

**BRITISH COLUMBIA REVIEW BOARD**

**RULES AND PROCEDURES  
GOVERNING THE REVIEW BOARD PROCESS**

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## PART 1 — GENERAL

### Rule 1 — Purpose of the Rules

- (1) The purpose of these Rules is to communicate the practices and procedures to be followed at hearings of the Board held under Part XX.1 of the *Criminal Code*, and to provide consistency, predictability, fairness, and efficiency to the hearing process.
- (2) All sections referenced in these Rules are of the *Criminal Code* unless otherwise specified. All *Criminal Code* definitions apply to these Rules.
- (3) The Board may use flexible adjudicative procedures to further the purpose of these Rules.
- (4) The Board will determine the procedures to be followed on a case-by-case basis when considering situations where these Rules have not been followed, or cases whose features were not contemplated during the development of these Rules.

### Rule 2 — Definitions

In these Rules,

**“Amicus Curiae”** means “a friend of the court” who is appointed by the Board to assist during a hearing when an Accused does not have counsel and either does not want counsel representing them or is unable or unwilling to instruct an appointed lawyer.

**“Application”** means a procedural request from a Party for decision, by the Board, or a request for relief from any of the Rules or Procedures. An application must be submitted to the BCRB Registry.

**“Board”** means the British Columbia Review Board, which is an independent tribunal established under Part XX.1 of the *Criminal Code*.

**“Board Registry”** refers to the staff, responsible for a variety of functions relating to the Review Board, including the production and distribution of all Dispositions and Reasons.

**“Business Day”** means a day between 8:30 a.m. and 4:00 p.m. from Monday to Friday. When calculating business days, day one begins on the first day after an event. The calculation of business days excludes weekends and statutory holidays.

**“By Date”** means the date by which the Board must make or review an Accused’s disposition.

**“Chairperson”** means a person designated by Order-in-Council as the chairperson of the Board and meets the qualifications as described in s.672.4 of the *Criminal Code*.

**“CLAS”** Community Legal Assistance Society is a non-profit law firm serving people in BC.

**“Day”** means a calendar day. Day one begins on the first day after an event. The calculation of days includes weekends and statutory holidays.

**“Director”** means the person, or their delegate, in charge of a designated hospital. This includes the director of Adult Forensic Psychiatric Services, the director of the Maples

Adolescent Treatment Centre, the director of Youth Forensic Psychiatric Services, and the director of the Pacific Institution/Regional Treatment Centre (Corrections Canada).

**“Initial Hearing”** refers to an Accused’s first hearing before the Board.

**“Observer”** means any member of the public who is not a Party to the proceedings and who is entitled to observe a Board hearing so long as a publication ban is not in effect.

**“Participant”** means any Party and legal counsel on their behalf, or witness who attends a Board hearing.

**“Party”** means the Accused (or counsel on their behalf), Crown Counsel and the Director (or their representative).

**“Panel”** means a quorum of the Board as defined in s.672.41(1) of the *Criminal Code* who have been assigned by the Chairperson to a disposition or fitness hearing.

**“Panel Chairperson”** means the Chairperson of the Board or any alternate chairperson designated to act on the Chairperson’s behalf.

**“Young Person/Youth Accused”** means a young person, as defined by the provisions of the *Youth Criminal Justice Act*, in respect of whom a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is rendered.

### **Rule 3 — Obligation to Comply with these Rules**

#### **Participants must comply with Rules**

- (1) Participants must comply with these procedure Rules unless the Board orders otherwise.

#### **Procedural Irregularity**

- (2) A technical defect or administrative irregularity does not invalidate a proceeding and does not constitute non-compliance with these Rules.
- (3) Any procedural irregularity in relation to a disposition hearing does not affect the validity of the hearing unless it causes the Accused substantial prejudice (s.672.53).

#### **Failure to comply with Rules**

- (4) A failure to comply with any of these Rules does not invalidate a proceeding.

## **PART 2 — HEARING PROCESS AND CONDUCT**

### **Rule 4 — Hearing Process**

#### **Timing of Reports and Notice of Witnesses**

- (1) The Accused must be provided with timely copies of all reports, have the opportunity to give evidence and ask questions of witnesses, and receive a timely disposition and

reasons for that disposition from a Panel that is objective and independent and that heard the matter.

- (2) Reports from the Director must be submitted to the Board three weeks prior to an annual review hearing and at least five business days prior to any other hearing. In every case the relevant reports should include a report from the Accused's treating psychiatrist.
- (3) Written documents submitted by all crown counsel, the Accused or counsel on their behalf, for consideration at the next scheduled hearing must be submitted to the Board for distribution to all parties at least five business days prior to the hearing date.
- (4) Any Party that wishes to call a witness must give notice to the Board, other parties and must provide any written information about which their witness is expected to refer in their evidence at the hearing.

