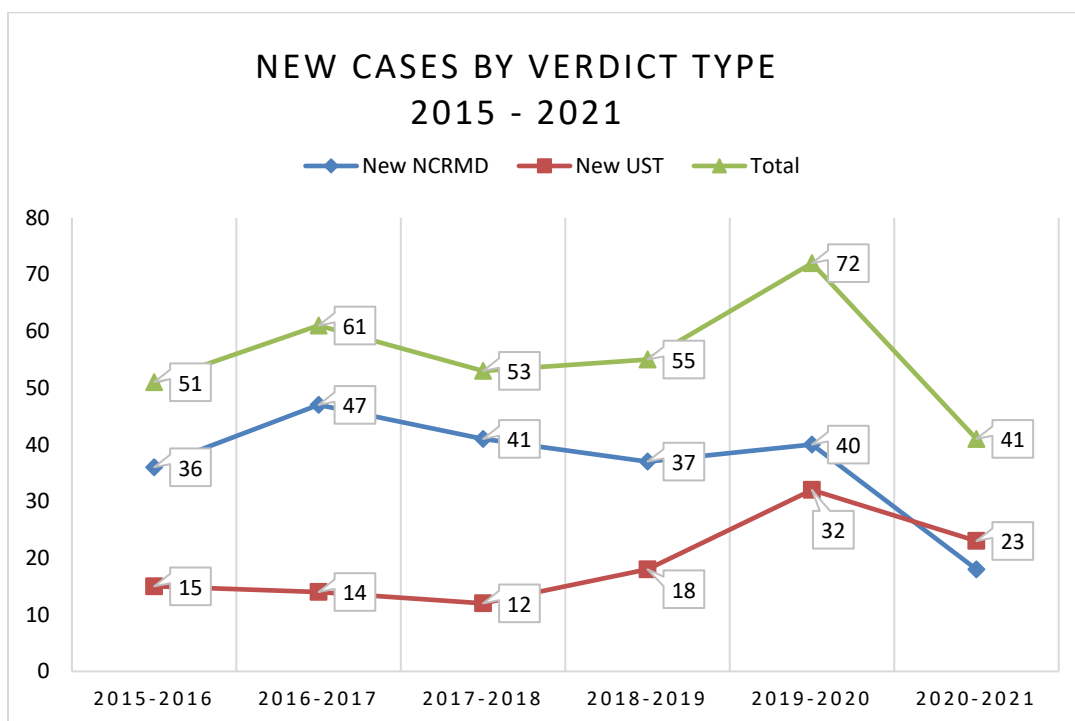
2. Total Accused by Verdict Type

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.



