

BRITISH COLUMBIA REVIEW BOARD



ANNUAL REPORT

**Fiscal Year:
April 2017 – March 2018**

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

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PART 1:

LETTER FROM THE CHAIR



BRITISH COLUMBIA REVIEW BOARD

June 25, 2018

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

Minister:

I submit the **Annual Report** of the **British Columbia Review Board (BCRB)**, established under the ***Criminal Code of Canada (the Code)***, for Fiscal Year 2017 - 2018. While the **Code** does not specifically require an annual report and there exists no statutory requirement that one be tabled in the legislature, this document is intended to satisfy the reporting requirements of the ***Administrative Tribunals' Act ("ATA")***.

This report addresses two very troubling issues which I believe highlight a deep and growing divide between the Ministry, the Board, as well as the larger tribunal sector and which threatens the proper administration of justice in this province.

Petition for Judicial Review

You are, of course, well aware that last year I filed a petition for Judicial Review related to issues arising from **Treasury Board Directive 1/17 (TBD)**. The substance of the petition is predicated upon two specific areas.

First, it is well established, and superior courts have repeatedly characterized or referred to the Review Board(s) as a “court of competent jurisdiction”: see **Conway** (S.C.C); **Chaudry**, (ONCA); **Re: Ohenhen** (2017 ONCA 960). The Review Board exercises a criminal jurisdiction. It is an integral part of Canada’s criminal justice system. Each and every hearing of the Review Board, at the very least, engages a mentally disordered accused person’s s.7 **Charter**-protected rights and interests. As a Tribunal, it operates at the judicial end of the spectrum in terms of procedural and substantive requirements.

The Attorney General has been designated by the Board as a standing party and routinely appears at its hearings.

Given the independence requirements associated with decisions that impact individual liberty and considering the Attorney General’s party status, the fact that the Minister determines not only the appointment, but the compensation of Board members, constitutes an impermissible intrusion into the constitutionally protected independence of the Board. It also exposes the Board and the Attorney General to significant risks of successful reasonable apprehension of bias and conflict of interest arguments.

The second aspect of the petition deals with flaws and errors contained in the TBD and government’s decisions which, arbitrarily and without a fair basis, prevented its implementation, after 10 years of stasis in the area of remuneration.

As you likely know, a settlement meeting was held shortly before the scheduled hearing of the petition in February. In an apparent spirit of co-operation, agreement on all issues was achieved by participants. In reliance on the undertakings given, the hearing was adjourned.

I am deeply disappointed to have learned that the Ministry has essentially resiled from every commitment agreed to at that meeting. Even more troubling was the substantial delay in the Ministry communicating its position. In my view, the Ministry’s conduct in these matters reveals a fundamental lack of respect for the Board and the important work it carries out. This has shaken my confidence in the willingness of the Ministry to engage with the Board, and the tribunal sector more generally, in a transparent and good faith manner.

As a result of the settlement agreement being unilaterally and completely undermined by the Ministry, the petition is now scheduled to be heard in Vancouver on July 3 and 4, 2018.

Tribunal “Transformation”’: A Slogan in Search of Substance

The so-called Tribunal Transformation conversation has gone on for ten years. It began with the express, though flawed, representation that if Tribunals were to share or combine such administrative duties as financial, human resources and information management functions, this would generate financial efficiencies and savings which could be redeployed toward improving member compensation. This was, and has turned out to be, of course, a fundamentally inaccurate representation.

Technological applications in aid of dispute resolution aside, “transformation” has become synonymous with “clustering” as modelled by the uneven experience in Ontario which I was given the opportunity to study. This label has, in turn, and despite a burgeoning Ministry bureaucracy, devolved to mean simply “co-location”.

As one of the longest-serving tribunal chairs, and having at various times chaired several tribunals simultaneously, I have been both a “champion” of clustering and a critic: the former when the notion held promise; the latter, ... well... when it did not.

At this time, the top-down work to co-locate six tribunals in the space presently occupied by a single, high-volume tribunal, advances apace. It is envisaged and being implemented by individuals who know nothing about tribunal operations or about administrative justice writ large. Despite being specifically excluded under the A.T.A., this initiative includes the BCRB.

Rather than utilizing the expertise of seasoned tribunal chairs to implement the vision and promise of clustering, which would see tribunals with compatible mandates and processes realize the benefits of enhanced service quality through cross-appointments, cross-training, and shared legal and administrative resources to strengthen the credibility, effectiveness and responsiveness of an independent and vibrant administrative justice system, the initiative has been reduced to all the banality of a real estate transaction. I can predict with absolute confidence that capacity, timeliness, responsiveness, productivity, accuracy, and performance will be sacrificed.

Yours truly



Bernd Walter
Chair
BC Review Board

PART 2: BCRB MANDATE

The **British Columbia Review Board (BCRB)** is an independent adjudicative tribunal, established pursuant to s. 672.38 of **Part XX.1** of the **Criminal Code of Canada**. The BCRB's mandate is to make and to review dispositions (orders) with respect to individuals charged with offenses in respect of whom verdicts of **not criminally responsible** on account of mental disorder or **unfit to stand trial** on account of mental disorder, have been rendered by a Court.

It is well established that the Board is a Court of competent jurisdiction and is entitled to determine Charter issues... : **Re: Ohenhen**, 2017, ONCA 960, par. 14.

