

BRITISH COLUMBIA REVIEW BOARD

ANNUAL REPORT

**Fiscal Year:
April 2021 – March 2022**

*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

October 28, 2022

The Honourable Niki Sharma
Attorney General
Parliament Buildings
Victoria, BC V8V 1X4

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 2021 -2022.

Sincerely

A handwritten signature in black ink, appearing to read "Alison MacPhail". The signature is fluid and cursive, with a small flourish at the end.

Alison MacPhail
Chairperson
BC Review Board

Chair's Message

As always, I am deeply appreciative of the incredible support I receive from the Review Board staff and Board members. I am very fortunate to work with this group of dedicated and enormously competent people.

The past year was one of consolidation of the changes required by the pandemic. Our hearings were conducted almost entirely by video, with staff and Board members working from home. A focus of the year was on improving participants' experience with video. This included individual technological support to all participants to troubleshoot issues they might experience, and the installation of a large monitor and an improved video set up in the hearing room at the Forensic Psychiatric Hospital, where the majority of Review Board accused attend their video hearings.

A research project to evaluate participants' experience with video proceeded once it received ethics approval from BCMHSUS Research Committee. Work is on-going to increase the number of participants in the study. As well, the researchers are working with other Canadian jurisdictions to broaden the reach of the study. We expect to receive helpful information to assist us to improve the experience of all participants in video hearings.

In the first year of the pandemic there was a significant decrease in the number of cases coming to the Board from the courts with a 43% decline in our intake numbers. While that is a significant decline, new cases on average make up only 15% of our caseload. This past year saw the numbers return closer to our historical trends.

Work on the new case management system continued. This is a complex project requiring significant adaptation of the off-the-shelf system to support the work of the Review Board. It has required heroic effort on the part of the Registrar, Paula Thorburn, to move this project to completion while still managing the day to day work necessary for the Review Board to fulfill its mandate.

The updated Review Board website (bcrb.ca) went live in August 2021.

Seven extremely well qualified individuals were appointed to the Review Board this year, with two new psychiatrists, two alternate chairpersons and three public members appointed¹. These new appointments assist the Board to schedule our hearings in a timely way, consistent with the *Criminal Code* requirements.

As was the case last year, although in person meetings have not been possible, we have continued to hold regular professional development sessions for the Board by video.

¹ <https://www.bcrb.ca/members/>

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, each Review Board is treated as though it were established under the laws of the province. Members are appointed by the provincial Cabinet. The BCRB is part of Canada's criminal justice system. Review Boards have concurrent jurisdiction with the courts in relation to matters in Part XX.1 of the *Code*.

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 on account of mental disorder (NCRMD) or unfit to stand trial (UST).

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 12 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 in-person 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 agreement of the accused.

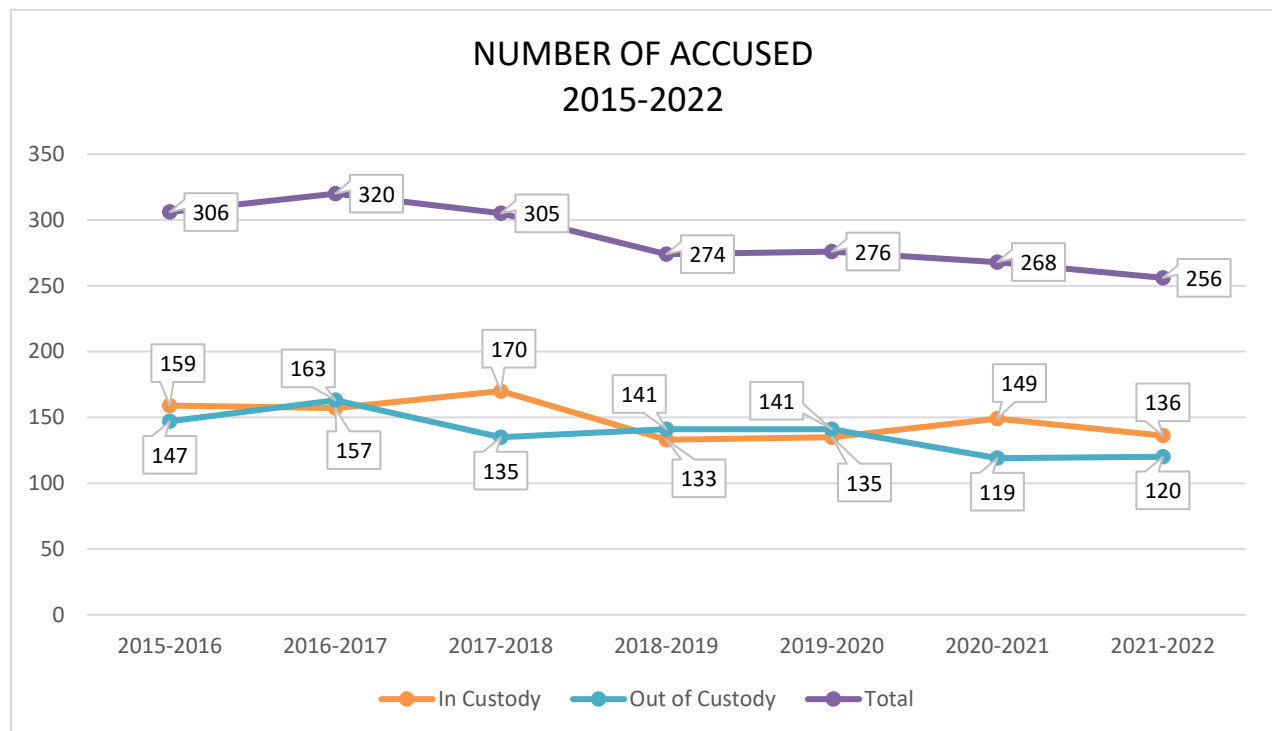
Review Board hearings are open to the public. Persons interested in attending a Review Board hearing should notify the Registry so that arrangements can be made to authorize their entry to the Forensic Psychiatric Hospital or other location.