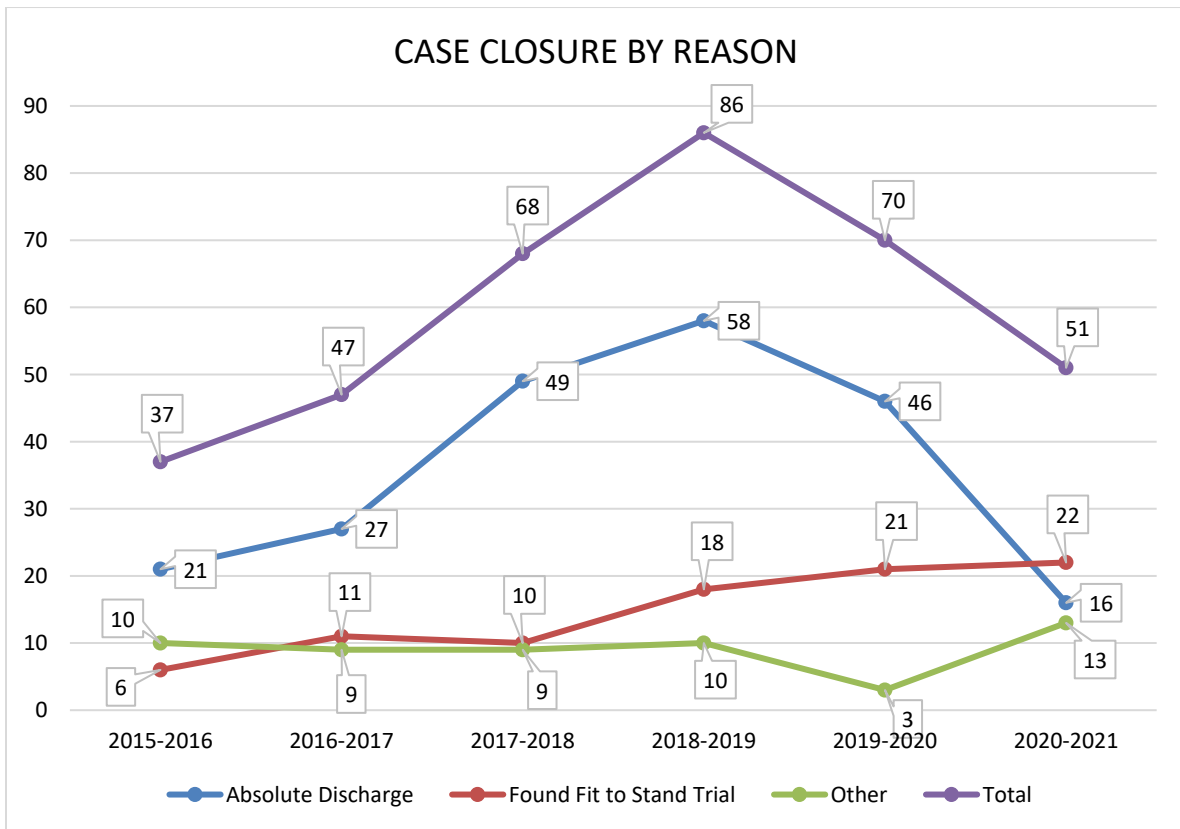
3. Breakdown of New Cases

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 decreased significantly from 72 down to 41. This can be attributed to the impact of the COVID-19 pandemic on court operations throughout the province. For the first time, the number of new UST findings from court outnumbered the new NCR verdicts, which reflects a trend over the past few years of increasing UST findings.



4. Case Closure by Reason

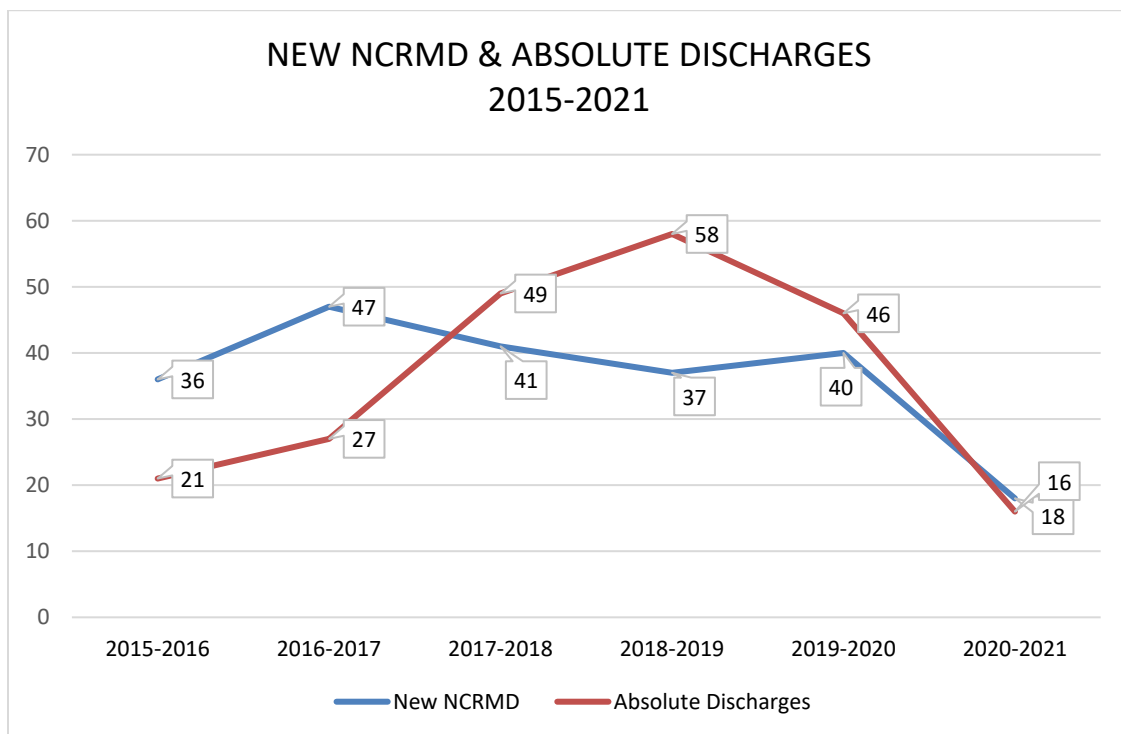
This graph indicates that the main reasons for case closure are absolute discharge (in the case of NCR accused) or matters where an unfit accused has been returned to court, and subsequently found to be fit. Besides these, a case may be closed due to death, interprovincial transfer, charges being stayed, an appeal, or a consolidated verdict¹.