The fundamental policy objectives of Part X.X.1 as affirmed by the Supreme Court of Canada in **Winko v. B.C.** (June 17, 1999), are:

- ***The protection of the public and treating mentally disordered accused persons fairly and appropriately.*** [Par. 21, 22, 30]
- ***To improve protection for society against those few mentally disordered accused who are dangerous; and to recognize that mentally disordered offenders need due process, fundamental fairness and need the rights accorded to them for their protection when they come into conflict with the criminal law.*** [Par. 22]

The criteria which govern the Board decisions were amended by s.672.54 of the **Not Criminally Responsible Reform Act** (in force July 12, 2014):

s. 672.54: *“Where a court or Review board makes a disposition pursuant to subsection 672.54(2), or subsection 672.64(3), or section 672.83 or 672.84, it shall, **taking into account the safety of the public, which is paramount consideration, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances** (emphasis added)*

- (a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be **discharged absolutely**;*
- (b) by order, direct that the accused be **discharged subject to such conditions** as the court or Review Board considers appropriate; or*
- (c) by order, direct that the accused be **detained in custody** in a hospital, subject to such conditions as the court or Review board considers appropriate. SC 1991. C43, s.4.”*

Appellate decisions since these amendments have held that the words “necessary and appropriate” have the same meaning as the prior language of “least onerous and least restrictive” disposition: see **Re Osawe**, 2015 Onca 280, at par. 45; **Re Ranieri**, 2015 ONCA 444, at par. 20; **Re McAnuff**, 2016 ONCA 280, at par. 22

The Review Board’s jurisdiction is founded on a finding that an accused poses a “significant threat”:

s.672.5401 defines “significant threat”:

For the purposes of section 672.54, a significant threat to the safety of the public means a risk of serious physical or psychological harm to members of the public — including any victim of or witness to the offence, or any person under the age of 18 years — resulting from conduct that is criminal in nature but not necessarily violent.

Since the implementation of s.672.5401, courts have indicated that this definition does not alter the definition of significant threat imposed by the SCC in **Winko**:

The threat posed must be more than speculative in nature; it must be supported by evidence. The threat must also be significant; there must be a real risk of physical or psychological harm and this potential harm must be serious. A miniscule risk of grave harm will not suffice; a high risk of trivial harm will not meet the threshold; the conduct or activity must be criminal in nature. [Par.57]

PART 3:

BCRB OPERATING ENVIRONMENT

- Unlike any other provincial tribunal, the **BCRB** is a judicial tribunal established by federal legislation, pursuant to S.672.38 of the ***Criminal Code of Canada***. **Part XX.1 of the *Criminal Code*** deals exclusively with **mentally disordered criminal offenders**. The **BCRB** is in fact, and in law, considered a court of competent jurisdiction: part of **Canada’s criminal justice system**.
- The **BCRB** has ongoing jurisdiction over individuals who have received verdicts of **Unfit to Stand Trial** or **Not Criminally Responsible on Account of Mental Disorder (NCRMD)**¹.
- The **BCRB** operates in the sensitive balance between **public safety and individual liberty**. **BCRB** hearings carry the due process expectations of a Court proceeding. They are entirely governed by, and carry the constitutional force of sections 7 and 11 of the ***Charter of Rights and Freedoms***: **Winko**, [1999] S.C.R. 625 at Par. 63:

“The provisions of Part XX.1 of the Criminal Code permit the state, through a court or Review Board, to deprive the N.C.R. accused of his or her liberty. Any law that does this must conform to the principles of fundamental justice pursuant to s.7 of the Charter.”: Winko, [1999] 2 S.C.R. 625, paragraph 63.”

- The **fundamental objectives** of the **BCRB’s** hearings and decisions (dispositions), as consistently reiterated by the Supreme Court of Canada, are **to protect public safety and to safeguard the legal/procedural rights and liberty interests of mentally disordered offenders**.
- **Hearings** must occur **within statutory timelines** (45 or 90 days), as well as **annually**, and **mandatorily** on the occurrence of certain events which **affect** an accused person’s **liberties**: **hearing backlogs cannot exist by law**.
- **Hearings** are conducted at the **Forensic Psychiatric Hospital (FPH)** (Detainees) and **in communities** throughout **BC** (Dischargees); the ***Criminal Code*** allows **video hearings**.

¹ Formerly referred to as Not Guilty, or, Unfit to Stand Trial, by “reason of insanity”

- The vast majority of accused under the **BCRB's** jurisdiction are represented by counsel. The **Attorney General of BC** is **designated a standing party** at all **BCRB** hearings.
- The **Tribunal** is required to gather and distribute documentary evidence and to **produce orders** and **legally sound reasons** for its **decisions**.
- Appeals of **BCRB** decisions go directly to the **BC Court of Appeal**, without leave.
- **BCRB** member **qualifications** are **prescribed by statute**: a quorum is 3; must be **chaired by a judge, retired judge or lawyer qualified for judicial office**; and **must include a psychiatrist** (other provinces may use panels of 5 at increased cost).
- **Fiscal Year 2017-2018 caseload/volume (summary) (see Part 5):**
 - 373 Accused cases handled.
 - 373 Hearings conducted.