### **Procedure at a Hearing**

- (5) Hearings before the Board are legal proceedings and parties are to dress and conduct themselves at hearings in a manner that would otherwise be appropriate at a disposition hearing or fitness review in a court of law. Panel Chairpersons will determine the appropriate degree of formality for the hearing and are responsible for ensuring that any informality in the process does not compromise the Accused's right to be treated in a procedurally fair manner or bring the administration of justice into disrepute (s.672.5(2)).
- (6) In general, Board hearings will begin with Panel members, the parties, or legal counsel on their behalf, introducing themselves, their clients and any witnesses.
- (7) Each Party that is present will be asked to provide the Board with their opening position regarding the outcome that they are seeking or recommending for that hearing.
- (8) The Panel Chairperson will ask the Director's representative to present the Director's evidence. Crown counsel and counsel for the Accused (or the Accused if self-represented) will be asked to present any evidence that they wish the Panel to consider. Any Party may present evidence by calling witnesses or submitting documents to the Board. When witnesses are called to provide evidence, they may be asked questions by:
  - a. The Party that called them;
  - b. The other parties; and
  - c. The members of the Panel.
- (9) If a member of the Panel asks questions of a witness, the Panel Chairperson will canvass with the parties whether they have any questions arising as a result of questions put to the witness by the Panel.
- (10) Parties should assume that Panel members have read all reports submitted to the Board for the hearing within the timelines established in these Rules and that they are familiar with applicable Canadian case and statutory law.
- (11) Typically, the Panel Chairperson will ask the Director's representative to provide evidence on behalf of the Director first. Usually, the Director begins their case by calling

the treating psychiatrist. The treating psychiatrist may provide a summary and/or an update to any report they have prepared or may state that they prefer to only answer questions about their written report. The Director may call other witnesses to provide evidence, such as other members of the treatment team, or witnesses who may have information regarding available resources or discharge planning relevant to the hearing.

- (12) The Panel Chairperson will then ask the Crown to provide any evidence they may intend to tender.
- (13) The Panel Chairperson will then ask counsel for the Accused (or the Accused personally if unrepresented) to provide their evidence last. Typically, the Accused's counsel leads the Accused through their evidence and the Accused and then makes the Accused available to be questioned by the other parties and the Panel. The Accused is not obligated to provide evidence or answer questions from the Parties.
- (14) After the Parties have tendered their evidence, the Panel Chairperson will ask them to provide closing submissions.
- (15) The Panel Chairperson will inform the Parties that the hearing has been concluded and that the Panel will deliberate in private.
- (16) If time permits and the Panel concludes its deliberations while the Parties are still present, the Panel Chairperson may reconvene to deliver the Panel's decision orally. Alternatively, the Panel Chairperson will inform the Parties that the Panel is reserving its decision. In either instance, written reasons for the Panel's decision will be delivered to the Parties.

### **Rule 5 — Lengthy Hearings and Pre-Hearing Conferences**

- (1) Hearings are typically set for two hours (including deliberation time).
- (2) If any Party believes a hearing will require more than the allotted two hours, they must make an application to the Registrar copying the other parties and providing the rationale. The Registrar or Deputy Registrar may call a pre-hearing conference to clarify based on the available information as to whether additional time is required.
- (3) If a Party intends to raise a novel or complex procedural or other legal issue, (e.g. a *Charter* application or application for a discretionary publication ban), at a hearing, they must advise the Board and all other parties at least five days prior to the scheduled hearing date. The Panel Chair and the Registry will decide if it will be heard at the disposition review hearing, or a separate pre-hearing conference or written submissions would be required.
- (4) The Board, on its own motion, may schedule a pre-hearing conference to clarify the parties' positions and to determine whether written submissions are required, the dates on which such submissions are to be filed, settle procedural issues, and to allow the Board to allocate the appropriate amount of time for the hearing.

### **Rule 6 — Written or Physical Evidence**

- (1) Section 672.51(1) defines disposition information as meaning all or part of an assessment report submitted to the Court or the Board, and any other written information before the court or Board that is relevant to making or reviewing a disposition.
- (2) Section 672.51(2) requires the Board to provide a copy of all disposition information to each Party and any counsel representing the Accused. It further requires that the Board make the disposition information available for inspection by those persons.
- (3) The Director must provide the Board with a report from the Accused's treating or assessing psychiatrist for every hearing with respect to an Accused.
- (4) The Board Registry will provide the other parties and designated parties with copies of any reports submitted to the Board by the Director's representative.
- (5) The Board Registry will distribute all submitted written information, including any Board-ordered assessments, and victim impact statements, to the parties as soon as practicable.
- (6) For counsel who have not acted on behalf of a particular Accused before, the Board's Registry will provide an ebinder at least two weeks prior to an annual hearing and as soon as practicable for all other hearings. The ebinder will contain all the information provided to the Board about the Accused, and other relevant documents (e.g., relevant correspondence between the Parties and the Board, Board orders and reasons for disposition regarding the Accused, and other relevant documentation) since the Accused came under the Board's jurisdiction.
- (7) For all other counsel, the Registry will provide only new information regarding the Accused since the last hearing.
- (8) Physical evidence or exhibits in the possession of the trial court are accessible to the Board. These may be requested by the Board's Registry and provided to the Parties. Information that is not included in the Board's ebinder is retained by the court and can be made available for inspection, or for a hearing, upon request to the Board Registry.
- (9) Public access to disposition information is only available as provided for under s.672.51.