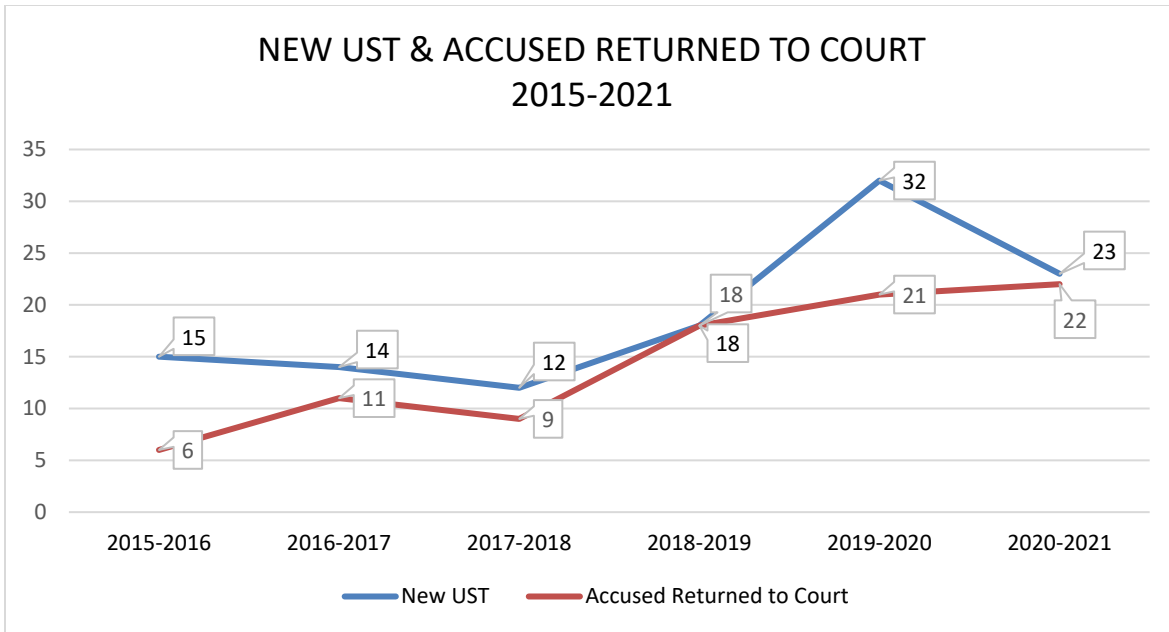
¹ When an accused person has more than one court verdict of NCR or unfit, they are combined into one Review Board 'case' and are dealt with together.

5. 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. As mentioned, the new NCR cases coming into the BCRB were significantly reduced in 2020-21 due to the COVID-19 pandemic. The number of absolute discharges also declined significantly. Community access for accused persons, was dramatically reduced, particularly at the beginning of the pandemic, as well as access to civil mental health services. This appears to have affected progress towards discharge. As well, given the restrictions and considerable unknowns at the time, many accused chose to pursue order extensions and paper hearings to maintain the status quo. We expect the impact of reduced community access options to continue to be seen as the pandemic continues.