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 2021-22

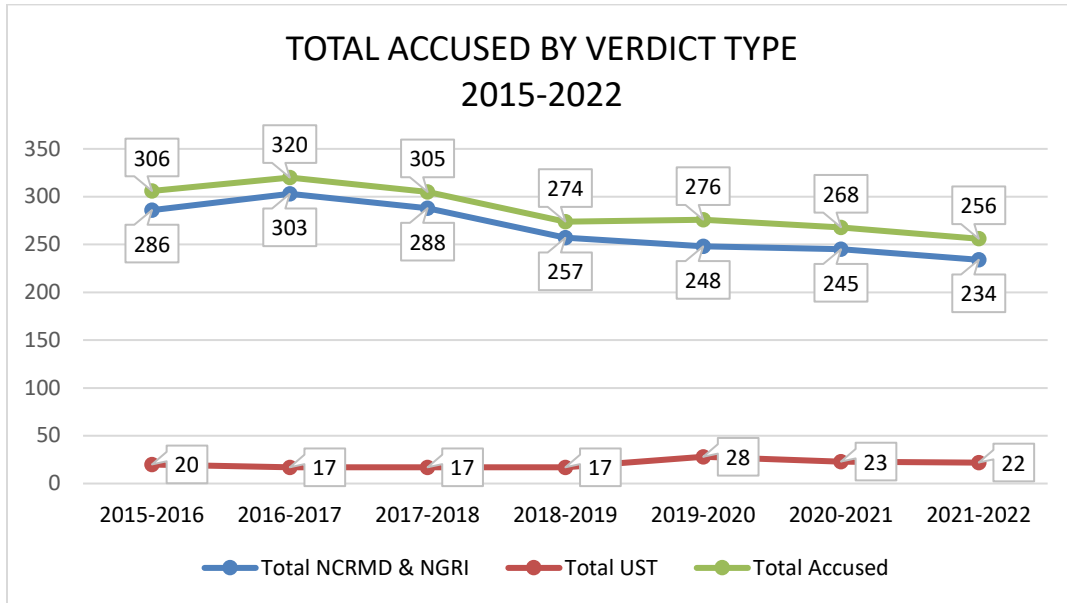
1. Number of Accused under BC Review Board Jurisdiction

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



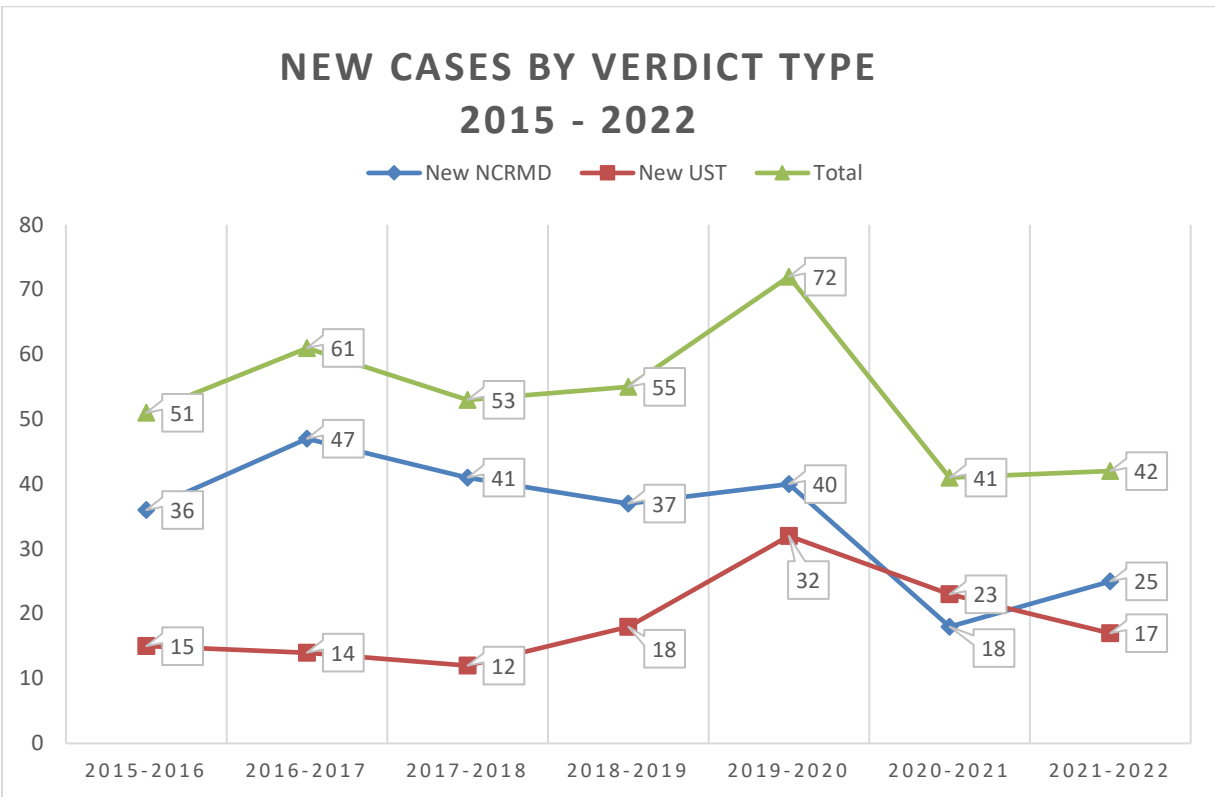
2. Total Accused by Verdict Type

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.