PART 4:

BCRB MEMBERS AND QUALIFICATIONS AS AT MARCH 31, 2018

CHAIR

Bernd Walter

ALTERNATE CHAIRS (LAWYERS)

Ingrid Friesen	Expires December 31, 2020
Barry L. Long	Expires January 31, 2022
Alison MacPhail	Expires February 28, 2022

PSYCHIATRISTS

Dr. Jeanette Smith	Expires September 19, 2018
Dr. Werner Pankratz	Expires December 31, 2018
Dr. Linda Grasswick	Expires December 31, 2018
Dr. Sam Iskander	Expires September 1, 2019
Dr. Todd Tomita	Expires September 22, 2019
Dr. Peter Constance	Expires December 31, 2020
Dr. Ron Stevenson	Expires December 31, 2020
Dr. Rakesh Lamba	Expires January 2, 2022

OTHER MEMBERS

Paula Cayley	Expires September 26, 2018
Dr. Lynda Murdoch	Expires December 15, 2018
Maryam Majedi	Expires September 1, 2019
Stuart Whitley	Expires December 11, 2019
Kim Polowek	Expires July 31, 2020
Jeremy Berland	Expires July 31, 2020
Dr. Matthew Burnett	Expires July 31, 2020
Brenda Edwards	Expires January 2, 2021
John James Threlfall	Expires January 2, 2021
Alan Markwart	Expires February 28, 2022

QUALIFICATIONS

Section 672.38 of the *Criminal Code* establishes the Review Board and provides the following professional qualifications for Board members:

- A Superior Court Judge or person qualified for appointment thereto as Chair
- Psychiatrists
- “Lay Persons”, such as social workers, criminologists or others (no specific professional qualifications prescribed), who have training, experience in mental health or who are entitled to practice medicine or psychology.

THE BOARD SEEKS APPOINTEES WITH THE FOLLOWING COMPETENCIES:

Knowledge in the areas of the Board’s Jurisdiction:

- Understanding of governing legislation and Board’s mandate (*Criminal Code*)
- Criminal law and procedure
- Administrative law, procedure and practice
- Forensic law/criminology/risk assessment
- Mental health law, practice and service delivery systems
- BC’s cultural and ethnic diversity
- Forensic psychiatry
- Issues of Public Safety and Security
- Understanding of, and sensitivity to, the interests and perspectives of victims

Skills/Experience

- Conducting a hearing
- Decision making, research and writing skills
- Ability to interpret legislation

- Listening skills
- Decisiveness
- Experience in matters related to the Board's mandate in particular in the field of Mental Health and forensic psychiatry
- Critical analysis

Values/Attitudes

- Respect for culture and diversity
- Impartiality/objectivity/open mindedness/flexibility
- Empathy, ethics, judgment & integrity
- Commitment to public service

PART 5:

BCRB STATISTICAL REPORT FOR FISCAL YEAR 2017-2018



**BRITISH COLUMBIA
REVIEW BOARD**

**WORKLOAD
STATISTICS**

APRIL 1, 2017 - MARCH 31, 2018

PREPARED: May 2018

GLOSSARY OF TERMS/ACRONYMS

NGRI: Refers to the now obsolete verdict of “**Not Guilty by Reason of Insanity**” under the *Criminal Code* provisions predating the current Part XX.1. This verdict **ceased to apply as of February 1992. This category will eventually disappear.**

NCRMD: Refers to the current verdict of “**Not Criminally Responsible on Account of Mental Disorder**” under Part XX.1 of the *Criminal Code*.

UST: Refers to the verdict of “**Unfit to Stand Trial on Account of Mental Disorder**” as defined in s.2 of the *Criminal Code*.

CHART 1.0: SUMMARY OF CASELOAD/VOLUME (1992 – 2018)

YEAR	CASES AT BEGINNING OF YEAR	NEW CASES	NEW CASE INCREASE OR DECREASE	TOTAL CASES HANDLED	TOTAL CASE INCREASE OR DECREASE	CASES CLOSED	YEAR END TOTAL	YEAR END INCREASE OR DECREASE
92/93	152	43		195		70	125	
93/94	125	96	123%	221	13%	49	172	38%
94/95	172	75	-22%	247	12%	46	201	17%
95/96	201	97	29%	298	21%	54	244	21%
96/97	244	119	23%	363	22%	74	289	18%
97/98	289	96	-19%	385	6%	81	304	5%
98/99	304	103	7%	407	6%	87	320	5%
99/00	320	122	18%	442	9%	114	328	3%
00/01	328	83	-32%	411	-7%	88	323	-2%
01/02	328	82	-1%	410	0%	99	311	-4%
02/03	311	77	-6%	388	-5%	82	306	-2%
03/04	305	74	-4%	379	-2%	71	308	1%
04/05	308	57	-23%	365	-4%	71	294	-5%
05/06	294	77	35%	371	2%	68	303	3%
06/07	303	72	-6%	375	1%	61	314	4%
07/08	314	65	-10%	379	1%	78	301	-4%
08/09	301	60	-8%	361	-5%	101	260	-14%
09/10	260	63	5%	323	-11%	70	253	-3%
10/11	253	57	-10%	310	-4%	49	261	3%
11/12	261	55	-4%	316	2%	54	262	0%
12/13	262	58	5%	320	1%	50	270	3%
13/14	270	59	2%	329	3%	40	289	7%
14/15	289	42	-29%	331	1%	39	292	1%
15/16	292	51	21%	343	4%	38	305	4%
16/17	306	61	20%	367	7%	47	320	5%
17/18	320	53	-13%	373	2%	68	305	-5%

EXPLANATORY NOTES:

This chart shows caseload fluctuations since the proclamation of **Part XX.1 (Mental Disorder) of the Criminal Code in February 1992**, in a number of key dimensions: **total cases at beginning of year; intake of new cases during the year; cases closed; total caseload at year end**. It also assigns **percentage values** to year over year changes in these critical dimensions. Note decrease in overall case load since FY 1999/2000, likely due to accelerated case closures attributable to the Supreme Court of Canada's decision in **WINKO**. Please note that in fiscal 01/02 the BCRB implemented a new method for calculating new case intake in a fiscal year. For this fiscal year, the number of new cases received was used to calculate intake. In previous years, the number of initial hearings was used to count new cases. For this reason there is a discrepancy between the number of cases open at the end of 00/01 fiscal (323) and the number of cases open at the beginning of 01/02 fiscal (328).

