

# **BRITISH COLUMBIA REVIEW BOARD**

## **ANNUAL REPORT**

**Fiscal Year:**

**April 2022 – March 2023**

*Protecting the Public and Safeguarding the Needs of Mentally Disordered  
Accused Persons*

# Contents

- Letter from the Chair..... 3
- Chair’s Message ..... 4
- Overview of the BC Review Board..... 6
- BCRB Statistical Report for Fiscal Year 2022-23 ..... 8
- BC Review Board Members at March 31, 2023 ..... 19
- Organizational Chart at March 31, 2023 ..... 20
- BC Review Board Budget & Expenditure Overview Fiscal Year 2022-23..... 21

## Letter from the Chair

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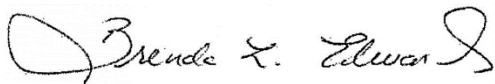
October 11, 2023

The Honourable Niki Sharma, KC  
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 2022 -2023.

Sincerely

A handwritten signature in black ink that reads "Brenda L. Edwards". The signature is written in a cursive style with a large initial 'B' and a decorative flourish at the end.

Brenda L. Edwards  
Chairperson  
BC Review Board

## Chair's Message

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The past year was marked by significant change. First, and foremost, shortly after the period covered by this report, the Board suffered the loss of our former Chairperson, colleague, and friend to many, Alison MacPhail. Her loss continues to be deeply felt both at the Board and throughout the administrative justice community.

I am authoring this report on her behalf as I was appointed Chairperson on May 8, 2023. I am confident that I speak for both Alison and me, when I say that we have been deeply appreciative of the incredible support that we received from the Review Board staff and members over the past year. The year has been a challenging time for all, and as Chairpersons we have been fortunate to work with this group of dedicated and highly qualified people.

Over the course of the year, the format of our hearings changed just as it did at the start of the COVID-19 pandemic. As you may be aware, section 672.5 (13) of the *Criminal Code* provides that Accused persons may agree to have their hearings via a video appearance before the Board. However, absent that agreement, the Board is compelled to schedule in-person hearings. As a result, Board hearings have transitioned from almost entirely video (held by MS Teams) to increasing numbers of in-person hearings both at the Forensic Psychiatric Hospital and in the community at Regional Forensic Clinics, local hospitals and in hotel meeting rooms. This ongoing shift has caused the Board to constantly reassess the demand for services and try to match it with our available resources.

Since the onset of the pandemic, Board members have gained expertise and comfort in presiding at video hearings and have come to appreciate the flexibility that remote work affords them. Not all Board members are able or willing to return to in-person hearings with the associated stressors of health risks, travel demands, and time away from home and office. As a result, the Board has been actively attempting to recruit additional Board members while also discussing the need for an amendment to the *Criminal Code* with Review Board chairs from across Canada.

As you know, the *Criminal Code* requires that every Review Board panel hearing a matter is to be chaired by the Chairperson or an alternate chairperson who must be either a judge, retired judge, or person qualified to be a judge (i.e., someone with at least 10 years call to the Bar). Further, every panel must include a psychiatrist. In British Columbia, the Board sits in panels of three with the third person being a public member qualified in psychology, psychiatric nursing, social work, criminology or another related field of expertise. As you will appreciate, there are a finite number of senior, qualified individuals who have the requisite experience and interest in part-time work with the Board; forensic psychiatrists are particularly difficult to recruit as they are few and tend to already be employed in positions in healthcare or correctional services. Further, many of our members have limited availability given their other work or personal commitments. Whilst the Board gained three new members in 2021-22, one alternate chairperson and two psychiatrists, we also suffered the loss or reduced availability of several of our existing members. As a result and given the increasing intake of referrals from the courts, the Board anticipates seeking more appointments in the months immediately succeeding this Annual Report.<sup>1</sup> These new appointments will assist the Board to schedule our hearings in a timely way, consistent with the *Criminal Code* requirements.

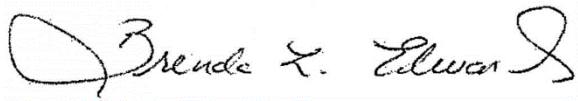
A further challenge for the Board has been the need to have some hearings occur as hybrid matters (with one or more participants appearing by video while others appear in-person). A/Deputy Registrar Theresa Newport is working closely with the Tribunals and Agencies Support Division to identify the

technology that the Board will need to continue to provide hearings in the place and in the manner required under the *Criminal Code*. In addition, work on the Board's new case management system has continued. This is a complex project requiring significant adaptation of the off-the-shelf system provided by the government to support the work of the Review Board. It has required an exorbitant amount of time and effort on the part of our Registrar, Paula Thorburn to move this project closer to completion while still managing the day-to-day work necessary for the Review Board to fulfill its mandate.

Another major project that the Board has undertaken over the past year is the preparation of a Benchbook (a comprehensive legal and administrative guidance document) and an updating of the Board's Rules of practice and procedure.

Over the past year, the Board's intake numbers remained steady. We are seeing a steady upward trajectory. That said, we anticipate that Court referrals to the Board will rise following a return to pre-pandemic processes in the Provincial and Supreme courts.

Finally, the Board has been gradually returning to in-person meetings of our membership with staff. We continue to offer regular professional development sessions for the Board through our collaboration with the UBC Forensic Education program. At the time of writing, meetings and educational opportunities were occurring with both in-person and video-optional attendance.

A handwritten signature in black ink that reads "Brenda L. Edwards". The signature is written in a cursive style with a large initial 'B' and a decorative flourish at the end.

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<sup>1</sup> <https://www.bcrb.ca/members/>

## 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, 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 with 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 with 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, like 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 2022-23

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

The total number of accused under the Board’s jurisdiction has remained steady over the last year despite the ongoing restrictions imposed on court and Board processes because of the COVID-19 pandemic (See, Figure 1, below). There are more accused in custody at the Forensic Psychiatric Hospital than under supervision in the community than was the case last year.