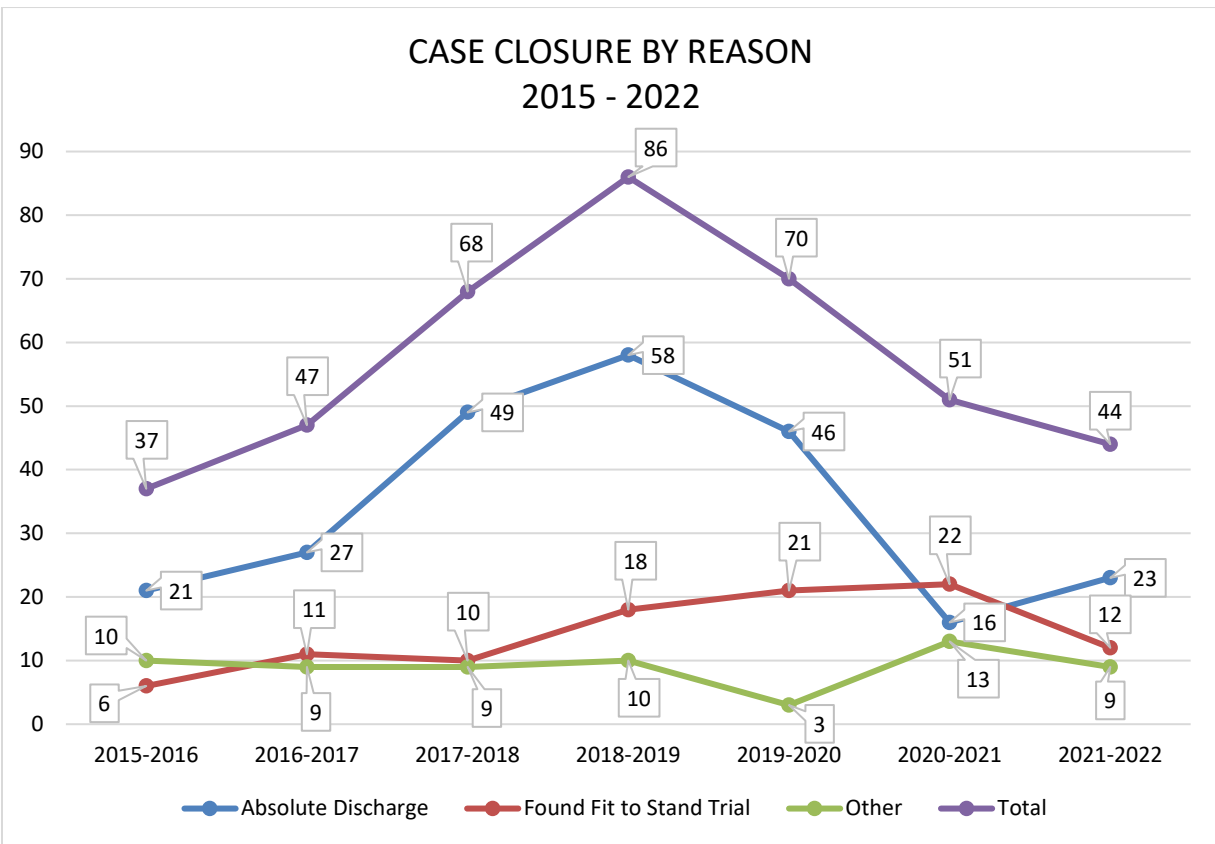
3. Breakdown of New Cases

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 have continued to decrease. This can likely be attributed to the ongoing impact of the COVID-19 pandemic on court operations throughout the province. Last year the number of new UST findings from court outnumbered the new NCR verdicts. This year that has reversed to the usual pattern of more NCR cases than UST, although at a significantly lower level of new NCR cases.



4. Case Closure by Reason

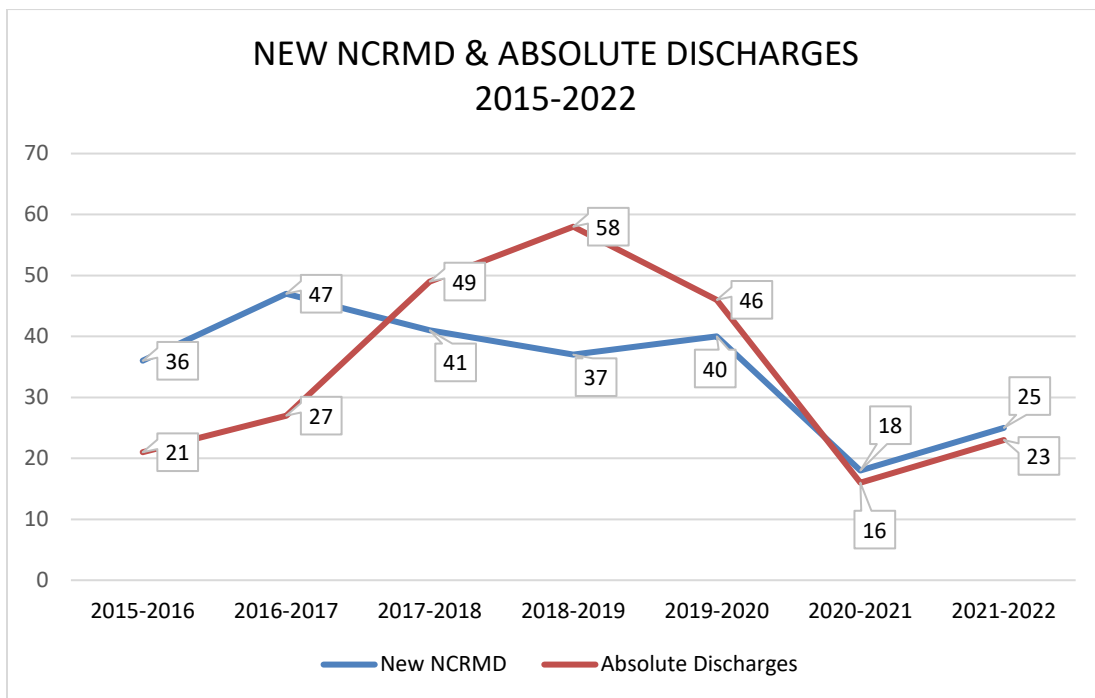
This graph indicates that the main reasons for case closure are absolute discharge (in the case of NCR accused) or matters where an unfit accused has been returned to court, and subsequently found to be fit. Besides these, a case may be closed due to death, interprovincial transfer, charges being stayed, an appeal, or a “consolidated verdict”².