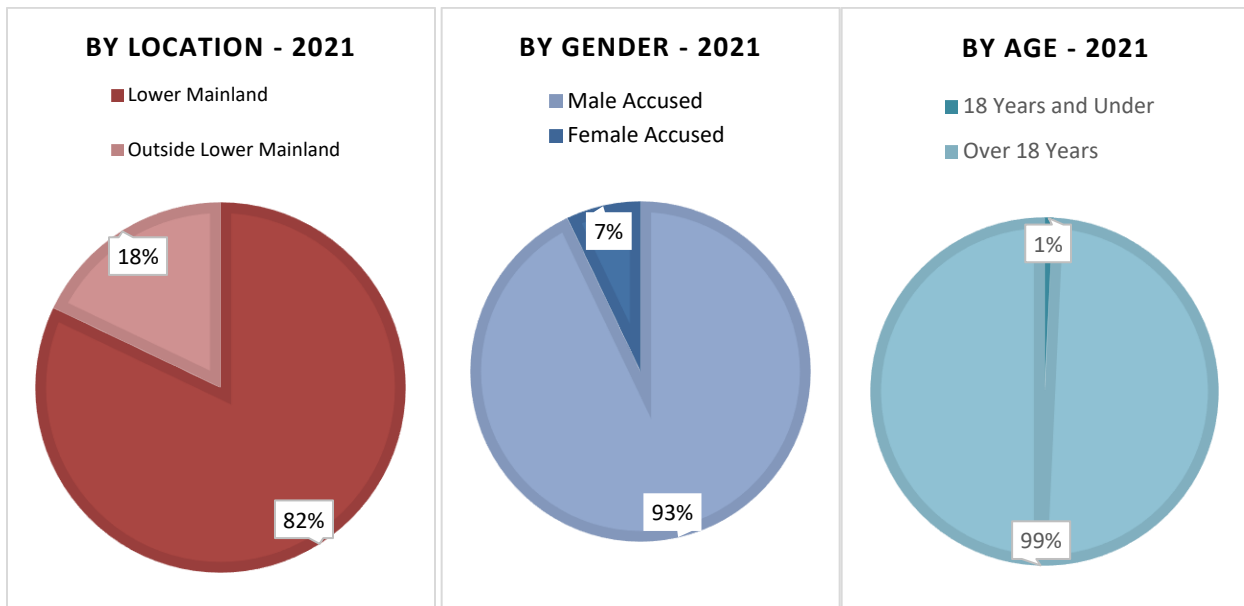


The next graph shows the number of new unfit accused, as well as the number of accused where the Board was of the opinion that the accused was fit to stand trial and ordered the accused to be sent back to court for trial of the issue. Although there were fewer new unfit accused in 2020-21 than in the previous year, the number was still higher than in prior years. The number of accused returned to court remained about the same.