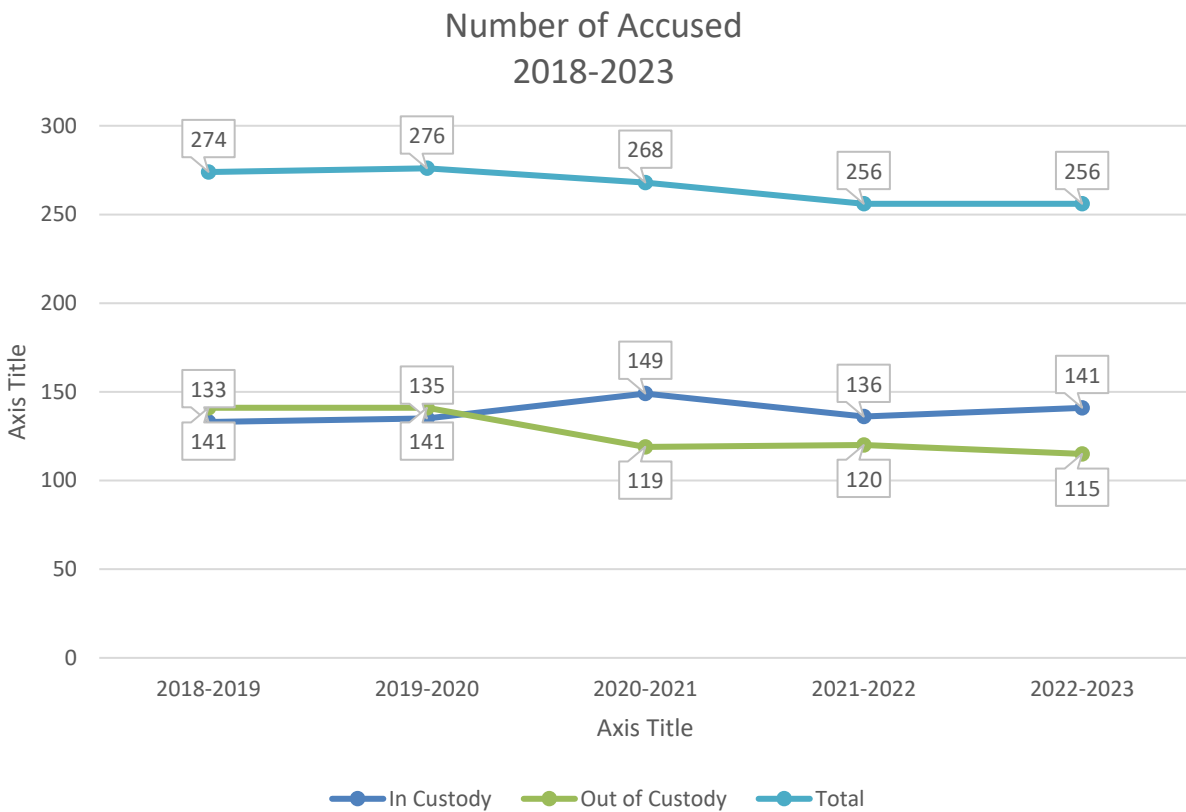


Figure 1



## 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. As is evident in Figure 2, the numbers have remained relatively unchanged over the past five years.

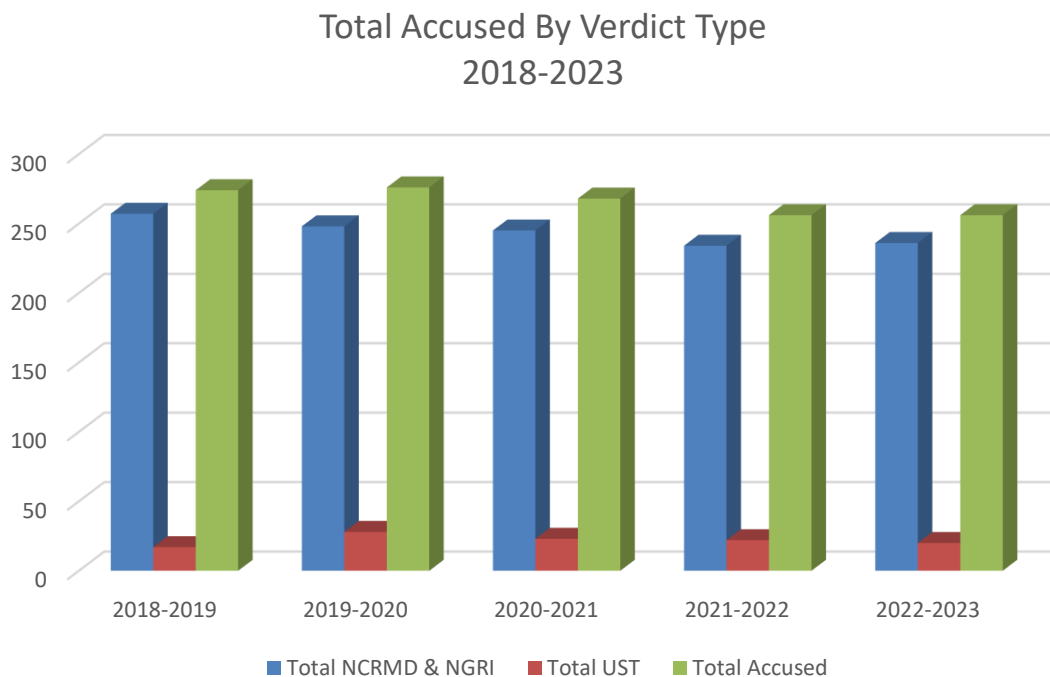


Figure 2

## 3. New Cases Referred to the Board contrasted with Number of Accused Absolutely Discharged by the Board

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 remained steady but are slightly below the number of referrals prior to the onset of the pandemic. 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 (See, Figure 3 below).

In contrast to the number of new cases deferred to the Board, which has remained steady over the past year, the Board has absolutely discharged fewer accused persons than it did in all but one of the past five years (See, Figure 4 below)