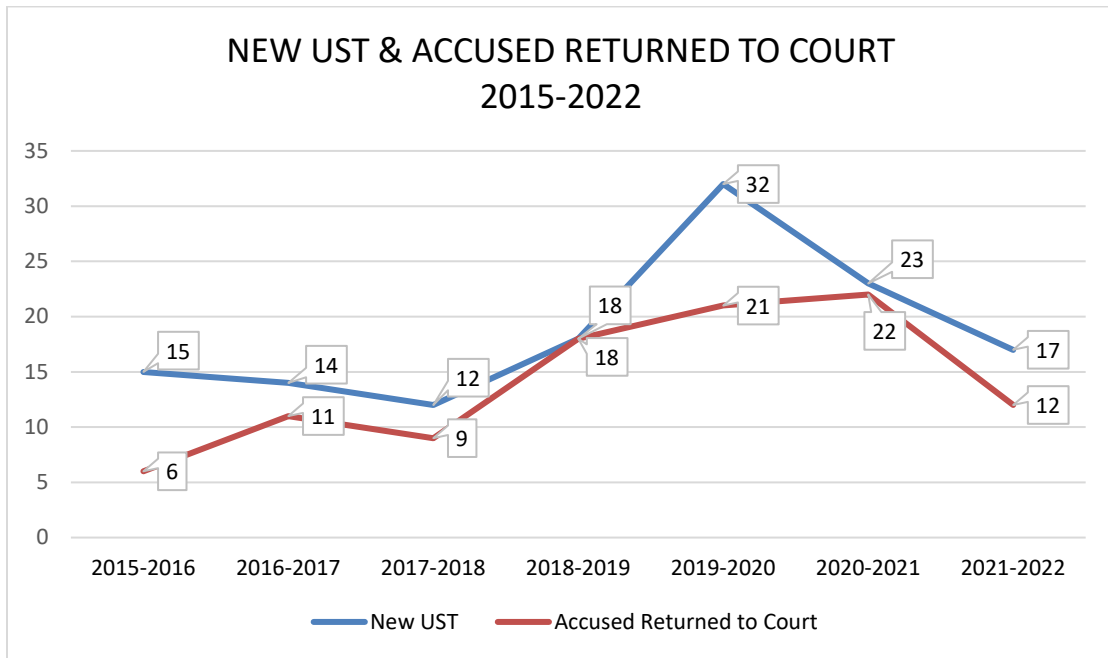
² When an accused person has more than one court verdict of NCR or unfit, they are combined into one Review Board ‘case’ and are dealt with together.

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 continued to be reduced in 2021-22 due to the COVID-19 pandemic, although were increased from the notable lows of the previous year. The number of absolute discharges increased at a similar rate to the number of new NCR cases this year. The impact of dramatically reduced community access and access to civil mental health services for accused persons during the pandemic continues to be reflected in these numbers.