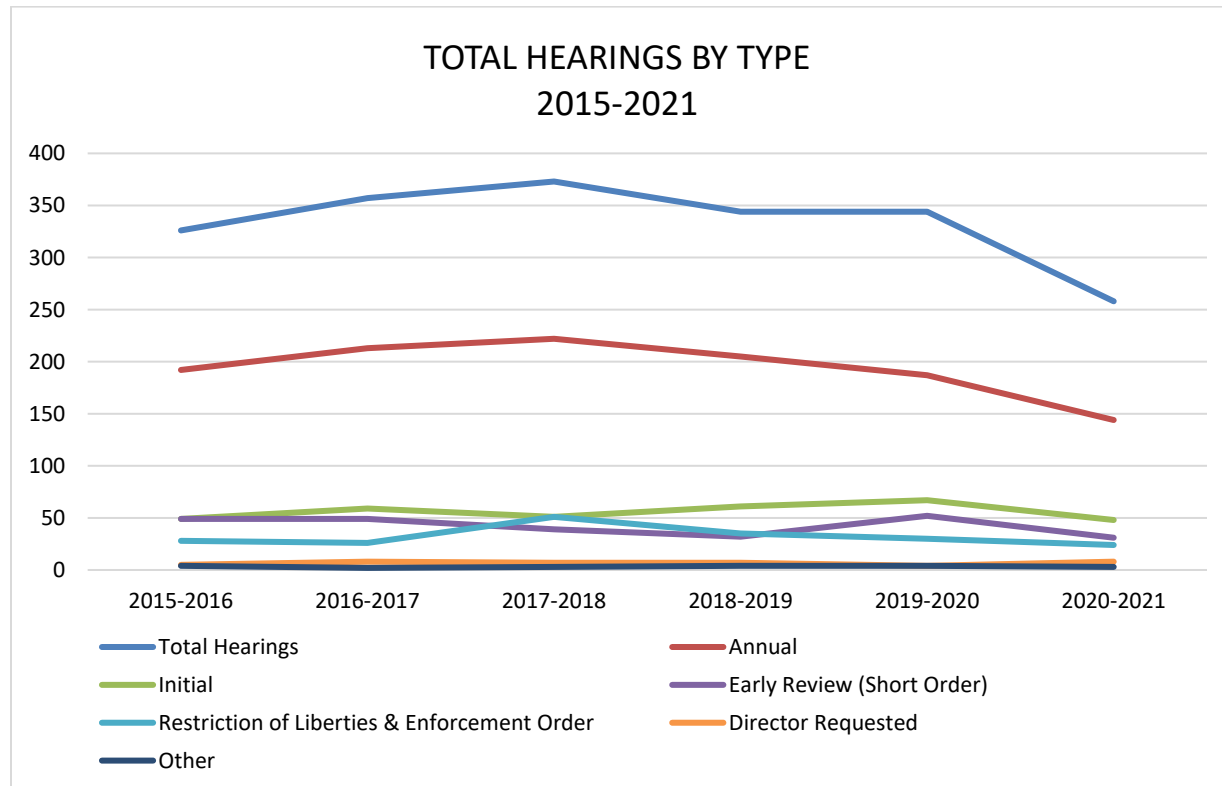
6. Accused Demographic Breakdown

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.



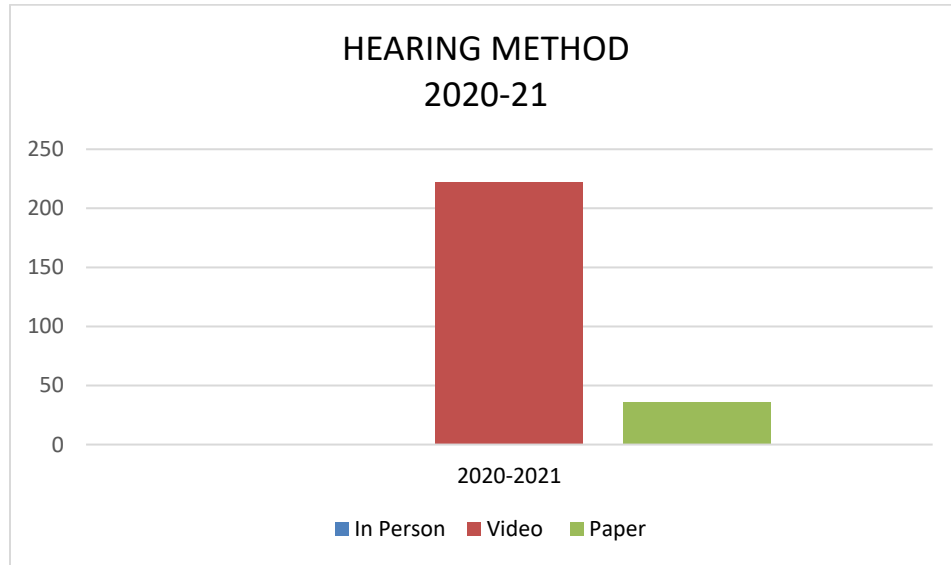
7. Total Hearings by Type

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.