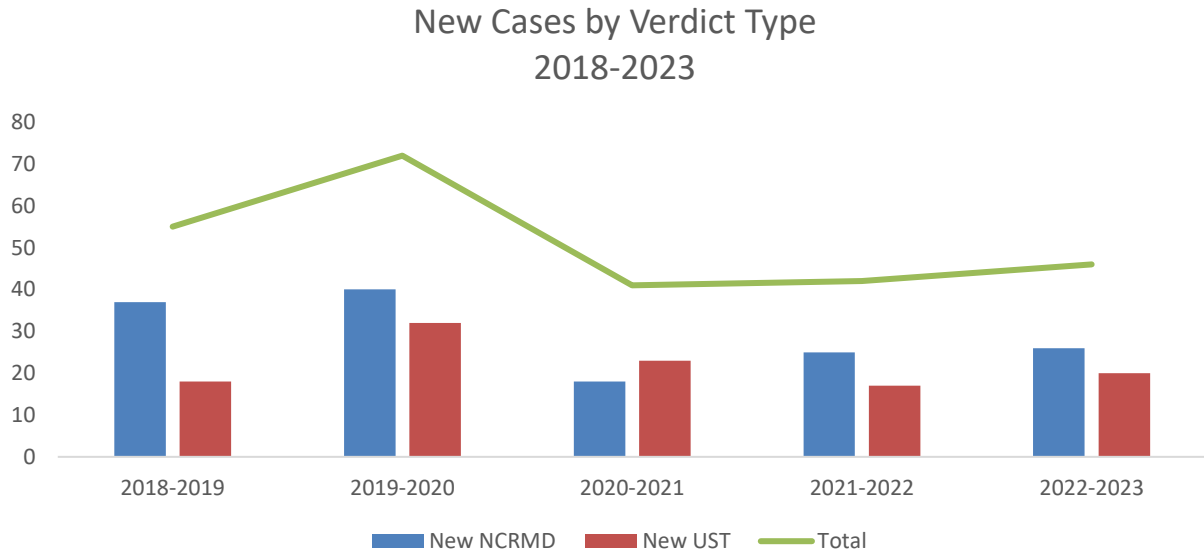


Figure 3

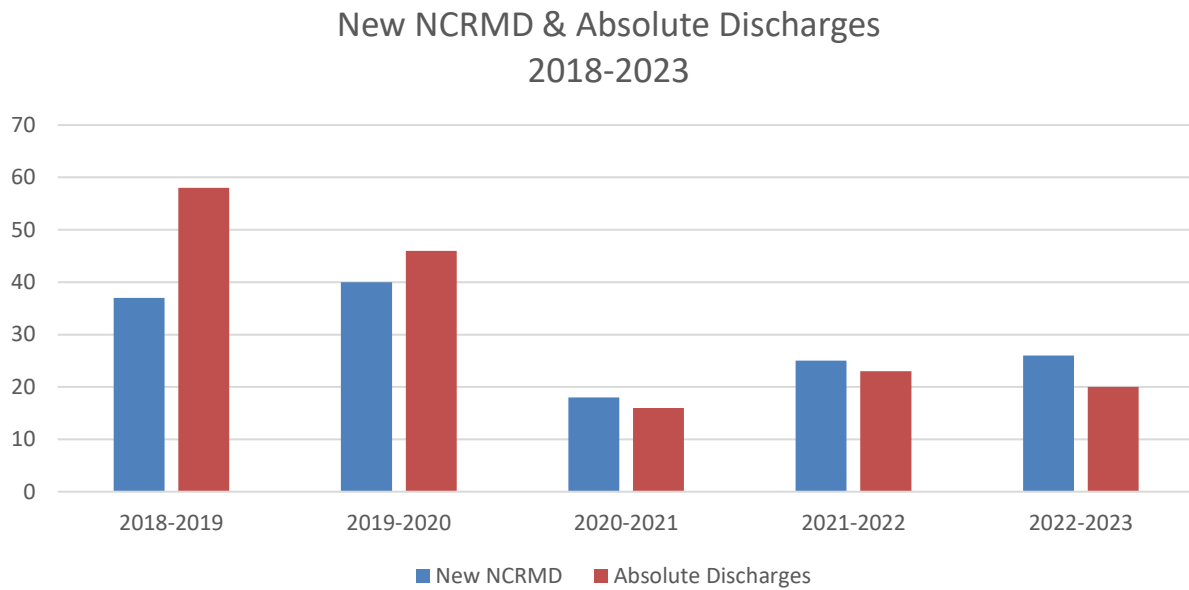


Figure 4

#### 4. Case Closure by Reason

The graph in Figure 5, below 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”<sup>2</sup>.

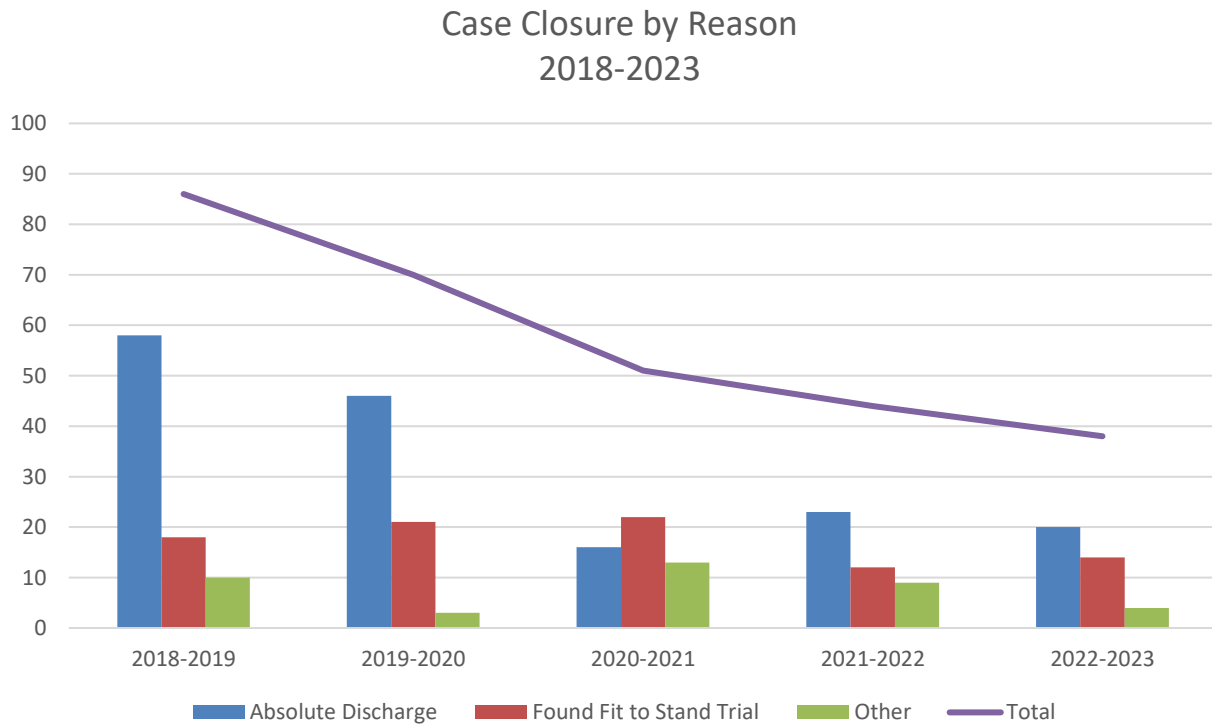


Figure 5

<sup>2</sup> 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*

The graph in Figure 6 below shows the new NCR accused, as well as cases that have been closed as a result of an absolute discharge. The number of new NCR cases coming into the BCRB remains stable compared to last year, is reduced in contrast to years prior to the COVID-19 pandemic. The number of accused persons absolutely discharged by the Board (i.e., closed cases) is slightly decreased from 2021-22 and is significantly decreased from pre-pandemic years. It is likely that 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.