CHART 2.0: CASE MOVEMENT BY CASE TYPE

APRIL 1, 2017 – MARCH 31, 2018

VERDICT	CASES AT YEAR BEGINNING APR 1 2015	NEW CASES	TOTAL CASES HANDLED	CASES CLOSED/ CONSOLIDATED	TOTAL CASES CARRIED OVER AT YEAR END MAR 31 2017
NGRI	11	0	11	3	8
NCRMD	292	41	333	53	280
UST	17	12	29	12	17
TOTAL	320	53	373	68	305

Explanatory Notes:

This chart reflects the number of current, intake and closed files by verdict or consolidated records, under the Review Board's jurisdiction at the commencement and at the end of the Reporting period; as well as the total number of cases handled (beginning cases + cases opened) during the period. One accused may have more than one verdict; therefore, their verdicts are consolidated.

Total number of cases handled is the true reflection of the Review Board's workload. This number has declined from a high of 442 cases in FY 1999/2000.

CHART 3.0: PROFILE OF NEW CASES BY MONTH AND VERDICT

APRIL 1, 2017 – MARCH 31, 2018

MONTH	NCRMD	UST	TOTAL NEW CASES
April	3	1	4
May	3	0	3
June	6	2	8
July	1	0	1
August	5	1	6
September	2	2	4
October	1	1	2
November	4	0	4
December	3	0	3
January	5	1	6
February	3	1	4
March	5	3	8
TOTAL	41	12	53

EXPLANATORY NOTES:

This chart profiles FY 2017/2018 **New Case Intakes by month and verdict type**. Case intake is driven by court verdicts of NCRMD or UST and has been declining somewhat since 1999/2000.

The Board experienced a 13% decrease in intake of new cases in FY 2017/2018.

**CHART 4.0: CASES CLOSED BY MONTH AND VERDICT
APRIL 1, 2017 – MARCH 31, 2018**

MONTH	NCRMD	UST	NGRI	TOTAL
April	6	0	1	7
May	6	1	1	8
June	7	2	0	9
July	3	3	0	6
August	1	0	0	1
September	2	0	0	2
October	7	2	0	9
November	7	0	1	8
December	2	0	0	2
January	5	1	0	6
February	2	1	0	3
March	5	2	0	7
TOTAL	53	12	3	68

EXPLANATORY NOTES:

This chart profiles **cases closed during FY 2017/2018 by month and verdict type**. NGRI type cases will eventually reduce to zero.

The Board experienced 42% increase in cases closed in FY 2017/2018 over the previous fiscal year.

CHART 5.0: CASE CLOSURE BY REASON

APRIL 1, 2017 – MARCH 31, 2018

Absolute Discharge	49
Deceased	7
Found Fit to Stand Trial	9
Interprovincial Transfer	0
Stayed	2
Appeal - Verdict Quashed	1
Consolidated Verdict/Proceeding	0
TOTAL	68

EXPLANATORY NOTES:

***Consolidated Verdict/Proceeding** refers to an accused person with more than one verdict. These are dealt with as a consolidated proceeding resulting in a single Disposition.

**CHART 6.0: CASE LOAD CHARACTERISTICS AT YEAR END
APRIL 1, 2017 – MARCH 31, 2018**

18 Years and Under	5	2%
Over 18 Years	300	98%
TOTAL	305	100%
Male	274	90%
Female	31	10%
TOTAL	305	100%
In Custody	170	56%
Out of Custody	135	44%
TOTAL	305	100%
Outside Lower Mainland	76	25%
Lower Mainland	229	75%
TOTAL	305	100%

CHART 7.0: SUMMARY OF HEARINGS (1992 – 2018)

YEAR	NUMBER OF HEARINGS	INCREASE OR DECREASE
92/93	280	
93/94	272	-3%
94/95	336	24%
95/96	404	20%
96/97	506	25%
97/98	519	3%
98/99	537	3%
99/00	572	7%
00/01	530	-7%
01/02	515	-3%
02/03	488	-5%
03/04	455	-7%
04/05	445	-2%
05/06	480	8%
06/07	442	-8%
07/08	410	-7%
08/09	403	-2%
09/10	334	-17%
10/11	347	4%
11/12	312	-10%
12/13	313	0%
13/14	293	-6%
14/15	338	15%
15/16	326	-4%
16/17	353	8%
17/18	373	6%

EXPLANATORY NOTES:

In FY 2017/2018 the Board experienced a 6% increase in hearings held.