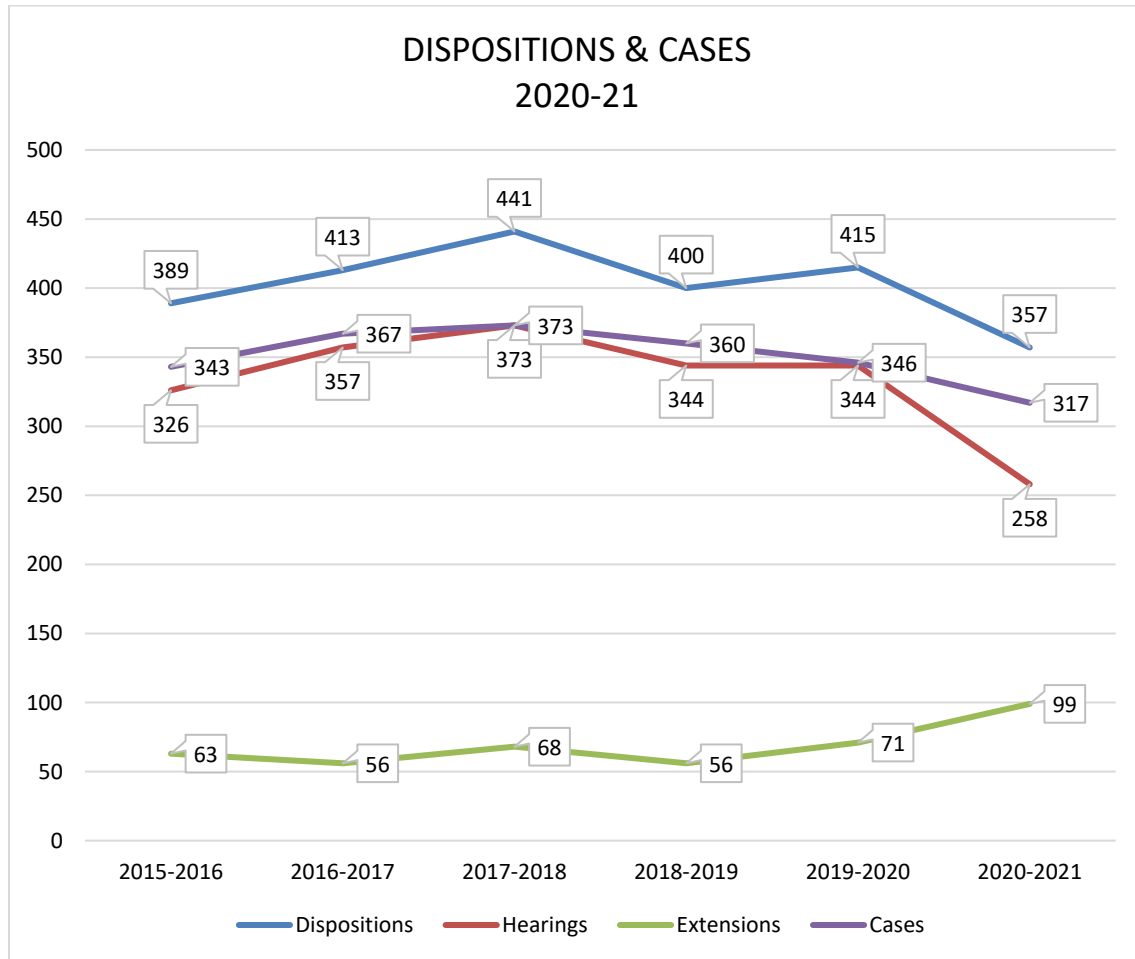
8. Hearing Method

This chart shows the breakdown of hearing method for 2020-21. Due to the COVID-19 pandemic, the BCRB held no in-person hearings this year. The majority of hearings were held by video, with the remainder held by paper. A ‘paper’ hearing may be held in the absence of parties where all parties agree on the order and conditions. A panel reviews all the evidence and makes their decision based on the usual standards.