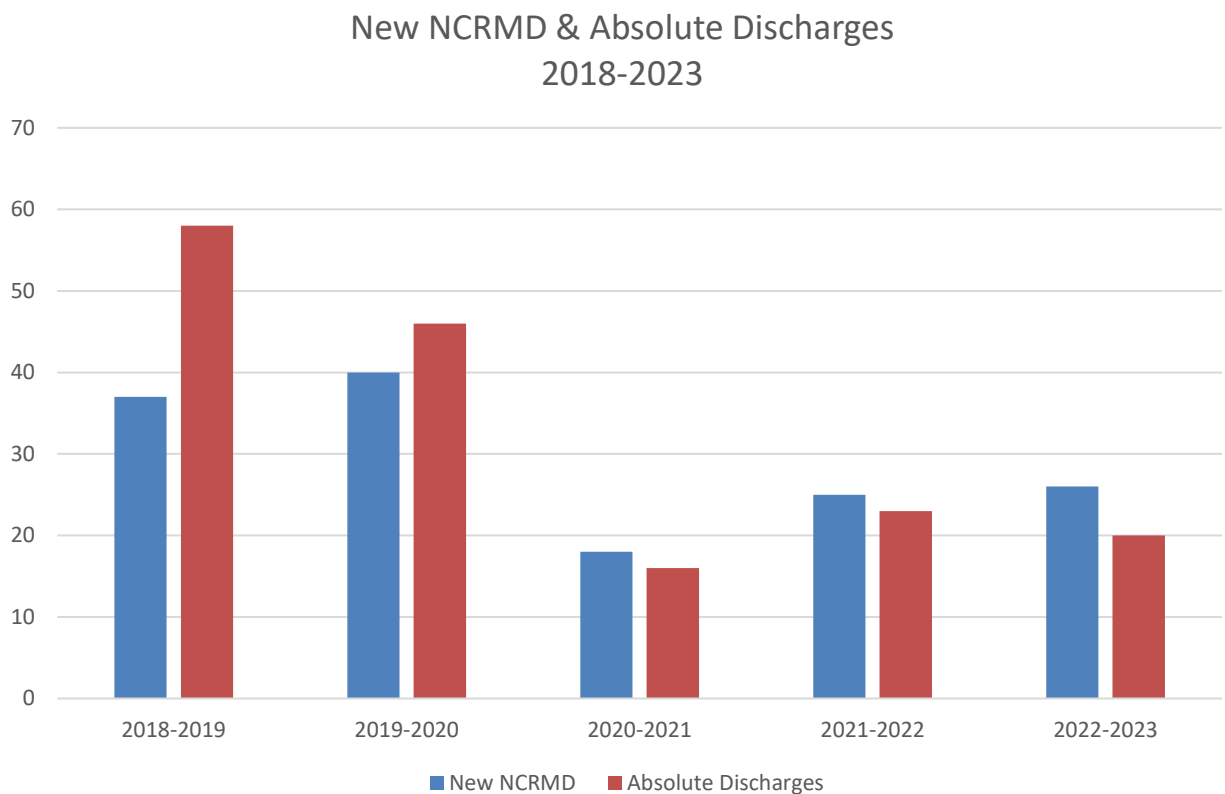


Figure 6

The next graph (Figure 7) shows the number of new unfit accused, as well as the number of accused where the Board was of the opinion that the individual was fit to stand trial and ordered that they be sent back to court for a trial of the issue. There were slightly more new unfit accused in 2022-23 than in the previous year, but still fewer than in the years preceding the pandemic. The number of accused returned to court has increased slightly from 2021-22 but is still significantly less than was the case in the 3 years preceding the pandemic.

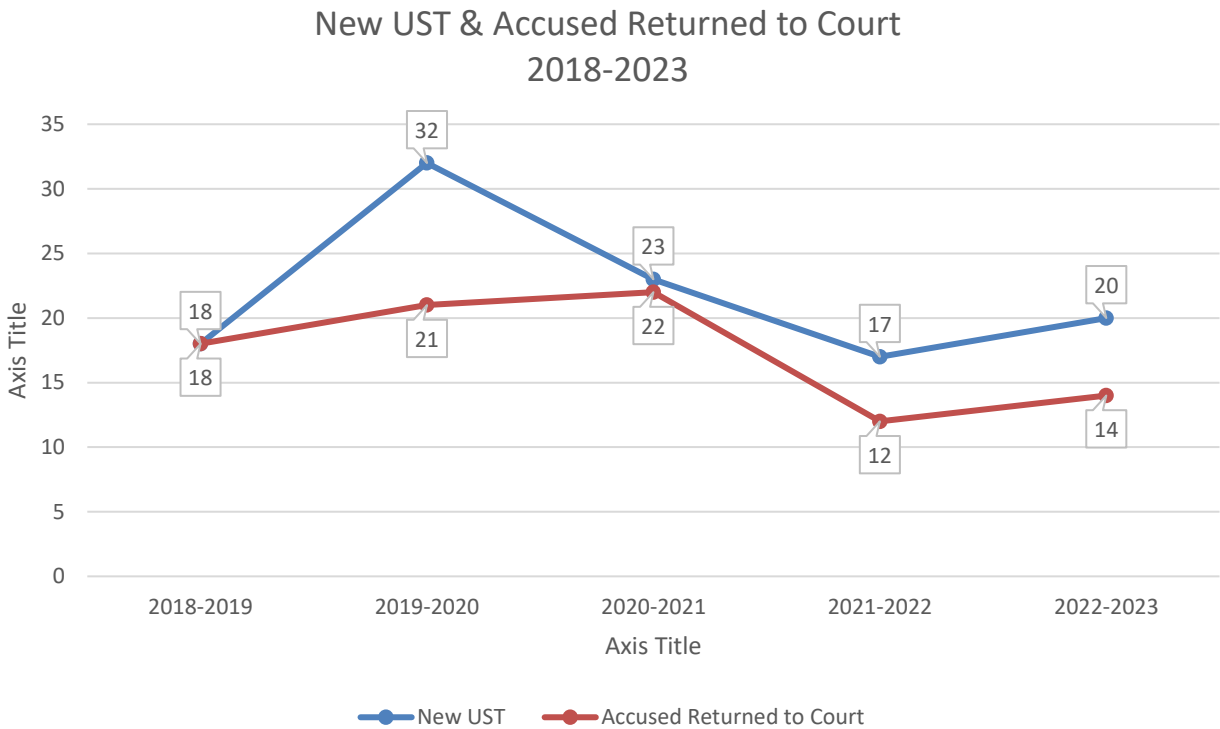


Figure 7

## 6. Accused Demographic Breakdown

The demographic breakdown of Review Board accused has remained relatively stable over the last five years. As illustrated in Figures 8-1 to 8-4, below, 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.