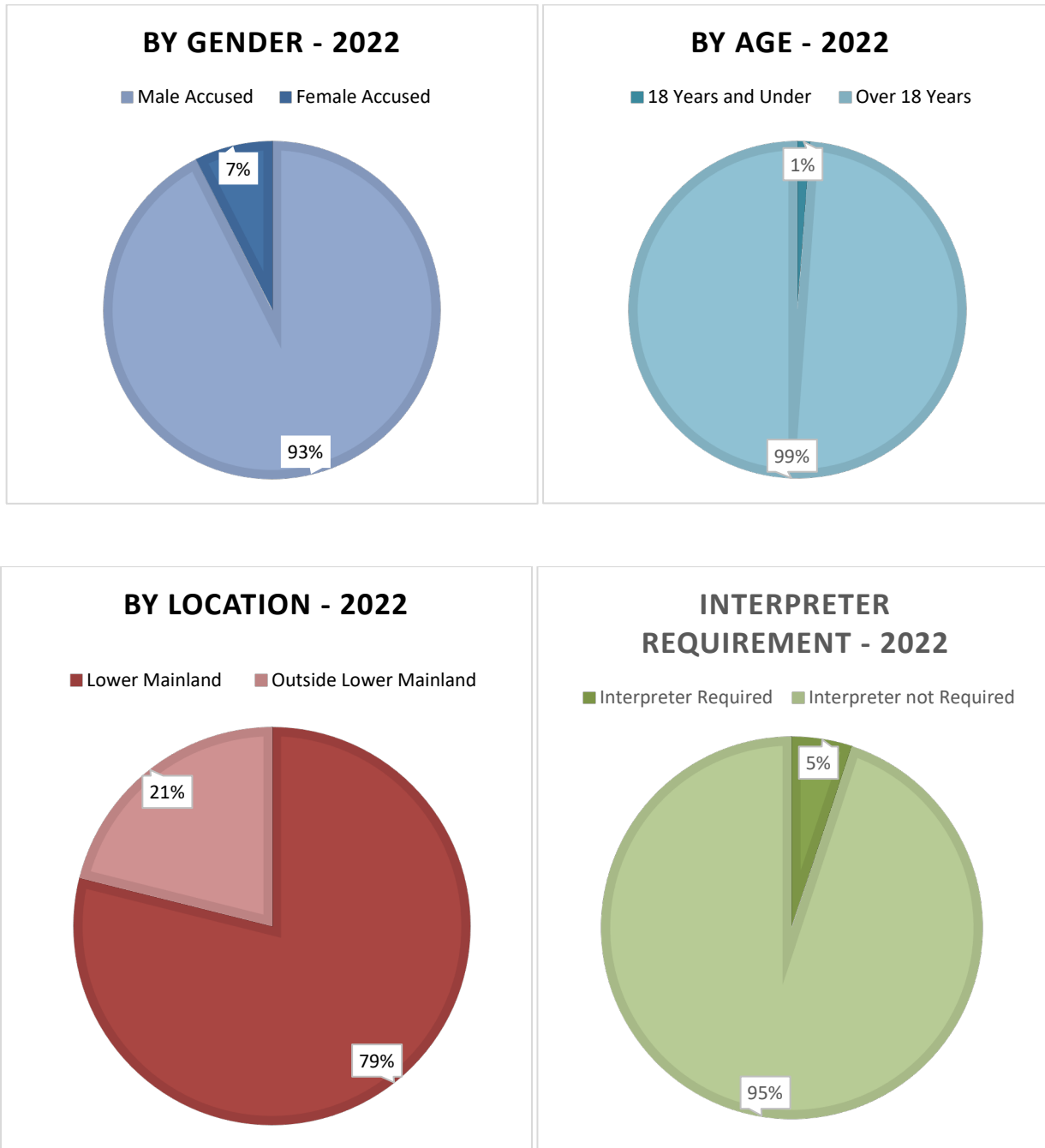


The next graph shows the number of new unfit accused, as well as the number of accused where the Board was of the opinion that the accused was fit to stand trial and ordered the accused to be sent back to court for trial of the issue. Although there were fewer new unfit accused in 2021-22 than in the previous year, the number was still higher than in prior years. The number of accused returned to court has decreased significantly compared to the previous 3 years.



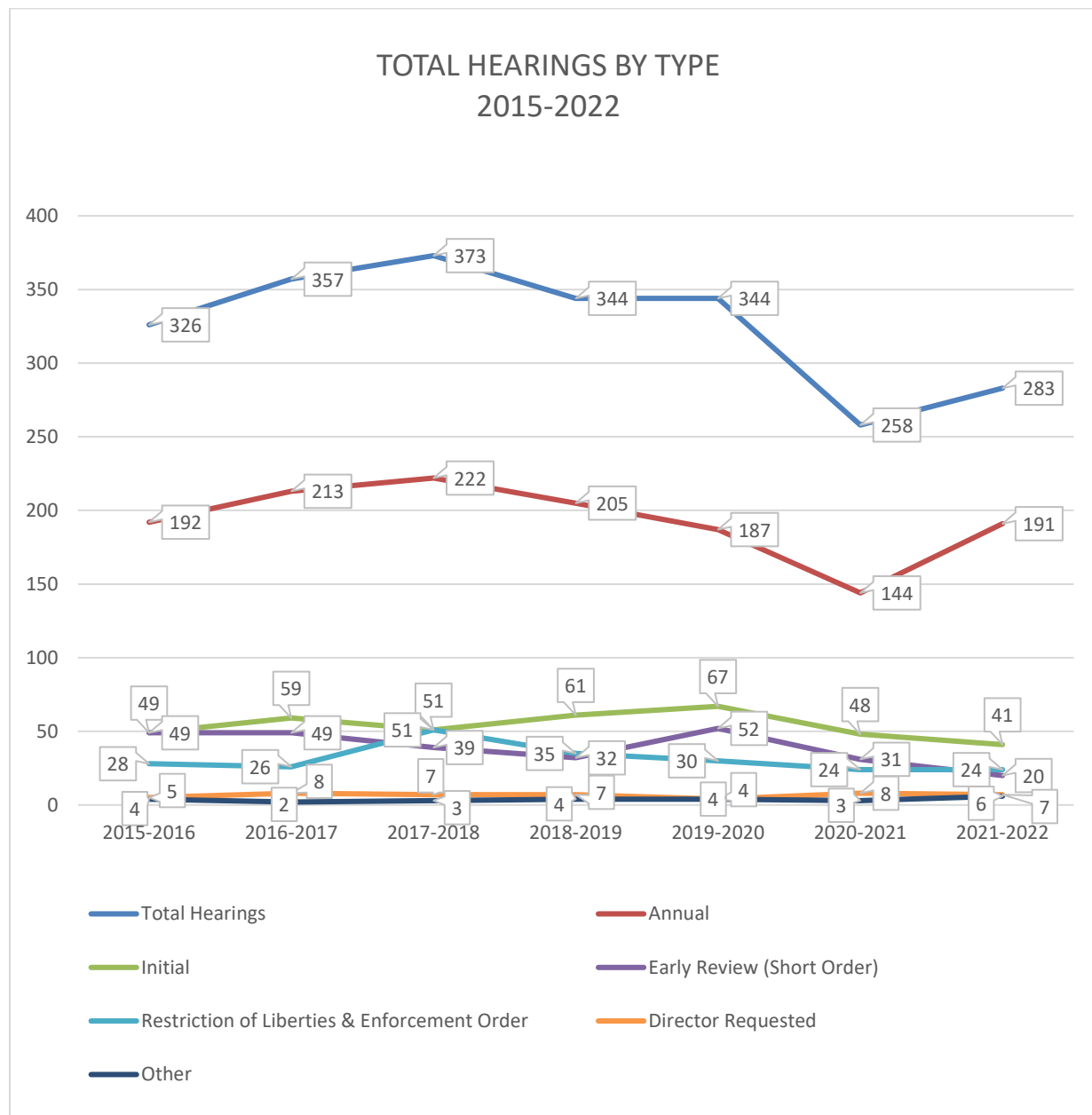
6. Accused Demographic Breakdown

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. A new demographic measure has been added this year, showing that 5% of accused require an interpreter present at hearings.