### **Rule 7 — Notice of Hearing**

- (1) A notice of hearing may include any information or directions the Board considers necessary for the proper conduct of a hearing and may be in the form of a written or electronic copy of a schedule of hearings or a document specifying the hearing information for an individual Accused.
- (2) The Board will provide a notice of hearing to the following, where applicable:
  - a. the Accused, their counsel on record for the scheduled hearing, or the *amicus curiae* as applicable;



- b. If there is not a person that meets the descriptor in (a), then the Board will notify the organization contracted by Legal Aid BC to represent Accused persons appearing before the Board;
  - c. the Director;
  - d. the Crown/agent of the Attorney General for BC;
  - e. a parent or guardian of an Accused who is a “young person” as defined in s.2(1) of the *Youth Criminal Justice Act*, unless such notice has been dispensed with;
  - f. any person added as a Party by the Board under s.672.5(4); and
  - g. a victim who has requested notice of a hearing from the Board under s.672.5(5.1).
- (3) Unless the Board decides otherwise, any in-person hearing will be held as close as possible to the place where the Accused is physically residing at the time of the hearing.

### **Rule 8 — Adding or Designating Parties**

- (1) The Board may, of its own motion, or at the request of a Party or counsel for the Accused, designate any person who has a substantial interest in protecting the interests of the Accused as a Party to a hearing (s.672.5(4)).
- (2) A request to make a person a designated Party to a hearing should be made in writing to the Board before a hearing. A request made at a hearing will be considered if it was not possible to make the application before the hearing.
- (3) A request under (2) must state why the person making the request has a substantial interest in protecting the interests of the Accused and why it is just that the person be designated as a Party.

### **Rule 9 — Assessment Orders**

- (1) Where the court has released an Accused and has not made an order specifying that the Accused must report to Forensic Psychiatric Services for assessment, the Board will make an assessment order pursuant to s.672.121(b) prior to an initial hearing.
- (2) The Review Board that has jurisdiction over an Accused found not criminally responsible on account of mental disorder or unfit to stand trial may order an assessment under s.672.121(a) of the mental condition of the Accused of its own motion or on application of the prosecutor or the Accused, if it has reasonable grounds to believe that such evidence is necessary to make a recommendation to the court under s.672.851(1).
  - a. Any Party that wishes to raise this with the Board, they must do so at subsequent hearings and the matter will be determined under s.672.851.

### **Rule 10 — Subpoenas/Summons**

- (1) The Board may compel the attendance of one or more witnesses on its own motion or at the request of a Party pursuant to s.672.5(12). The Chairperson or Alternate Chairperson assigned as the Panel Chair may issue a subpoena or a summons for the intended witness(es).
- (2) A request to compel the attendance of a witness must be provided in writing to the Board and all other parties before a hearing, or, if prior notice of the request is impossible, by application at the hearing.
- (3) A request to compel a witness must indicate the information sought from the witness and why a subpoena or summons is necessary.
- (4) A Party receiving notice of a request to compel the attendance of a witness may:
  - a. respond to the Board in writing and circulate the response to other parties; or
  - b. provide an oral response if the request is made at the hearing.
- (5) The Party making a request to compel a witness will provide all witness fees, travel, or other expenses associated with the witness' attendance at the hearing.

### **Rule 11 — Hearings May Occur by Video or in Person**

- (1) The Board may schedule hearings to occur in-person, or by videoconference.
- (2) When scheduling an Accused's hearing, the Board Registry will contact the Director representative or confirmed Accused Counsel if the Accused wishes to appear in person or by video in accordance with s.672.5(13).
- (3) Subject to any restrictions on the Board's ability to hold in-person hearings, an in-person hearing will be scheduled where the Accused does not agree to appear by video.
- (4) Members of the public including media, victims, family members of the Accused and others, may observe the hearing by telephone or videoconference. In order not to distract the Panel, such attendance is to occur with the observer's video and audio turned off, unless the Panel Chairperson directs otherwise.
- (5) When a hearing is scheduled to occur in person, the Board expects that all parties will attend in person. If in-person attendance is not possible, then, not less than 5 days prior to the hearing, the Party who is unable to attend in person must request approval from the Chairperson to participate by video or some other manner.
  - a. The Board prefers that where a Party intends to call an expert witness, that the Party arrange for the expert witnesses to attend at the clinic, hospital or other location where the hearing is occurring. If that is impracticable, the expert witness

may attend the hearing by video conference and, with leave of the Chairperson or an Alternate Chairperson, may attend by telephone.

- (6) Where the hearing takes place by video, it is expected that all parties will attend by video. If video attendance is not possible, then, not less than 5 days prior to the hearing, the Party who is unable to attend by video should request approval from the Chairperson to participate in some other appropriate manner.
- (7) The Board records all hearings. No other recording of the hearing is permitted. A Party or counsel for the Accused may order a transcript. The Party ordering the transcript must bear the cost of the transcription.