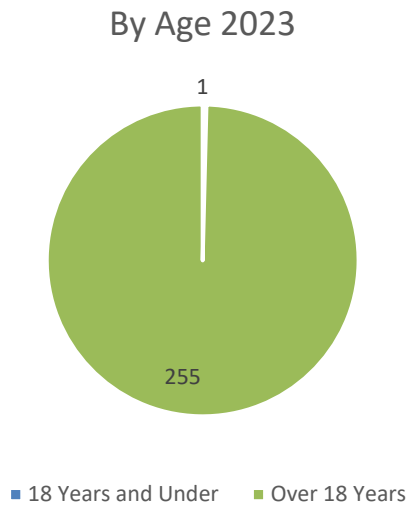


Figure 8-1

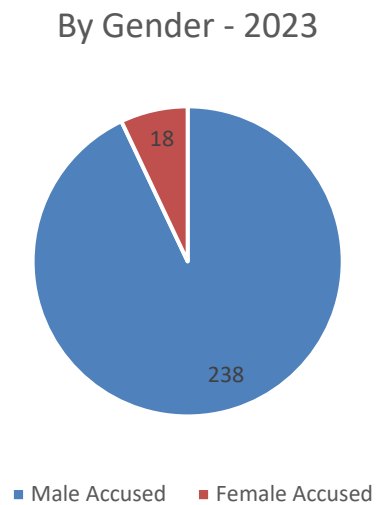


Figure 8-2

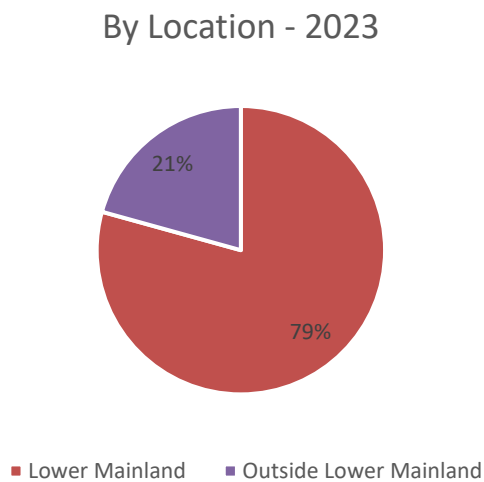


Figure 8-3

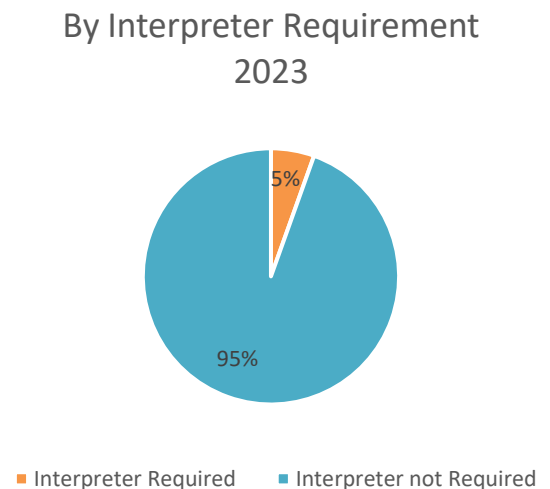


Figure 8-4

## 7. Total Hearings by Type

The chart below (Figure 9) 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.