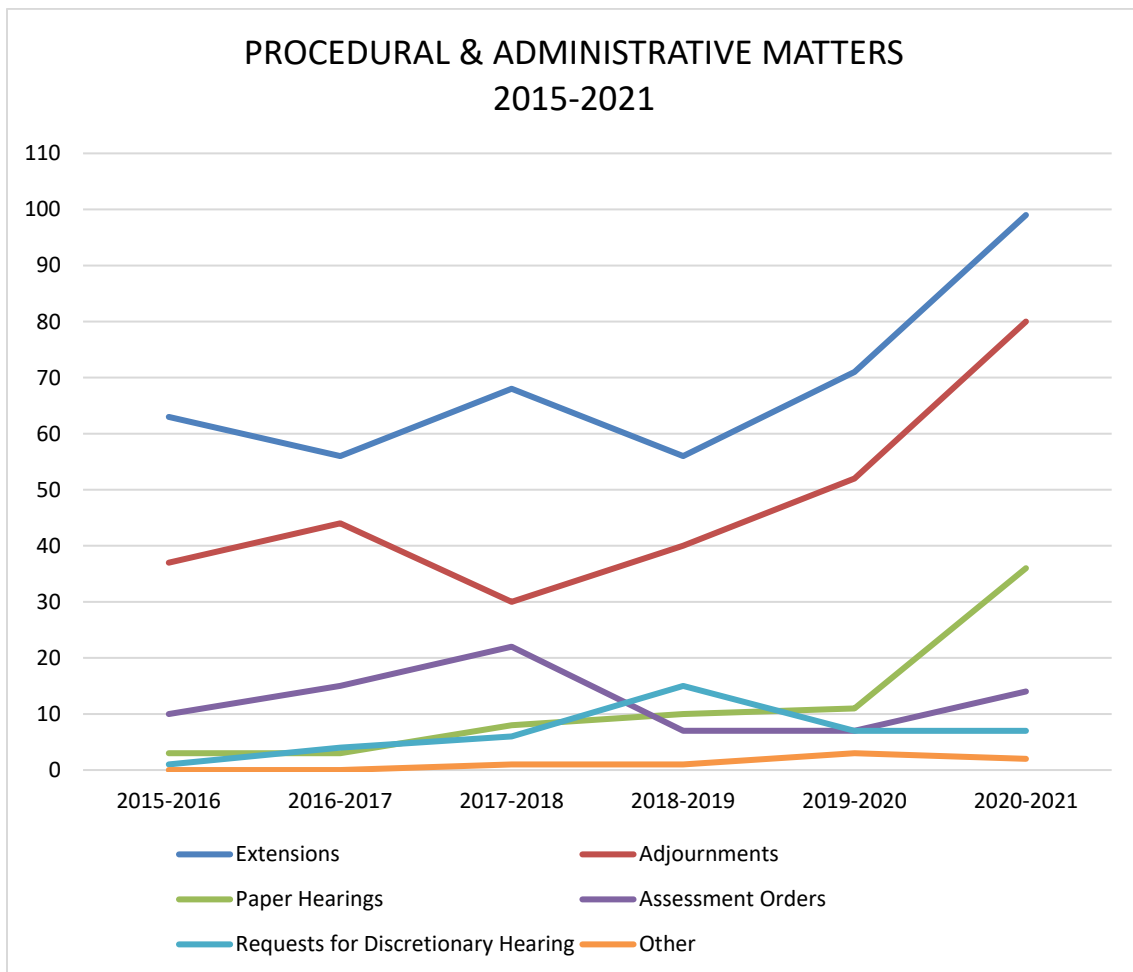
9. Dispositions and Cases

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 2019-20 and the number of new accused deferred by the court to the Board in 2020-21. Because cases are sometimes reviewed more than once per year, the total case number is not an accurate reflection of workload.



10. Procedural and Administrative Matters

This chart shows the breakdown of procedural and administrative matters for 2020-21. These are an indication of additional workload outside of the regular hearing process. There were greater numbers of adjournments, extensions, and paper hearings this year due to the COVID-19 pandemic, particularly in the first quarter while the video hearing process was being investigated and set up. The 'Other' category includes SOP recommendations, victim requests to read VIS, and 672.48(3) returns to court.



BCRB Members at March 31, 2021

BCRB Chair

Alison MacPhail

Chairs

Barry L. Long (Vice Chair)