### **Hearing Compartment – All Hearings**

- (8) All participants at a hearing, including parties, witnesses, and observers, are expected to comply with standard hearing and etiquette expectations and the Board's hearing Rules.
  - a. **Prompt attendance:** participants are expected to join the video hearing, or in the case of an in-person hearing attend the hearing room, at least 10 minutes before to the scheduled start time. If a Party, other than the Accused or their counsel, is late the Panel Chairperson may direct that the hearing proceed in the absence of the missing Party;
  - b. **Clothing:** participants shall dress as if they are attending an in-person court proceeding;
  - c. **Cellphones and electronics:** cell phones and electronic devices that are not required for the hearing must be turned off. All electronic devices are to be silenced during the hearing;
  - d. **Food and drink:** participants can consume a beverage but are not to eat during the hearing;
  - e. **No recording or photography:** no participant is authorized to record or capture (by any audio or visual means) any portion of the hearing or evidence submitted at the hearing;
  - f. **Objecting, responding, or commenting:** parties and witnesses may physically (or virtually) raise their hands or respectfully interrupt the proceedings when appropriate. Observers are not permitted to speak unless the Panel Chairperson directs otherwise;
  - g. **Publication bans:** publishing, broadcasting, reproducing, transmitting, or disseminating information identified in the ban, by any participant is strictly prohibited when there is an applicable publication ban in place.

**\*\*Please refer to the Board's website for current information on public health requirements for hearings.**

## Hearing Comportment – Video Hearings

- (9) All participants at a video hearing, including parties, witnesses, and observers, are expected to comply with the Board’s video hearing etiquette Rules.
- a. **Video links:** participants will be provided individual video links or dial-in information prior to the hearing.
  - b. **Location:** parties and witnesses should make all reasonable efforts to appear at the hearing from a quiet, private space with a neutral background. Parties and Panel Members are expected to remain present during the hearing unless approved by the Panel Chairperson;
  - c. **Microphone:** all participants must mute their microphone before joining the hearing and throughout the duration of the proceeding unless called upon by the Panel Chairperson. Observers are not permitted to speak unless the Panel Chairperson directs otherwise.
  - d. **Camera:** observers must turn off their camera before joining the hearing and throughout the duration of the proceeding unless the Panel Chairperson directs otherwise. Parties are expected to keep their cameras turned on and focused on the speaker throughout the proceeding. Witnesses are expected to turn their cameras on when providing testimony but should turn cameras off when observing the proceeding;
  - e. **Participation:** anyone in the room with the parties or their witnesses should be identified to the Panel Chairperson at the start of the hearing. No one is permitted to provide any assistance or coaching to a witness from off-camera.

## Rule 12 — Appearances and Witnesses

- (1) The Panel Chairperson will determine how the hearing is conducted. They may give any directions or make any orders they consider necessary for the just and timely resolution of the hearing, and may receive and accept information that they consider relevant, necessary, and appropriate.
- (2) Parties, representatives of parties, and witnesses are expected to attend Board hearings, further:
- a. parties, other than the Accused, must notify the Board prior to the hearing if they do not intend to attend the hearing; and
  - b. the Accused must notify the Board that they intend to apply to be absent from the hearing under s.672.5(10), in which case the Panel Chairperson will render a decision on the application.
- (3) An Accused, or their representative, who intends to make an application to excuse an Accused from the hearing under s.672.5(10) must provide notice to the Board and other parties as soon as reasonably possible.

- (4) The Party calling on a witness is responsible for contacting the witness, arranging for the witness' attendance and all costs associated with that evidence at the hearing (including arranging and any cost associated with an interpreter for the witness), and informing the Board registry, in advance of the hearing, of the intent to call a witness, the identity of the witness, and an estimate of the amount of time required to receive that person's testimony/evidence.
- (5) The Panel Chairperson will give parties an opportunity to call witnesses, cross-examine the witnesses of opposing parties, introduce evidence, and make submissions. The Panel Chairperson may require that evidence be given under affirmation or oath.

### **Rule 13 — Interpreters and Other Accommodations**

- (1) A Party must notify the Board, at the time the hearing is scheduled or at the earliest opportunity thereafter, that an Accused requires an interpreter in a certain language, or other accommodation.
- (2) The Board will provide an interpreter for the Accused at a Party's request, or on its own motion, and may arrange for any other accommodation reasonably necessary to ensure that the Accused receives a fair hearing.

### **Rule 14 — Hearings are Open to the Public**

- (1) A hearing is open to the public unless the Board orders otherwise.
- (2) The Board has the power to exclude the public, any members of the public from the hearing or any part of the hearing where the Board considers that it is in the best interests of the Accused and not contrary to the public interest (s.672.5(6)).
- (3) A Party may request, either in writing to the Board or on application at the hearing, that the Board order the public or any member of the public be excluded from the hearing.
- (4) A request to exclude any member of the public must describe why such a request is in the best interest of the Accused and not contrary to the public interest.
- (5) The Board may distribute any such written request to the other parties for the purposes of obtaining their views on the appropriateness of the application and may convene a pre-hearing conference to determine the issue.