CHART 8.0: HEARINGS BY TYPE AND MONTH

APRIL 1, 2017 – MARCH 31, 2018

MONTH	INITIAL HRGS	ANNUAL HRGS 672.8	SHORT ORDER/ EARLY REVIEW 672.63	ROL 672.81 (2)(a)	DIR. REQ. 672.81 (2)(b)	DUAL STATUS 672.81 (3)	ENF. ORDER 672.94	ACC. REQ. 672.82	TOTAL HRGS	AVG. # HRGS PER DAY	TOTAL # of HRG DAYS
Apr	5	15	5	3	0	0	1	0	29	1526	19
May	3	27	8	1	1	0	2	0	42	1826	23
Jun	5	27	4	0	1	0	0	1	38	2,000	19
Jul	8	21	4	3	0	0	1	0	37	2,176	17
Aug	2	6	2	1	0	0	0	0	11	2,200	5
Sep	5	25	1	1	2	0	1	0	35	2,500	14
Oct	4	15	2	8	0	1	2	0	32	1,882	17
Nov	3	32	0	9	0	0	1	0	45	2,250	20
Dec	2	6	6	0	1	0	1	0	16	2,000	8
Jan	5	21	4	3	0	0	1	0	34	2,429	14
Feb	5	14	1	2	1	0	6	1	30	2,143	14
Mar	4	13	2	3	1	0	1	0	24	2,000	12
TOTAL	51	222	39	34	7	1	17	2	373	2,049	182

CHART 9.0: FOUR-YEAR COMPARISON OF HEARINGS BY TYPE
FISCAL 14/15 – 17/18

HEARING TYPE	FISCAL 14/15	FISCAL 15/16	FISCAL 16/17	FISCAL 17/18
Initial 45 Days	46	44	56	39
Initial 90 Days	4	4	3	12
Annual	215	192	213	222
Director Request	3	5	8	7
Discretionary Hearing	2	4	2	2
Enforcement Order	20	12	15	17
Restriction of Liberties	12	16	11	34
Early Review	36	49	49	39
Dual Status Offender Placement Hearing	0	0	0	1
TOTAL	338	326	357	373

CHART 10.0: PROCEDURAL MATTERS
APRIL 1, 2017 – MARCH 31, 2018

PROCEDURAL MATTER	
Extension of Disposition Orders on Consent - s.672.81(1.1)	68
Adjournments - s.672.5(13.1)	30
Adjournments - s.672.5(15.3) (Victim Requested)	0
Victim Requests to Read VIS - s.672.5(15.1)	1
Assessment Order - s.672.121	22
Recommendation to Court Re Stay of UST Matter - s.672.851(1)	0
TOTAL	121

PART 6:

BCRB BUDGET AND EXPENDITURE OVERVIEW FOR FISCAL YEAR 2017-2018

FY 2017/18 Delegation	FY 2017/18 Expenditures	FY 2017/18 Variance
\$1,378,000	\$1,526,359	\$148,209

VARIANCE EXPLANATIONS:

2017-2018

- STOB 50/52 – Salaries and Benefits – Chair Remuneration increase retroactive to November 2016; Registrar salary lift; staff incremental increases; without significant increase to STOB allocation - **\$82K over budget**
- STOB 55 – Board Member Fees and Expenses – Remuneration increases to Board members retroactive to November 2016 - **\$92K over budget**
- STOB 60/65 – Prof Services and Office/Business Expenses – Use of electronic distribution of evidence providing reduction in operating costs - **\$25K under budget**

PART 7:
BCRB MEMBER CODE OF CONDUCT

**MEMBER CODE
OF CONDUCT**

Revised: August 27, 2002

BC REVIEW BOARD

CODE OF CONDUCT

1.0 PURPOSE OF THIS CODE OF CONDUCT

- To establish and articulate the **values and conduct expectations** of Board membership; including diligence, prudence, respect, confidentiality and ethics
- To identify the **criteria against which members' performance will be assessed** and which will affect their appointment or re-appointment
- To emphasise the concept that Board membership constitutes a public trust
- To foster, **reinforce and maintain high standards of professional conduct** and performance
- To **promote public confidence** in, and the independence and credibility of, the Board
- **To identify** and provide guidelines respecting specific activities which may give rise to problematic perceptions **of conflict**.

1.1 SCOPE

The Code addresses the key areas of expectations and responsibilities including membership expectations/obligations; conduct during hearings/decision making; public and Media Comment; conflict of interest.

The Code is based on and recognizes the fundamental principle and requirement of independence in adjudicative decision making.

The Code will be revised and expanded as necessary.

2.0 ROLES AND AUTHORITIES OF BOARD MEMBERSHIP

British Columbia Review Board members exercise the authorities of membership and speak on behalf of the Tribunal only while seated as members of a panel in the course of conducting a hearing. They do not function or speak on behalf of the Board on policy matters in the sense of a Board of Directors.

Board members are expected to act honestly and in good faith and to comply with these conduct expectations and with the administrative practices and procedures of the Board.

3.0 RESPONSIBILITIES TO THE BOARD

CONFIDENTIALITY

Board members do **not divulge confidential information** obtained as a result of their appointment unless legally required.

PARTICIPATION

Board membership includes the reasonable expectation that the **member will attend and participate in periodic meetings, policy discussions, orientation and training opportunities/programs.**

ORIENTATION AND TRAINING

Board **members are expected to read and acquaint themselves with the orientation and training materials** provided, prior to participation in hearings; to undertake ongoing efforts to understand the area under the Tribunal's jurisdiction and mandate and its governing legislation/law.