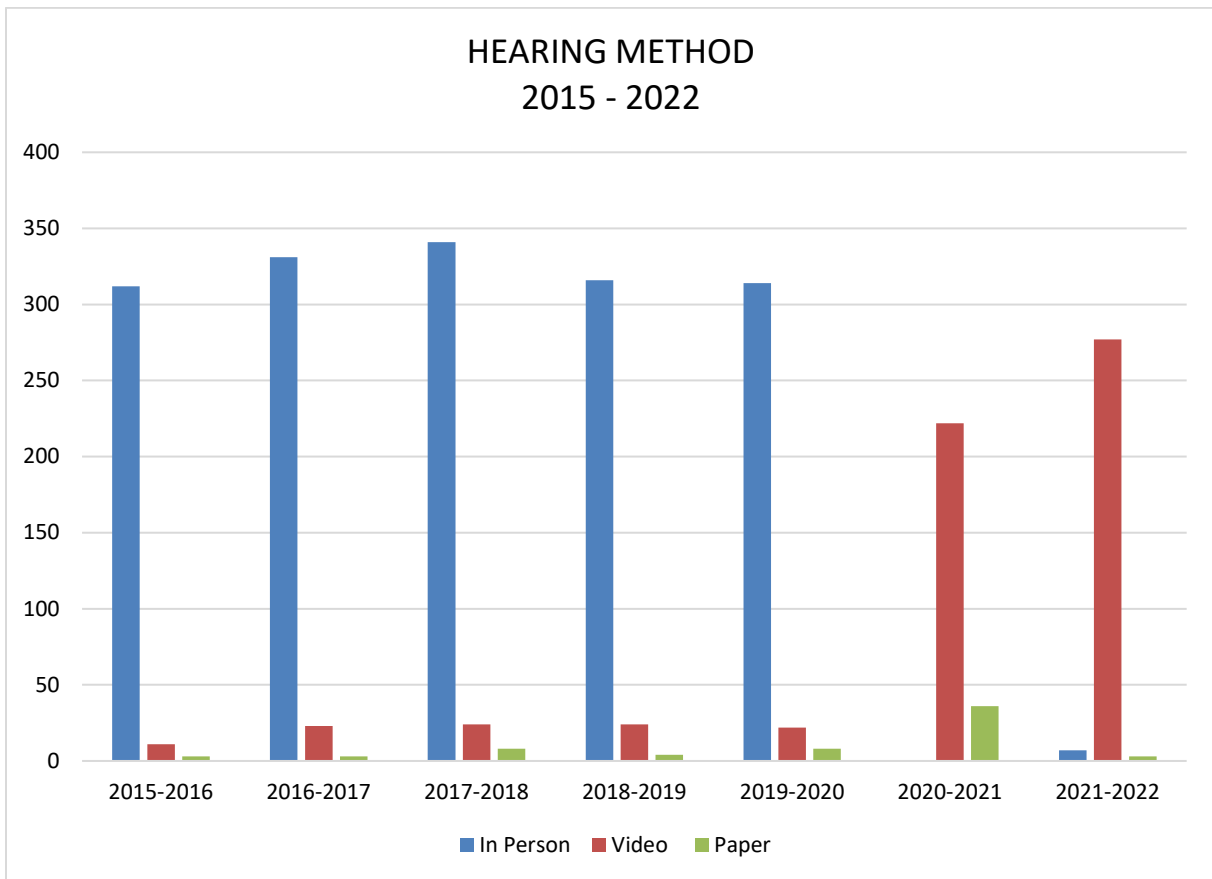
7. Total Hearings by Type

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.