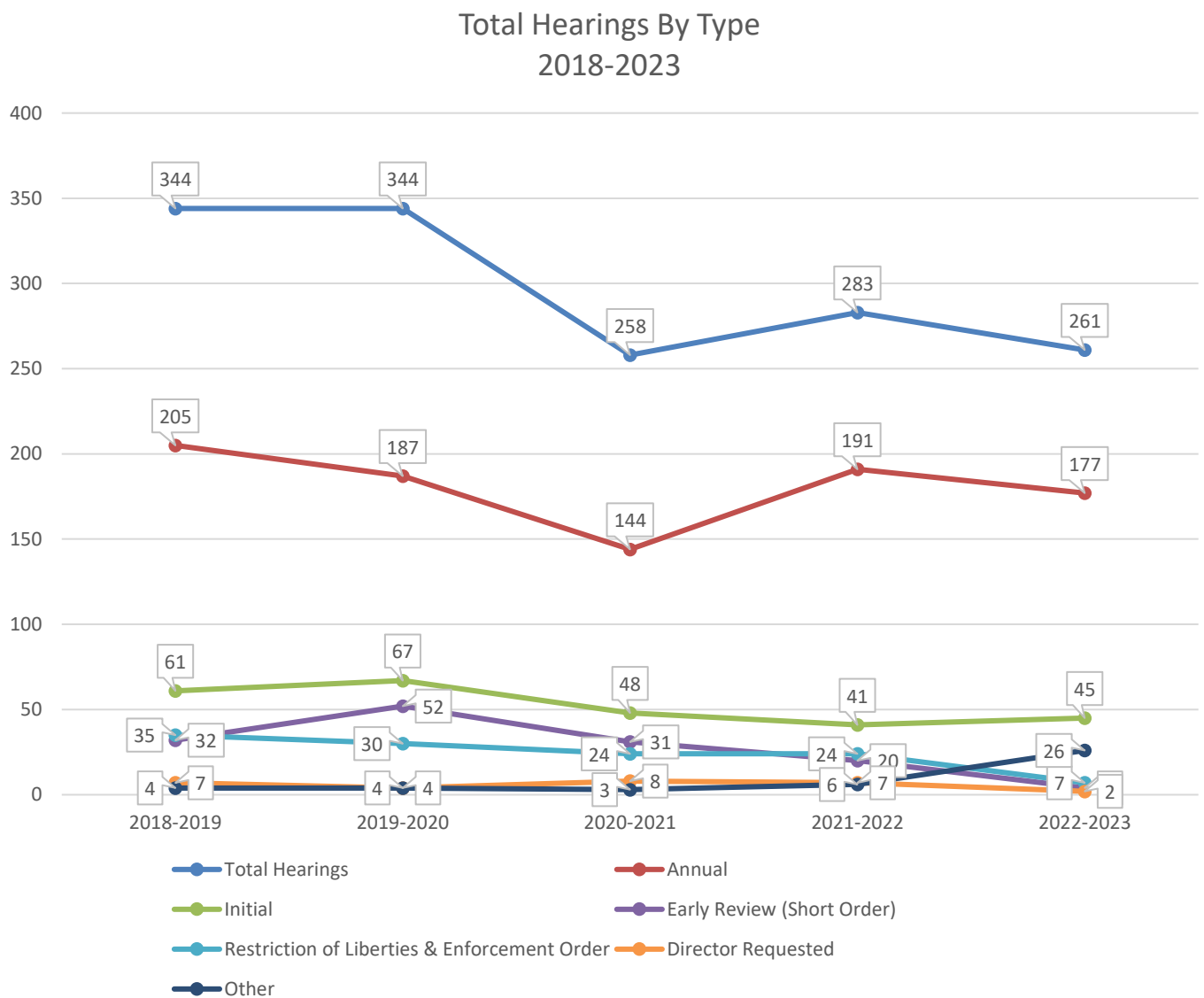


Figure 9

## 8. Hearing Method

The chart below (See, Figure 10) shows the breakdown of hearing method for 2018-2023. The majority of hearings in 2022-23 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. At a paper hearing, the 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 and remained constant in 2022-2023.

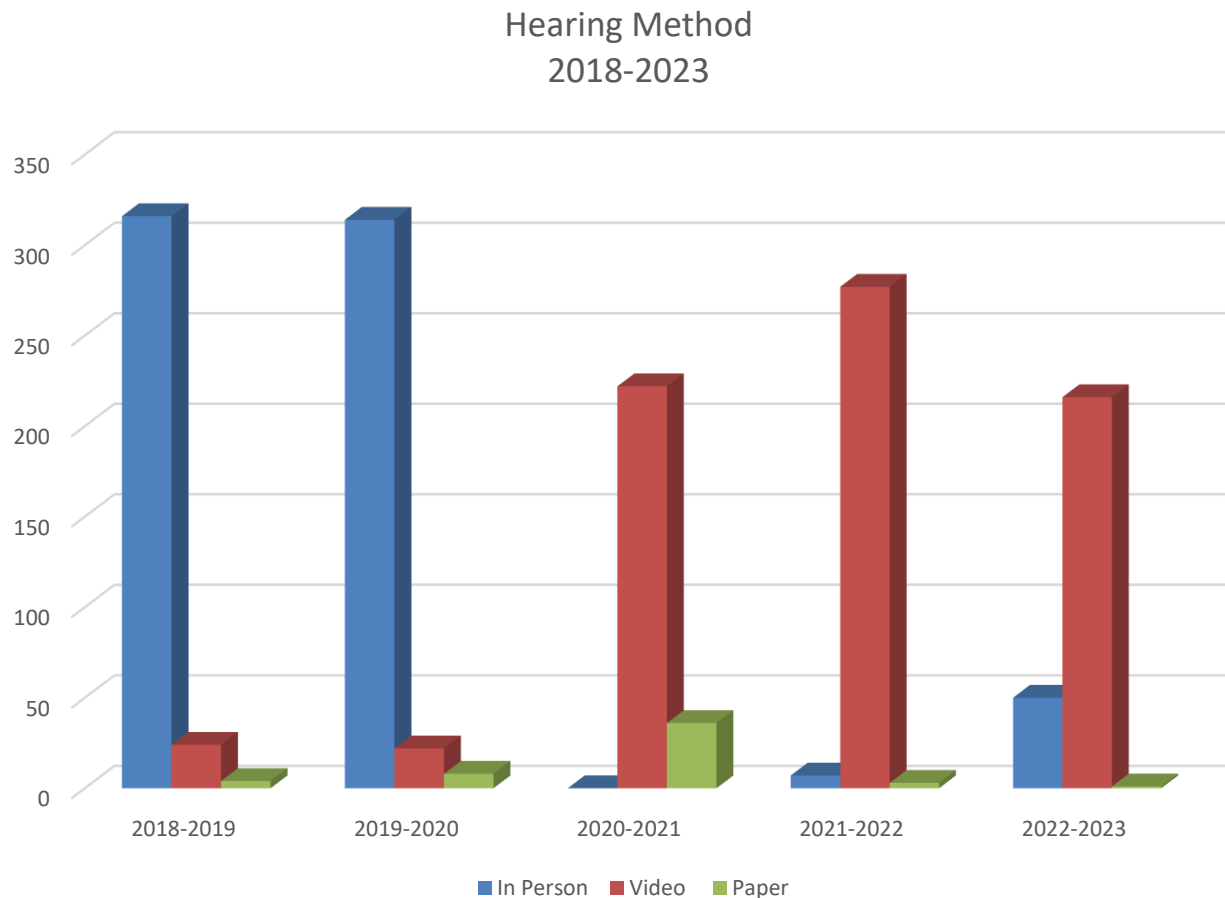


Figure 10



## 9. Dispositions and Cases

The graph below (Figure 11) 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 2021-22 and the number of new accused deferred by the court to the Board in 2022-23. Accused persons' matters may be reviewed more than once per year, thus the total case number is not an accurate reflection of workload.