### **Rule 15 — Publication Bans**

- (1) The prosecutor, a victim or a witness may make an application for a Publication Ban under s.672.501(3). If imposed, a discretionary publication ban will continue unless it is removed by the Chairperson, or the Panel Chairperson at a hearing.

- a. Subject to any publication ban or an application to withhold the reasons for disposition, the Board will publish its reasons no sooner than 21 days after the release of the reasons to the Parties.
  - b. Any party opposed to the Board publishing its reasons under Rule 15(a) must apply to the Board, in writing and citing any law and evidence in support, for an order that the Board not publish its reasons. The application to the Board must be made within 21 days of the date the Registry releases the reasons to the Parties.
  - c. After receiving an application under Rule 15(b), the Board will set a schedule for submissions from the other Parties, invite the media to make submissions, and then will render a decision on the application.
    - i. No Party shall further distribute the reasons pending the Board's decision on the application.
- (2) Parties, witnesses, and observers are expected to be aware of any publication ban(s) and abide by the parameters of the ban(s).
  - (3) Publishing, broadcasting, reproducing, transmitting, or disseminating of any information that is the subject of a publication ban is strictly prohibited.

### **PART 3 — COUNSEL, REPRESENTATION, AND COMMUNICATION**

#### **Rule 16 — Representation before the Review Board**

- (1) Parties are entitled to be represented at hearings before the Board by counsel or another representative.
- (2) Unfit Accused must be represented by counsel, and the Board may assign counsel to represent unrepresented NCR Accused wherever the interests of justice so require (s.672.5(8)).
- (3) Recognizing that it is virtually always in the interests of justice for an Accused to be represented, where an Accused has not retained counsel, the Board will typically assign counsel to act on the Accused's behalf at the hearing.
- (4) If an NCR Accused refuses to be represented by counsel, the Board will ensure that the Accused understands the implications of refusing counsel. The Board may appoint counsel as *amicus curiae* if the Board has reason to believe the Accused may require assistance or to assist the panel in reaching a fair and just resolution of the proceeding.
- (5) A person who has been retained to represent an Accused before the Board must inform the Board of their retainer as soon as possible.
- (6) A person who ceases to represent an Accused must inform the Board as soon as possible and include confirmation that the Accused has been notified.

- (7) All Accused in the Lower Mainland are assumed to be represented by CLAS as per the agreement with Legal Aid BC. If non-CLAS counsel wish to be noted as counsel of record for an Accused, they must notify the Review Board.
- (8) If counsel fails to respond to the Board's Registry within the timelines noted, it is assumed that they are no longer representing the Accused and the Registry will assign another counsel to represent the Accused.

## **Rule 17 — Communications with the Review Board**

### **Accepted Methods**

- (1) Typically, all communications to the Board are to occur by electronic means, except that communications to and from Accused persons may occur by mail. The Board will typically communicate with the parties by electronic means. Others who do not have access to electronic methods, such as victims, family members, or legal guardians, may communicate with the Board Registry in writing.
  - a. There is to be NO communication from the Parties or the public (including media) to individual Board members.
- (2) A communication received after the end of a business day is deemed to be received on the next business day.

### **Address for Delivery**

- (3) For an Accused who is the subject of a custodial order the address for delivery is the address of the facility where they are detained.
- (4) For an Accused who is residing in the community on conditional discharge, the address for delivery is where they reside.
- (5) For all others, the address for delivery is a current email address and/or complete postal address.

### **Requirement to Provide Address for Delivery**

- (6) The Board Registry will contact the community forensic clinic that supervises the Accused to obtain the Accused's current address for delivery.
- (7) Parties and others entitled to be advised of Board hearings or processes must notify the Board of their current address for delivery, whether electronic or physical.
- (8) Unless the Board is notified of a new address for delivery, the default address for delivery will be the last known address.

**PART 4 — SCHEDULING A HEARING**

**Rule 18 — Scheduling Process**

- (1) The Board Registry will schedule hearing dates and times, in consultation with the Parties and counsel for the Accused (if confirmed) as the Board considers appropriate, and in accordance with the *Criminal Code*.
- (2) If a Party does not respond to the Board Registry within provided timelines, the Board will schedule the hearing without further consultation.
- (3) The Board Registry will prioritize scheduling hearings of an urgent nature and those with statutory time limits.

**Rule 19 — Types of Hearings and Timelines for Scheduling**

The Board Registry will schedule hearings according to the type of hearing and on or before the By Date as outlined in the table below.