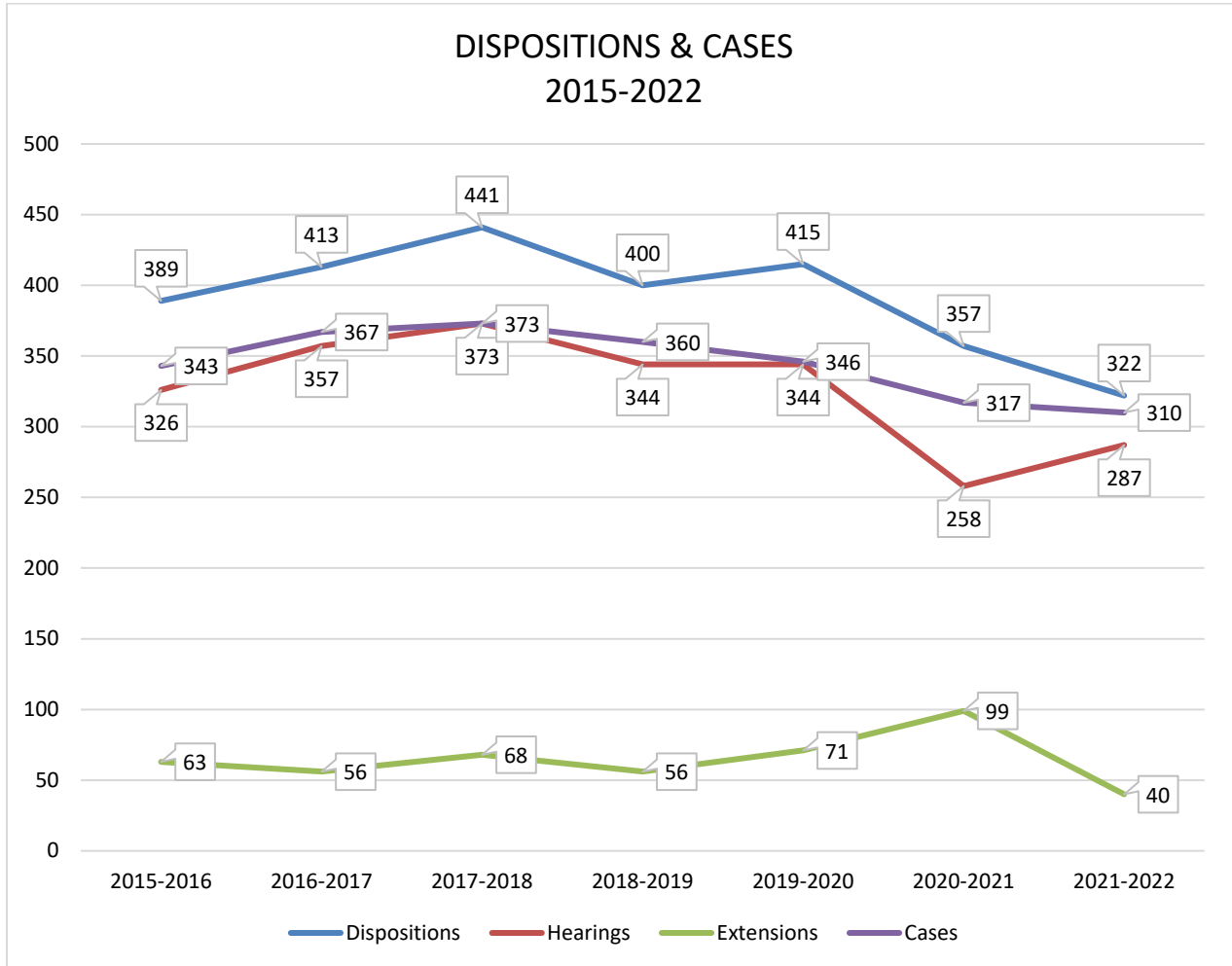
8. Hearing Method

This chart shows the breakdown of hearing method for 2015-22. The majority of hearings were held by video due to the COVID-19 pandemic, with some held in-person or 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. While more hearings were conducted by paper in early 2020 while the Board adjusted to the pandemic, these hearings returned to their normal level by 2021-22.



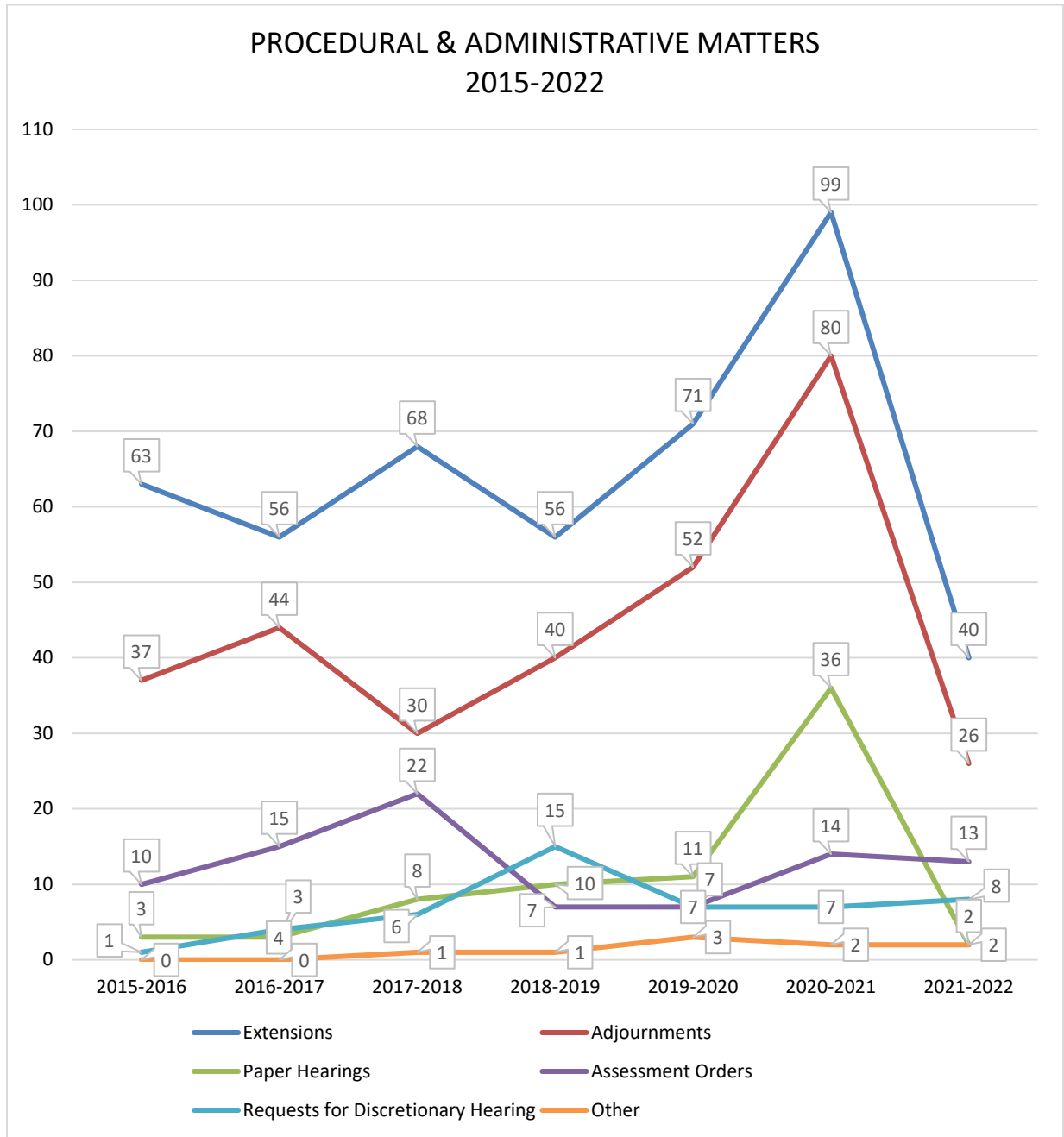
9. Dispositions and Cases

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 2020-21 and the number of new accused deferred by the court to the Board in 2021-22. 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 2015-22. These are an indication of additional workload outside of the regular hearing process. This year saw considerably lower numbers of extensions, adjournments and paper hearings compared to last year. This is unsurprising as many hearings were delayed or dealt with by these methods during 2020 due to the COVID-19 pandemic. The 'Other' category includes recommendations to the court for a stay of proceedings, victim requests to read VIS, and 672.48(3) returns to court.