LOYALTY

Board members are expected to bring to the Chair's attention the conduct of a colleague which they reasonably believe is in breach of this Code or which may threaten the integrity of the Tribunal.

JUDGEMENT

Board members are expected to exercise judgment regarding appropriate conduct on matters or in situations not specifically mentioned in this Code.

KNOWLEDGE

Panel members must know and understand the legislation and case law which governs a decision.

4.0 CONDUCT OF MEMBERS IN THE HEARING CONTEXT

The British Columbia Review Board adjudicates on and determines Charter-protected matters of personal liberty and public safety which are accorded the highest values and legal protection in Canadian society.

NATURAL JUSTICE

The hearing process must be **fair and reasonable**, must accord with **rules of procedural fairness or natural justice**, and must be so viewed by all parties. Members of the Board must understand the elements of natural justice and the obligation of fairness.

IMPARTIALITY

Bias, or the reasonable perception of bias, must be avoided. Board members should not display bias, or the appearance of bias, or offer **preferential treatment** to any party in a hearing. The appearance of bias voids the hearing and the resulting decision.

4.1 PRE-HEARING REQUIREMENTS / EXPECTATIONS

Panel **members must be fully prepared for hearings**; to have reviewed and become familiar with all of the historic and documentary evidence (disposition information) provided. **This is an unconditional requirement.** If a member has been unable to properly prepare for a hearing for any reason, he/she should notify the Chair and offer to withdraw from the panel prior to the hearing.

Panel **members must be present and ready to proceed prior to the scheduled time** of the hearing, and to be available throughout the proceeding and decision making process otherwise they should not commit to being empanelled. This communicates respect for the process and for the participants.

Panel **members must maintain an appropriate professional distance** from parties or their counsel by:

- avoiding casual, social or private conversations or pleasantries or spending time with parties or counsel, either before, during or after the hearing or adjournments;
- avoiding the use of first names or any other behaviour which may give an impression that a personal or social relationship or a bias exists.

4.2 CONDUCT DURING THE HEARING

Tribunal/panel members must, in the context of the hearing:

- **Be impartial.**

- Demonstrate receptiveness and an **open mind** and avoid doing or saying anything that could cause any person to think otherwise. Board members may **question** a witness in order to clarify the evidence, but **should not show impatience or a negative attitude toward a witness; do not ask leading questions** which simply confirm a perspective; do not frame questions in such a way that it appears sides are being taken or that minds are already made up. Do not make speeches, propound theories, debate, offer a second opinion, or give advice;
- Members should **limit their questions** and **examination**. If the question has already been asked, answered or is repetitive, serves no useful purpose or is **not relevant** to the inquiry, do not ask it.
- Ensure that parties who are unrepresented by counsel are not unduly **disadvantaged** at a hearing; at the same time do not unfairly favour an unrepresented party.
- Through their demeanor, timeliness and language **behave seriously and courteously** at all times; demonstrate **respect** for the parties, counsel, witnesses, for the dignity of the hearing process itself, and for the issues at stake. It is **inappropriate to demonstrate hostility, disdain or sarcasm** toward parties, counsel, or witnesses, beyond commenting on, or admonishing improper conduct;
- Listen **patiently and carefully** to the views, evidence and submissions of the parties and their representative(s), while maintaining control of the hearing;
- Conduct the hearing in a manner that demonstrates **sensitivity to the culture and heritage** of the parties, counsel and witnesses;
- Maintain a sense of **decorum**;
- Conduct the hearing as **formally or as informally** as is appropriate under prevailing circumstances;
- Conduct the hearing **expeditiously**, preventing unnecessary delay while ensuring that all parties have a fair opportunity to present their case;
- **Listen and seek clarification** from parties/counsel if the evidence is not understood. Focus on the subject matter of the hearing. It is inappropriate to discuss matters or pass notes during the hearing; if an interruption is required this should be communicated to the Panel Chair;
- **Avoid expressions of fatigue** or attending to extraneous or personal matters e.g. diaries, palm pilots, etc., which can be interpreted as a lack of interest or **boredom** with the proceedings. If you are tired and a break is needed, request the Panel Chair to call a recess;

- **Avoid unnecessary interruptions** in the submissions of a party or counsel, except as may be necessary to clarify a submission or to ensure the relevance of a particular argument. **Avoid interference** in the examination of **witnesses**. Parties should be given a full and fair opportunity to examine and cross examine witnesses and present relevant evidence.

4.3 EVIDENCE

Any oral **evidence**, document or other form of information **relevant** to the subject matter of the proceeding may be admitted whether or not such evidence would be admissible in a court. The Board will ultimately decide what "weight" to attach to it.

The **Board may accept "hearsay evidence"**. The issue is how much weight should be placed on the hearsay evidence. Here a decision will be required on whether the Board is reasonably satisfied as to the "reliability" of the hearsay evidence. Consult Panel Chair for direction.

The Board may, if they are disclosed to other parties, admit written documents or reports from any source whether or not produced by the person preparing the document or report. It is, however, preferable to receive evidence and documentation through witnesses who have first-hand knowledge.

Although evidence may be admitted without oath or affirmation, the Board **has the authority to require evidence to be given under oath or affirmation**. Consult Panel Chair as to when this may be appropriate.