<b>Section</b>	<b>Hearing Type</b>	<b>Scheduling Timeline</b>
<b>672.47(1)</b>	Initial hearing (standard)	Within 45 days of verdict
<b>672.47(4)</b>	Initial hearing (high-risk Accused)	
<b>672.47(2)</b>	Initial hearing (extension from court)	Within 90 days of verdict
<b>672.47(3)</b>	Initial hearing (disposition made by court)	
<b>672.47(5)</b>	Initial hearing (extension high-risk Accused)	
<b>672.81(1)</b>	Mandatory hearing	Before or on By Date
<b>672.81(2)</b>	Director request	As soon as practicable
<b>672.81(2.1)</b>	Restriction of liberties	
<b>672.82(1)</b>	Discretionary review	
<b>672.94</b>	Enforcement order	

**Rule 20 — Initial Hearings**

- (1) Where the court does not make a disposition after it renders a verdict of NCRMD or unfit to stand trial, the Board Registry will schedule an initial hearing within 45 days of the court’s verdict or up to 90 days where the court grants an extension of the time to hold a hearing.



- (2) Where the court makes a disposition after it renders a verdict of NCRMD or unfit to stand trial, the Board Registry will schedule an initial hearing within 90 days of the court's verdict.

### **Rule 21 — Mandatory Annual and Short Order Reviews**

- (1) The Board Registry will schedule a mandatory hearing not later than 12 months after making a disposition and every 12 months thereafter for as long as the disposition remains in force (s.672.81(1)).
- (2) Where a disposition provides that it is to be reviewed within a shorter period of time than the mandatory 12 months (a "short order"), the hearing will be scheduled before or on the date that period expires.
- (3) Where possible, the consultation process for scheduling mandatory hearings will begin four months in advance of the By Date.

### **Rule 22 — Director Requested Reviews**

- (1) The Board Registry will schedule a Director's requested hearing under s.672.81(2) as soon as practicable upon receiving written notice.
- (2) New reports supporting a request for an early hearing under s.672.81(2) are expected to be submitted with the written notice requesting the review to ensure expeditious scheduling.

### **Rule 23 — Discretionary Reviews**

- (1) The Board may hold a hearing to review any of its dispositions at any time, of its own motion or at the request of the Accused or any other Party (s.672.82(1)).
- (2) If the Board schedules a hearing of its own motion, it will provide the Parties with written notice and the basis for scheduling the hearing (s.672.82(1.1)).
- (3) A request for a hearing under Rule 23(1) must be made to the Board in writing and must specify:
  - a. why a new hearing is justified;
  - b. the circumstances that have changed substantially since the last hearing and whether those circumstances could reasonably be expected to affect the disposition, or the conditions imposed at the previous hearing;
  - c. the outcome or changes sought to the existing disposition; and
  - d. a description of any new relevant evidence.

- (4) A request for a hearing under this Rule must be circulated to the other Parties.
- (5) A Party who receives a copy of the request may respond to the Board in writing with their response to the request, with copies to all other Parties.
- (6) The Board will review the request submitted under s.672.82(1) and advise the Parties.
- (7) Parties should be aware that s.672.82(2) provides that upon requesting a discretionary review that Party is deemed to abandon any appeal that has been filed against the Board's current disposition.

#### **Rule 24 — Restrictions of Liberties**

- (1) The Board Registry will schedule a hearing as soon as practicable after receiving a written notice from the Person in charge who increases the restrictions on the liberty of the Accused for a period exceeding seven days (s.672.56(2)).
- (2) The notification of change of liberties identify:
  - a. the date on which the Accused's liberties were restricted;
  - b. the nature of the restriction; and
  - c. the reason for the restriction.

#### **Rule 25 — Enforcement Orders**

- (1) The Board Registry will schedule a hearing to review the Enforcement Order under s.672.93(2) after consulting with the Parties. The Parties are expected to make all reasonable efforts to ensure that they are available at the earliest possible date to ensure that the Accused's liberties are not unduly restricted. If the Parties are unable to agree on a date for the hearing, the Registrar will set a date peremptorily.

#### **Rule 26 — Extension of Disposition**

- (1) The Board may extend the time for holding a hearing to a maximum of 24 months after the making or reviewing of a disposition if the Accused is represented by counsel and the Accused and the Attorney General consent to the extension (s.672.81(1.1)).
- (2) The Board may extend the time for holding a hearing in respect of a high-risk Accused to a maximum of 36 months after making or reviewing a disposition if the Accused is represented by counsel and the Accused and the Attorney General consent to the extension (s.672.81(1.31)).

- (3) The Board may extend the time for holding a hearing to a maximum of 24 months on its own motion for serious personal injury offence if the criteria under s.672.81(1.2) have been met.
- (4) The effect of an extension of the time for holding a hearing is that the existing disposition is continued for the duration of the extended period.
- (5) In making a determination as to extend the time for holding a hearing, the Board will consider:
  - a. any request or consent from Counsel for the Accused and justification for the length of the extension,
  - b. whether the extension would put the Accused beyond 24 months without appearing before the Board, and
  - c. the Attorney General consents to the extension.
- (6) Extension requests will be considered by the Chairperson and:
  - a. if the request is approved, the hearing will be removed from the schedule and an extended disposition will be distributed to the Parties; or
  - b. if the request is denied, the hearing will proceed as scheduled.