BCRB Members at March 31, 2022

BCRB Chair

Alison MacPhail

Chairs

Barry L. Long (Vice Chair)
Ingrid Friesen
Brenda L. Edwards
Jim Threlfall
James Deitch
Dr. Michelle Lawrence
Steven Boorne
Aamna Afsar
Paul Singh

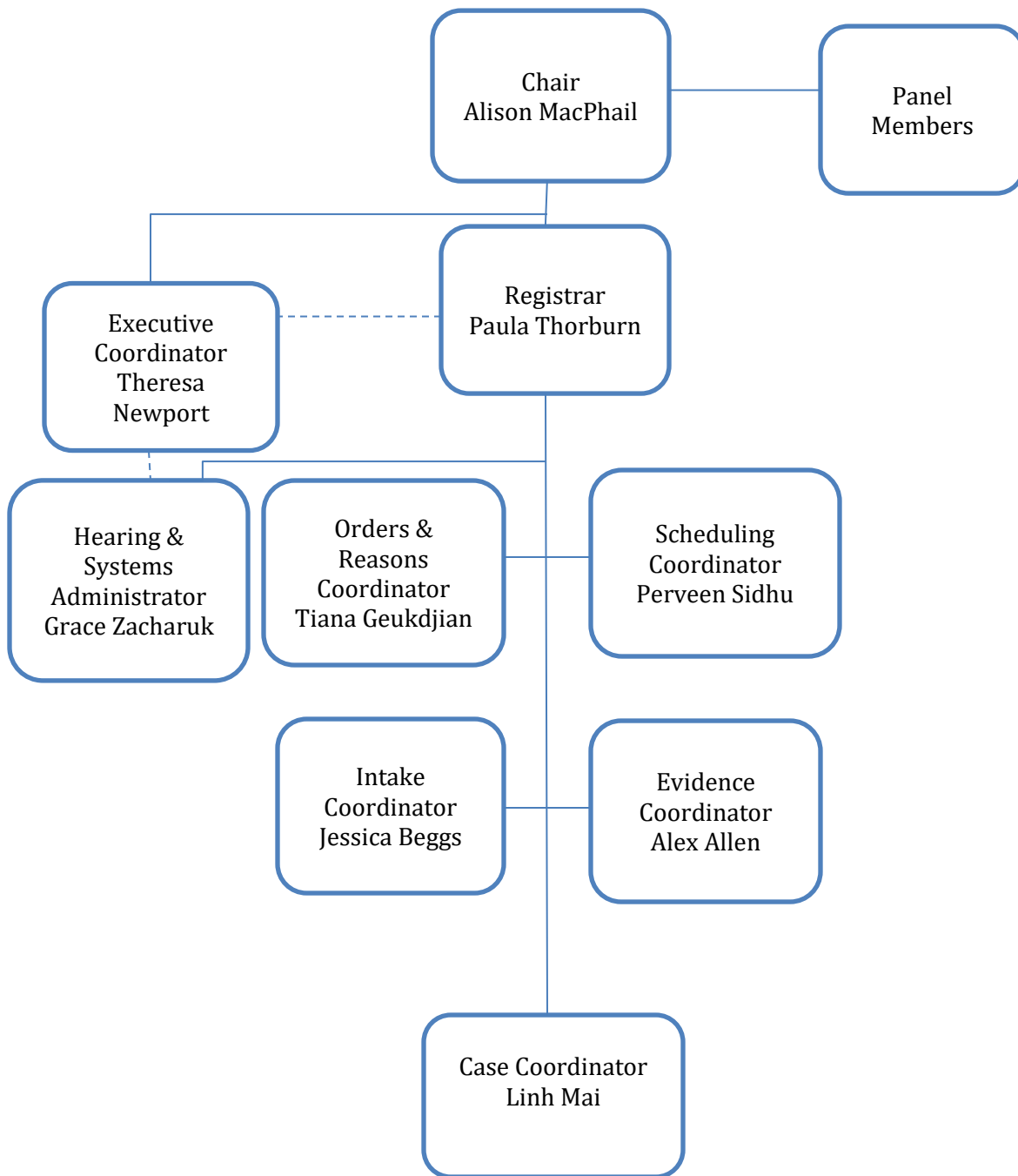
Psychiatrists

Dr. Peter Constance
Dr. Ron Stevenson
Dr. Linda Grasswick
Dr. Jeanette Smith
Dr. Todd Tomita (on leave)
Dr. Sam Iskander
Dr. Sandi Culo
Dr. Roy O'Shaughnessy
Dr. Paul Janke

Public Members

Dr. Kim Polowek
Paula Cayley
Alan Markwart
Dr. Lynda Murdoch
Jeremy Berland
Penny Acton
Joanna Nefs
Karlán Modeste
Doug LePard
Dominic Flanagan

Org Chart at March 31, 2022



BCRB Budget & Expenditure Overview Fiscal Year 2021-22

FY 2020/21 Delegation	FY 2020/21 Expenditures	FY 2020/21 Variance
\$1,533,000	\$1,708,162	(\$175,162)

SIGNIFICANT VARIANCE EXPLANATIONS 2021-2022:

As the Board continued to hold proceedings via video, travel expenditures for Board members were greatly reduced again this fiscal year. The two main budget pressures causing over-expenditure were staffing and technology costs. The Board’s new case management system remains an unbudgeted cost, and additional temporary staffing remained in place for data entry. As the Board continued to hold proceedings via video, travel expenditures for Board members were greatly reduced again this fiscal year, which means that some of the additional cost was absorbed by these savings.