Ingrid Friesen

Brenda L. Edwards

Jim Threlfall

James Deitch

Dr. Michelle Lawrence

Steven Boorne

David Renwick, QC

Psychiatrists

Dr. Peter Constance

Dr. Ron Stevenson

Dr. Linda Grasswick

Dr. Jeanette Smith

Dr. Todd Tomita

Dr. Sam Iskander

Dr. Sandi Culo

Public Members

Dr. Kim Polowek

Paula Cayley

Alan Markwart

Dr. Lynda Murdoch

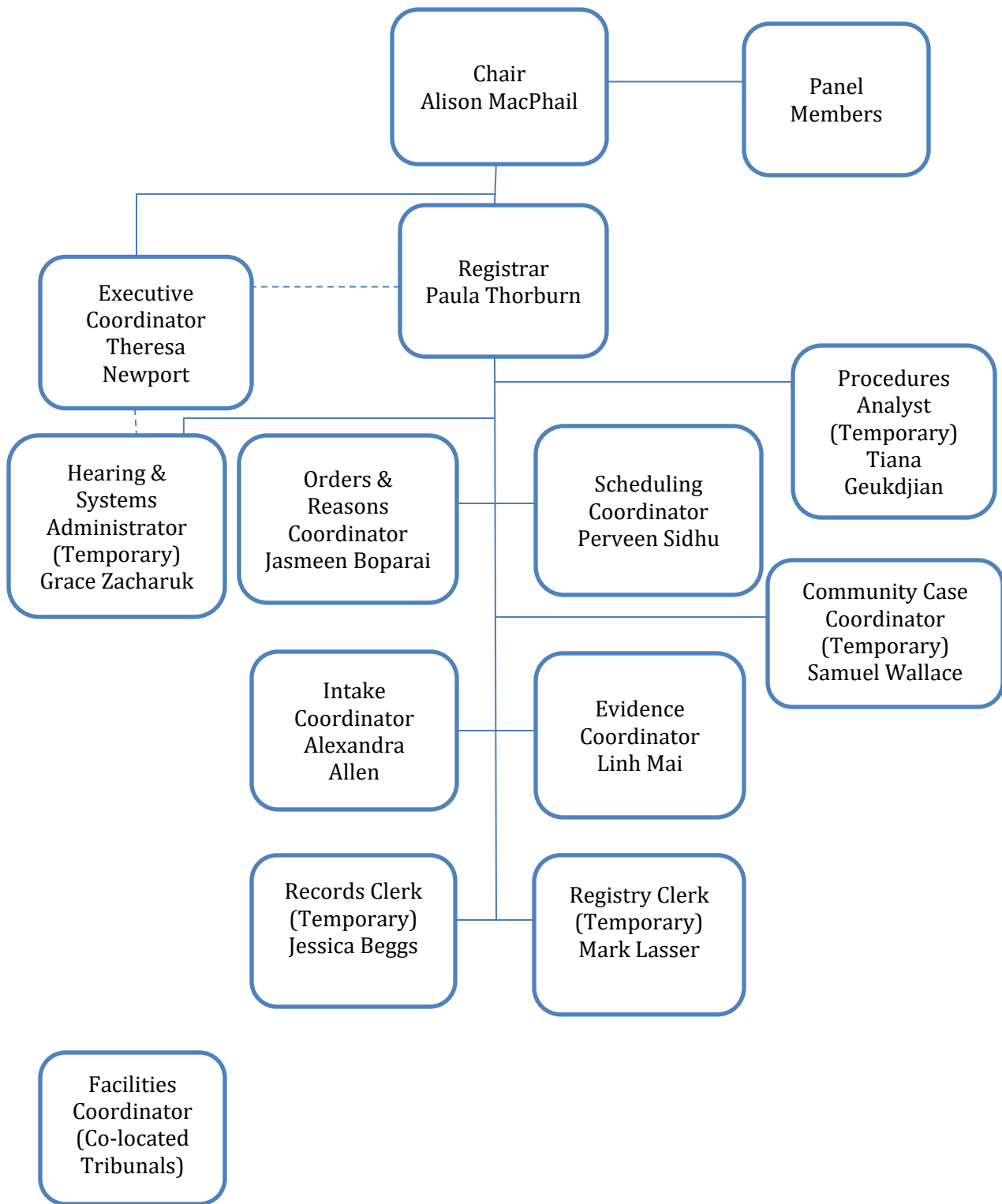
Jeremy Berland

Dr. Chris Webster

Penny Acton

Joanna Nefs

Org Chart at March 31, 2021



BCRB Budget & Expenditure Overview Fiscal Year 2020-21

FY 2020/21 Delegation	FY 2020/21 Expenditures	FY 2020/21 Variance
\$1,533,000	\$1,568,034	(\$35,034)

SIGNIFICANT VARIANCE EXPLANATIONS 2020-2021:

The Covid-19 pandemic has a significant impact on hearings, especially during the first quarter. As the Board transitioned to proceedings via video, travel expenditures for board members were reduced to almost nothing over the fiscal year. The combination of savings from these two factors meant that the board was able to absorb considerable other expenditures, including unbudgeted case management system costs, and temporary staffing requirements due to urgent Covid-19 process changes, and data entry for the new case management system.