### **Rule 27 — Paper Hearings**

- (1) An Accused may apply for a hearing in the absence of the Parties (a “paper hearing”).
- (2) The Panel may determine that a hearing may proceed in the absence of all Parties where:
  - a. the Parties have consented to proceeding by paper and have agreed to the proposed disposition (including length of disposition order);
  - b. the new reports provided for the hearing support the matter proceeding in the absence of all Parties; and
  - c. the order requested by the Accused will not put them beyond 24 months without having appeared before the Board, whether by video or in person (or 36 months in the case of a high risk Accused);
  - d. in extraordinary circumstances, the Board may schedule a paper hearing in circumstances where the Accused has not been seen before the board within 24 months (36 months in the case of a high risk Accused);
- (3) Parties are encouraged to consider requesting a paper hearing, rather than a video or in-person hearing, when an Accused whose liberties were restricted under s.672.81(2.1) has had their liberties restored prior to the scheduled hearing date, and all Parties agree on the disposition being sought.

- (4) Where the Panel is of the view that the reports provided do not support the requested disposition, the Panel may request that additional written information be provided or order that the matter be scheduled for a hearing in person or by video.

### **Rule 28 — Rescheduling**

- (1) Any Party seeking to reschedule a hearing must write to the Board Registry explaining the rationale for their request, copying the other Parties, and proposing alternative dates and times.
- (2) A request to reschedule a hearing shall be made at the earliest possible opportunity.
- (3) If a request to reschedule a matter is received by the Board Registry prior to the hearing, and all Parties agree, the hearing may be rescheduled without a formal adjournment ordered under s.672.5(13.1), unless the rescheduling of the matter would have the effect of exceeding the By Date.

### **Rule 29 — Adjournments**

- (1) Under s.672.5(13.1), the Board may adjourn a hearing for a period not exceeding 30 days if necessary for the purpose of ensuring that relevant information is available to permit it to make or review a disposition or for any other sufficient reason.
- (2) Applications for adjournments must be made in writing to the Board and must be copied to all Parties.
- (3) An application to adjourn shall be made as early as possible. Where an application is made prior to a scheduled hearing, it must be in writing and state:
  - a. why the request is reasonable; and
  - b. why granting the request is necessary in order not to prejudice this Accused, or if the request is made by a Party other than the Accused, will not unduly prejudice the Accused.
- (4) Adjournment requests received within three business days prior to a hearing will not normally be granted, except where necessary to avoid significant prejudice to the Accused.
- (5) Adjournment requests made prior to a hearing will be considered by the Board Chairperson unless the Chairperson determines that the adjournment should be considered by the Panel at the hearing.
- (6) A Panel receiving a request for an adjournment at a hearing may grant the adjournment without starting the hearing, or deny the request and start the hearing. Under normal circumstances, Panels will continue, rather than adjourn, hearings that have already begun.

## **Adjournments to Allow Preparation of Victim Impact Statements**

- (7) Under s.672.5(15.3), the Board may adjourn a hearing held under s.672.47 on application of the Crown or a victim, or of its own motion, to permit a victim to prepare a victim impact statement if the Board is satisfied that the adjournment would not interfere with the proper administration of justice.
- (8) The application for an adjournment from the Crown or a victim must be submitted to the Board in writing at least 10 days before a hearing and shall include the reason for the adjournment request.
- (9) If made at least three days prior to a hearing, the adjournment application and the parties' positions will be considered by the Chairperson. Otherwise, the decision will be made by the assigned Panel.
- (10) If the Board grants the adjournment, the victim impact statement must be provided to the Board at least 14 days before the next hearing for distribution to the other parties before the rescheduled hearing.

### **Rule 30 — Continuations**

- (1) When a hearing has been started, but cannot be completed due to lack of time, or another reason that the Panel finds just, the Panel may discontinue the hearing, and then continue it on a date agreed to by the parties and counsel for the Accused, to be continued and completed by the same Panel.

## **PART 5 — POST HEARING**

### **Rule 31 — Dispositions and Reasons**

- (1) A disposition is a legal order issued by the Board under s.672.54.
- (2) Dispositions and reasons are presumptively available to the public.
- (3) Where the Board issues a new disposition, written reasons will follow.
- (4) Subject to any relevant publication ban, the Board will publish the reasons for disposition or other decision following the lapse of time to apply to withhold those reasons from publication.
- (5) A party may apply to the Board, under Rule 15, to withhold its reasons for disposition or other decision from publication.
- (6) The Board will issue a disposition as soon as practicable upon conclusion of the hearing and it will:
  - a. take effect on the date indicated on the order; and

- b. will remain in force until the Board holds a hearing to review the disposition and makes another disposition (s.672.63), or until further court order.
- (7) The Board may amend a disposition or reasons for decision at any time to correct clerical or typographical errors that do not affect the substance of the disposition or reasons.

### **Rule 32 — Fitness Determination**

- (1) Where at any hearing after an initial hearing the Board is of the opinion that an Accused is fit to stand trial and orders that the Accused be returned to court, the Board will not make a new disposition. Under s.672.63, the previous disposition continues in effect until the court makes a disposition.