Full **disclosure of information** and documentation is fundamental to fairness. Panel members may not accept any evidence or receive any information from parties except during the formal part of a hearing. Board members **should not communicate directly or indirectly with any party, witness, agent or lawyer in respect of a proceeding, except in the presence of all parties and their representatives**. If a Panel member is provided, is aware of, or considers relevant information which is not provided to the parties, this may constitute ex parte communication and amount to a denial of natural justice. Panel members aware of information which may be relevant must disclose this to their colleagues and to the parties. If disclosure of a persons' name would pose a risk to safety, this may be withheld. Consult Panel Chair for direction.

Decisions must be based **only on the merits and the evidence received**. If the Board makes a finding of fact with no relevant evidence to support it, the entire decision may be overturned by a court on review or appeal.

Seek independent advice, through the Panel Chair if necessary, provided that the advice is made known to the parties and that they are given the opportunity to make submissions as to the law.

Receive legal advice only from Panel Chair or Board resources.

4.4 DECISION MAKING AND WRITING

In the course of deliberating and decision making members must:

- Understand that the Board's decision making authority/jurisdiction is circumscribed or modified by legislation and judicial interpretation;
- Notwithstanding personal views or values, **not come to any judgment, conclusion or decision on an issue until all the evidence has been submitted**, all documents have been entered and all arguments have been concluded;
- **Be present** for all of the decision-making process;
- Apply the law to the evidence in **good faith** in accordance with its underlying intent and to the best of their ability, notwithstanding the potential unpopularity of the result. The prospect of disapproval from any party, institution or community must not deter a member from making a decision which he/she believes is correct **based on the law and the evidence**; not fetter their discretion by considerations other than the proper purposes of the legislation.
- **Render decisions promptly and plainly.** Panel members must **be prepared to give explicit reasons** for their dispositions. Reasons enhance the confidence of parties, assist with future cases and render the decision less prone to challenge. Reasons must be adequate to the extent of enabling a party to assess whether grounds for appeal exist.
- Although the decision of a majority of a panel forms the Board's decision, where a member(s) of a panel, having duly listened to and considered the views/reasons of the majority, is unable to agree, he/she should **dissent**. Unanimity is not a value in itself. A dissent serves an important purpose. **Adjudication is not negotiation.** Members may consult but are bound to **reach their own decisions**.
- In the interests of consistency, consider previous Board decisions on similar issues. While these are not necessarily binding, **panels should give reasons for departing from previous decisions**.
- Make and retain their **own careful notes** of a hearing to assist their recollection of the evidence; these should be used as the basis for the decision. Notes should be stored appropriately on a permanent basis.
- Respond as quickly as possible with comments on a draft decision.

- Adhere to or attempt to model the following attributes of good decisions:
 - Clear, early identification of the issue(s)
 - Clear findings of fact based on the evidence and the reasons for the findings
 - Responsive to submissions/arguments
 - Identification and application of law.

- When drafting reasons or dissents:
 - consider your audiences -- often a number of different groups of varying capacities;
 - use plain language; avoid jargon
 - use the active, rather than the passive voice;
 - use short sentences and paragraphs;
 - be as concise, clear, understandable, and logical as possible.

- **Maintain documents and binders in a confidential and secure manner.**

4.5 OBLIGATIONS OF PANEL CHAIRS

Designated Alternate or Panel Chairs are expected, as the presiding member, to ensure they and other members of a panel adhere to the foregoing conduct requirements and to take any necessary steps to ensure compliance, including:

- To **resolve any conflict** between members of a hearing panel on a procedural or substantive issue but do so privately, not during the hearing or in the presence of parties;
- To **limit panel members' questions** if they are irrelevant, repetitive, leading, prolix;
- To anticipate and be prepared to **deal with preliminary or procedural issues** in an independent and decisive manner;
- To identify and **deal with conflicts which may disqualify** a member from participating in a hearing;
- To ensure they and their colleagues **comport themselves with dignity** and in keeping with these conduct expectations; and to bring breaches to the attention of the colleague and the Chair;
- To **maintain appropriate control of the proceeding**; attempt to conduct and complete hearings within times allocated;

- To ensure that **deliberations and decision making are professionally controlled/orderly**, thorough and courteous/respectful, and outcomes are timely, based on the evidence adduced and sound in law;
- To ensure that **Reasons for Disposition are produced in a timely fashion** and are legally sound;
- To **intervene decisively** when the conduct of their colleagues in the hearing in any way threatens the credibility of the Tribunal.

5.0 CONFLICT OF INTEREST

While on Board business or serving on a hearing panel, Board members function primarily as members of the Board, not of any other constituency or interest group.

Board members must be vigilant in identifying and diligent in avoiding **real and/or apparent conflict of interest**.

Board members shall not participate in Board matters or serve on a hearing involving any individual with whom they have any current or past financial, personal, private or professional involvement. **In the case of the British Columbia Review Board, prior professional involvement is the most likely type of conflict to arise: members must take all reasonable steps to identify accused or other parties with whom they have or have had previous professional involvement (e.g. as counsel or assessor) and to recuse themselves from serving on any panel/hearing involving such individuals.** You must disclose anything which could reasonably be expected to affect or appear to affect your ability to adjudicate in a neutral, objective manner. Remember this is a subjective, “eye of the beholder” test. Where a Board member **suspects** that **conflict of interest** may exist, he/she shall immediately take steps to declare and/or remove it. If a member is in doubt as to whether or not a conflict exists, he/she must seek the advice of the Panel Chair.