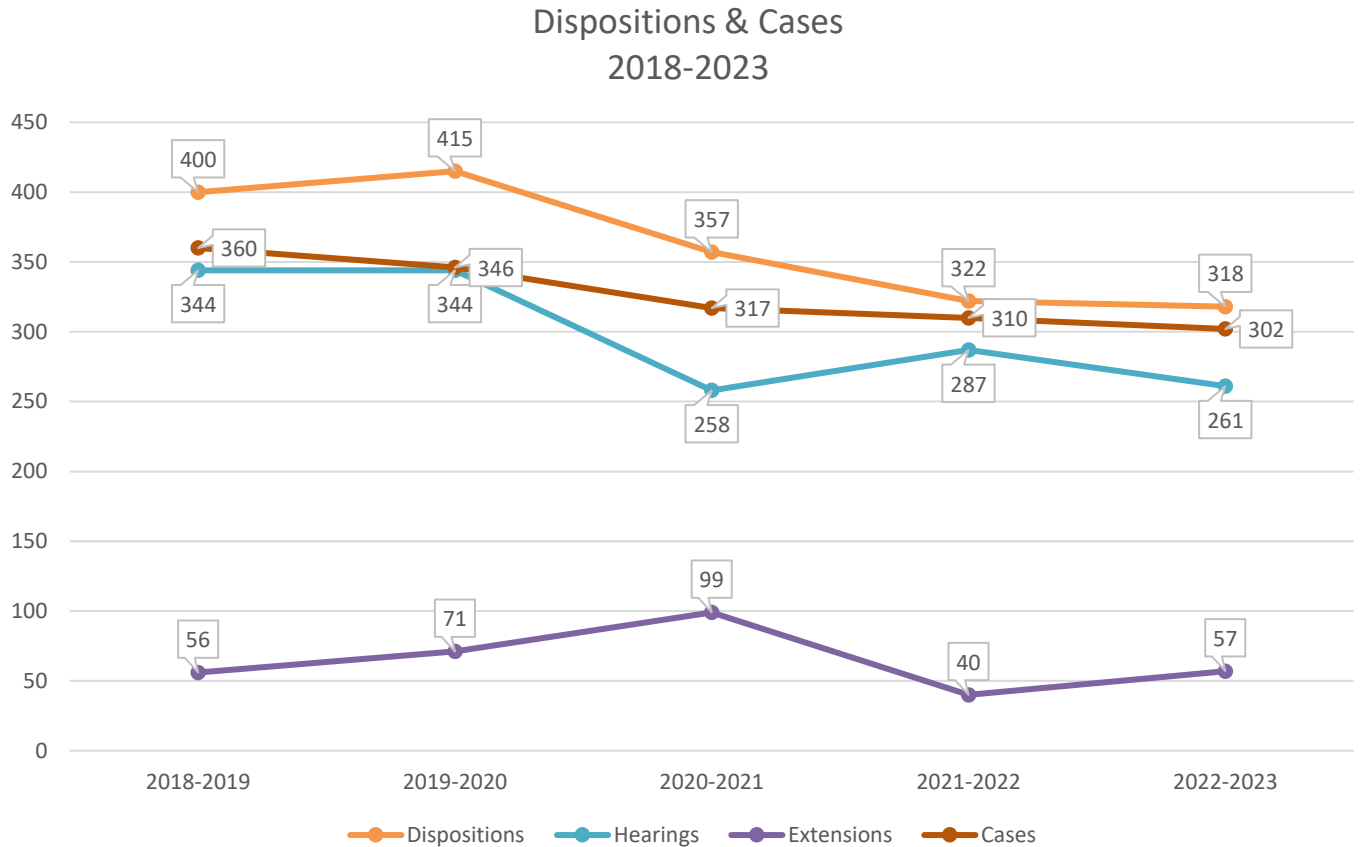


Figure 11

### 10. Procedural and Administrative Matters

The chart below (Figure 12) shows the breakdown of procedural and administrative matters for 2018-2023. These are an indication of additional workload outside of the regular hearing process. The fiscal year 2022-23 saw considerably an increase in the numbers of extensions, adjournments and paper hearings compared to the previous year. The ‘Other’ category includes recommendations to the court for a stay of proceedings, victim requests to read VIS, and returns to court under 672.48(3) of the *Criminal Code*.