### **Rule 33 — Transcripts**

- (1) No member of the public may have access to a transcript of the Board's proceedings absent a direction from the Chairperson or the Registrar.
- (2) Members of the public may apply to the Board, in writing for access to a transcript of a hearing. If granted, the applicant will bear responsibility for ordering and paying the cost of the transcript.
- (3) Public access to transcripts of youth proceedings is prohibited unless the Board directs otherwise. Only authorized persons listed under s.119 of the *Youth Criminal Justice Act* are permitted immediate access.

### **Rule 34 — Appeals**

- (1) All inquiries regarding appeals of Board orders, including dispositions are to be directed to the Court of Appeal.

## **PART 6 — SPECIAL CASES**

### **Rule 35 — Accused Travel Requests**

- (1) Accused travel requests must be considered at a hearing and will be included as a condition of the Board's disposition if ordered. The Accused must apply to the Board for all travel outside of the Province of British Columbia.
- (2) When considering whether to authorize travel, the Board will consider factors including but not limited to the accused's mental condition prior to travel, how the Director will continue to treat and supervise the accused during any absence, and the services available to support the Accused in the destination.
- (3) For travel outside of British Columbia, Accused persons should be prepared to provide the following details at their upcoming hearing for the Panel to consider in managing their risk during the absence:

- a. purpose, destination, approximate departure/return dates, and duration of proposed travel;
- b. mode of travel including flight details, if available;
- c. names of persons accompanying the Accused;
- d. address, telephone and other contact information for the Accused and their accompaniments at the destination;
- e. details regarding provision of medical care, monitoring, supervision, and access to prescribed medication in the foreign jurisdiction; and
- f. safety plan for the duration of stay outside of the Province of British Columbia.

### **Rule 36 — Interprovincial Transfers**

- (1) The Accused may be transferred to any other place in Canada (s.672.86(1)) or (s.672.86(2.1)) where:
  - a. the Review Board of the province from where the Accused is being transferred recommends a transfer for the purpose of reintegrating the Accused into society or the recovery or treatment of the Accused; and
  - b. the Attorney General of BC and of the receiving province consent.
- (2) A Party who intends to request that the Board recommend the transfer of an Accused shall, prior to the hearing, provide notice of the request to:
  - a. the other parties;
  - b. the hospital or clinic at which the Accused would attend if the request is granted; and
  - c. the Board.

### **Rule 37 — Dual Status Offenders**

- (1) A dual status offender is an Accused who is subject to both a Board disposition and a sentence as a result of a criminal conviction.
- (2) Where a court imposes a sentence of imprisonment on an offender who is, or thereby becomes, a dual status offender, that sentence takes precedence over any prior custodial disposition, pending any placement decision by the Review Board (s.672.67(1)).

- (3) Where a court imposes a custodial disposition on an Accused who is, or then becomes a dual status offender, that disposition takes precedence over any prior sentence of imprisonment, pending any placement decision by the Board (s.672.67(2)).

### **Placement Decision**

- (4) Under s.672.68(2), where the Board is of the opinion that the place of custody of a dual status offender made by the court is inappropriate to meet their mental health needs or to safeguard the well-being of other persons, the Board will decide whether to place the offender in custody in a hospital or in a prison. The Board may only make such a placement decision above after giving reasonable notice to the offender and the responsible Minister as defined in s.672.68(1).
- (5) The Board may issue a notice for a placement decision on its own motion or upon an application by the responsible Minister (s.672.68(2)).
- (6) In making a placement decision, the Board will take into consideration:
  - a. the need to protect the public from dangerous persons;
  - b. the treatment needs of the offender and the availability of suitable treatment resources to address those needs;
  - c. whether the offender would consent to or is a suitable candidate for treatment;
  - d. any submissions made to the Board by the offender or any other Party to the proceedings and any assessment report submitted in writing to the Board; and
  - e. any other factors that the Board considers relevant (s.672.68(3)).

### **Rule 38 — Youth to Adult Transition**

- (1) When a youth Accused, under the Board's jurisdiction, reaches the age of 19 the Accused may be transitioned to Adult Forensic Psychiatric Services.
- (2) In determining whether the Accused should transition to the Adult Forensic Psychiatric Services or continue under the purview of Youth Forensic Psychiatric Services beyond the young person's age of majority the Board will consider:
  - a. the needs and circumstances of the youth Accused and those around them;
  - b. the public interest; and
  - c. the resources and capacities of respective hospitals to continue or undertake custody.
- (3) At a Board hearing to make a decision on a youth Accused's transition, the Board will invite the Director of Adult Forensic Psychiatric Services to appear as an interested Party.



## **History of Rules and Procedures Governing the Review Board Process**

- Amended Rule 15(1)(b) effective December 7, 2023 [to be consistent with the wording regarding the release of reasons in Rule 15(1)(a)].
- Amended Rule 8 effective June 4, 2024 [removed subsection (4) to be consistent with the *Criminal Code* section 672.5 which applies to a hearing].
- Amended Rule 4(2) effective June 21, 2024 [to remove reference to Appendix A].