Members shall not accept **gifts or benefits** from person(s) who are directly or indirectly affected by a decision of the Board; nor indeed from anyone if the gifts are in relation to their membership on the Board. Offers of gifts shall be brought to the Chair’s attention.

Board members shall not knowingly take advantage, **make personal use of, or benefit** from information obtained in the course of official duties which is not generally available to the public.

Board members shall avoid **partisan political or advocacy activities** which could jeopardize the neutrality and impartiality, both real or perceived, of the Board.

Board members shall use **Board/government property or assets and time** only for official Board activities.

Board members must never engage in conduct which exploits for personal benefit their position of authority.

Board members should avoid **donations to, or memberships in** charitable, recreational, community or special interest organizations where it is likely that such organizations will:

- a. be parties or participants in hearings which Board members may preside, and / or
- b. publicly espouse positions or issues that are or may be the subject matter of Board reviews.

Board members shall not engage in any **work or business** undertaking:

- a. that interferes with the performance of their duties as a member;
- b. in which they have an advantage derived from their appointment as a member;
- c. that will, or is reasonably likely to, influence or affect the carrying out of their duties as a member.

Former members should not take **improper advantage** of their previous office.

Tribunal members are expected to respect this Code even after their appointment has expired.

6.0 PUBLIC AND MEDIA COMMENT

The Attorney General or Cabinet speak for government policy.

The BC Review Board Chair or his/her delegate is the public spokesperson for Board policies or procedures.

Tribunal members or staff do not speak publicly for the Board on any matter.

Board members or staff **do not, unless expressly requested by the chair, make public comment**, orally or in writing, on any aspect of a matter before the Board, either before or after a decision. Board members do not discuss in private, outside the Board, any matter before the Board.

Board members do **not publicly criticize or comment on** the decisions, policies, procedures or structures of the Board or on the conduct of colleagues at a hearing. Questions relating to any policy, procedure or standard are raised with colleagues and the Chair at the appropriate forum. Board members advise the Board Chair when they become aware of the professional or personal conduct of a colleague which may threaten the **integrity** of the Board or its processes.

Board members should alert the Chair to any issue or situation that may attract media attention or possibly arise in the Legislature.



BRITISH COLUMBIA REVIEW BOARD

UNDERTAKING

I, _____ have been appointed as a member of the British
Columbia Review Board (the “Tribunal”), pursuant to OIC # _____.

I have been provided with, read and understand the Member Code of Conduct established by the Tribunal.

I undertake to comply fully and to the best of my ability with the provisions of the Code of Conduct, and any subsequent amendments, understanding that I am required to maintain independence in decision making.

I understand that my failure to comply in a substantial way with the Code, and any subsequent amendments may result in a recommendation for revocation of my appointment or a recommendation against my re-appointment.

Dated at: _____, this _____ day of _____, 20_____

PART 8:

BCRB MEMBER PERFORMANCE ASSESSMENT

RE: (panel member name)

As a regular participant in BCRB hearings, you are being asked to provide your assessment or opinion of the above board member's conduct and performance at board hearings, in relation to the specific areas covered by the following questions.

Member performance is evaluated against the BCRB's Member Code of Conduct. The Code articulates the standards with which all board members agree to comply.

Please circle the number between 1 and 3 which most closely matches your experience of this member's performance. The number 1 signifies that the individual's performance in a particular area falls below Code of Conduct expectations or criteria; 2 indicates the member meets Code expectations; 3 indicates the member exceeds expectations.

The Member:

- 1. Does not appear biased or preferential in his/her treatment of any participant at a hearing and actually treats all hearing participants in an unbiased, non-preferential manner.**

1 2 3

- 2. Is present and ready to proceed at or before the time scheduled for the commencement of the hearing.**

1 2 3

- 3. Prior to, and throughout the course of a hearing, maintains appropriate professional distance from participants; avoids casual conversation or over-familiarity with any participant whether or not all participants are present.**

1 2 3

- 4. Appears familiar with historic evidence and is prepared to meaningfully participate in/conduct the hearing.**

1 2 3

5. Demonstrates patience and an open mind during a hearing.

1 2 3

6. Asks questions which are relevant to subject matter of the inquiry and the Tribunal's mandate.

1 2 3

7. Asks questions in a manner which communicates an open mind rather than to affirm a point of view.

1 2 3

8. Demonstrates courtesy and respect for participants in the circumstances, despite the need to ask potentially difficult or sensitive questions.

1 2 3

9. Demonstrates an appropriate balance of formality and informality in the circumstances.

1 2 3

10. Provides all parties with the opportunity to fully present their case.

1 2 3

11. Demonstrates attention to the evidence and submissions throughout the hearing.

1 2 3

As an Alternate Chair:

- 12. As panel chair, maintains appropriate control, orderly conduct, fairness and dignity of the proceeding.**

1 2 3

- 13. As panel chair, generally manages hearing process efficiently and is reasonably able to adhere to allotted/scheduled time periods.**

1 2 3

- 14. Produces reasons for disposition which are logical, clear, understandable and consistent with the relevant evidence and case law, and is responsive to relevant submissions.**

1 2 3

- 15. Is prepared to assist panel members to maintain and adhere to their own conduct, procedure and legal expectations.**

1 2 3

Additional comments which you believe are relevant to this member's participation and performance on the BC Review Board:

PART 9:

BCRB ORGANIZATION CHART AS AT MARCH 31, 2018