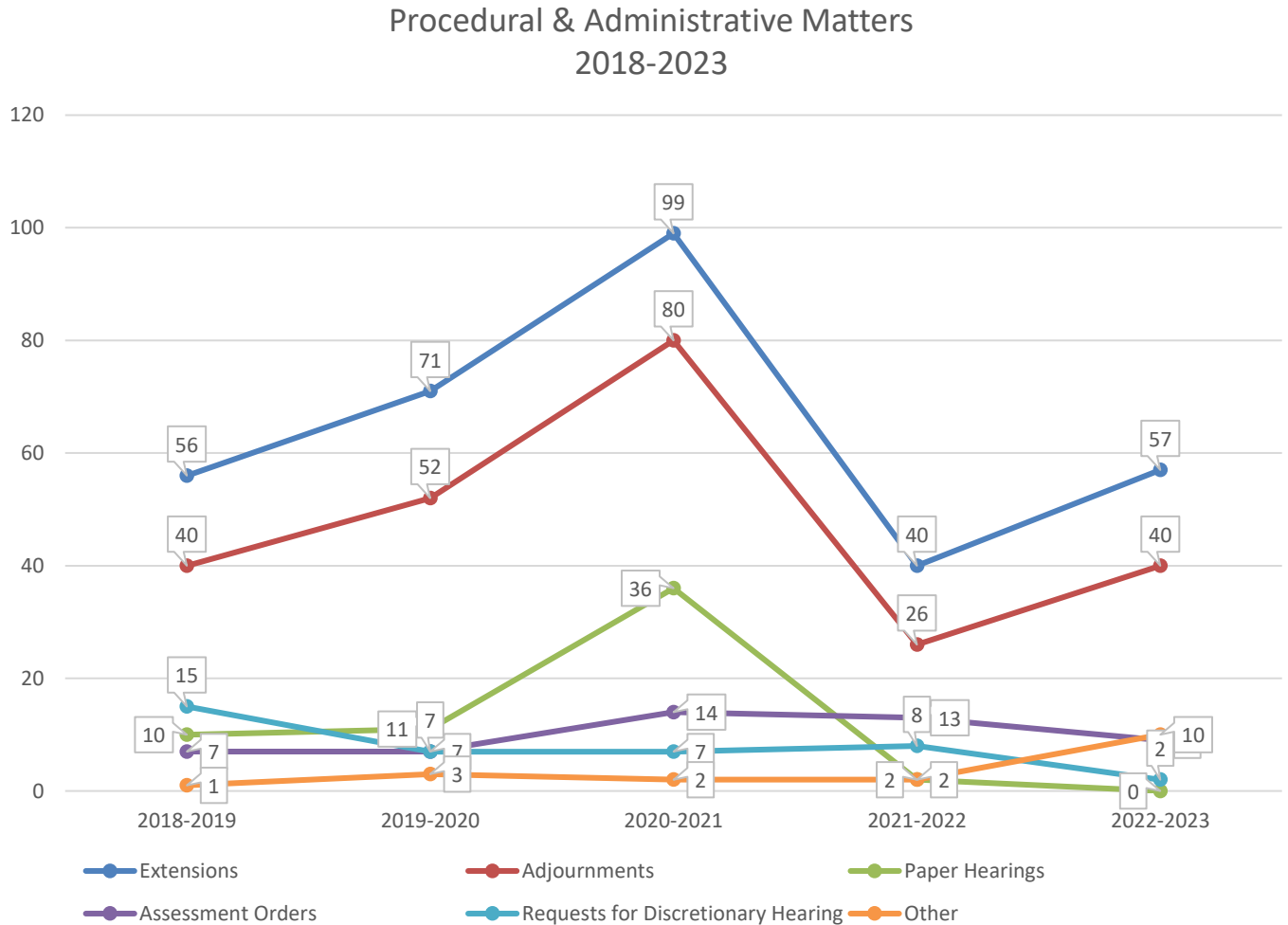


Figure 12

## BC Review Board Members at March 31, 2023

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### BC Review Board Chair

Alison MacPhail

### Alternate Chairs

Barry L. Long (on leave)  
Ingrid Friesen  
Brenda L. Edwards  
Jim Threlfall  
James Deitch  
Dr. Michelle Lawrence  
Steven Boorne  
Aamna Afsar  
Paul Singh  
Gail Banning

### Psychiatrists

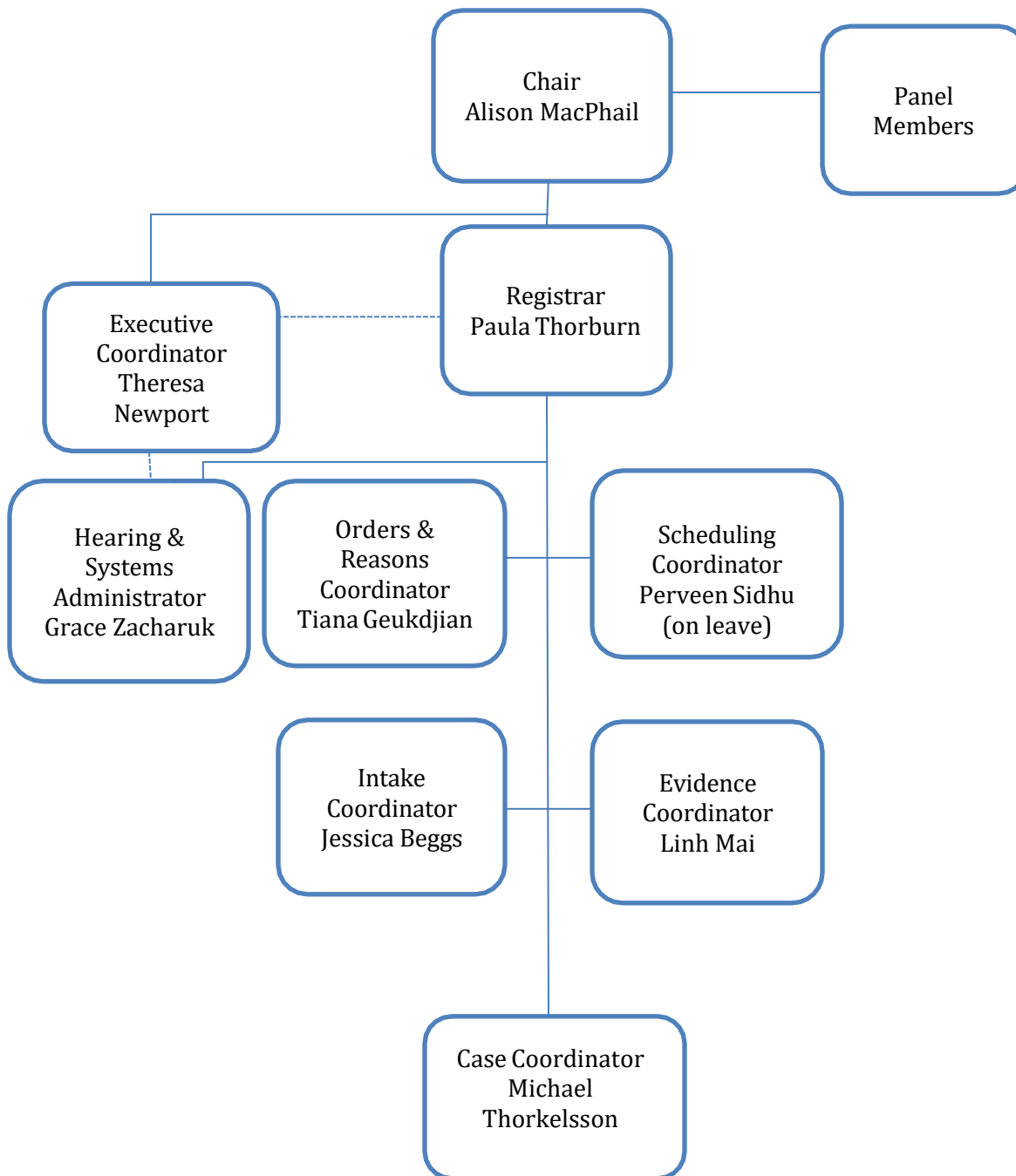
Dr. Peter Constance  
Dr. Ron Stevenson  
Dr. Linda Grasswick  
Dr. Jeanette Smith  
Dr. Todd Tomita (on leave)  
Dr. Sam Iskander  
Dr. Sandi Culo  
Dr. Roy O'Shaughnessy  
Dr. Paul Janke  
Dr. Robert Lacroix  
Dr. Andrew Kolchak

### Public Members

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

## Organizational Chart at March 31, 2023

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BC Review Board Budget & Expenditure Overview Fiscal Year 2022-23

<b>FY 2022/23 Delegation</b>	<b>FY 2022/23 Expenditures</b>	<b>FY 2022/23 Variance</b>
\$1,533,000	\$1,545, 262	\$12,262

**SIGNIFICANT VARIANCE EXPLANATIONS 2022-2023:**

As the Board continued to hold proceedings via video for part of the year, travel expenditures for Board members were reduced for the fiscal year. The two main budget pressures causing over-expenditure were staffing reclassifications and the Board’s new case management system (Salesforce) which remains an unbudgeted cost. The Board’s reduced travel expenditure for Board members and under-staffing meant that some of the identified over-expenditures were absorbed by these savings.