



BRITISH COLUMBIA REVIEW BOARD

RECRUITMENT, SCREENING AND APPOINTMENT PROCEDURES

April 27, 2004

1.0 BRITISH COLUMBIA REVIEW BOARD MANDATE

The British Columbia Review Board (BCRB) is established pursuant to s. 672.38 (Part X.X.1) of the Criminal Code of Canada. It has ongoing jurisdiction to make and review dispositions (orders) with respect to individuals charged with offenses in respect of which verdicts of not criminally responsible on account of mental disorder or unfit to stand trial on account of mental disorder have been rendered.

The fundamental objectives of Part X.X.1 are restated by the Supreme Court of Canada in **Winko v. B.C.** (June 17, 1999) per M. McLachlin, J.:

- *The twin goals of Part X.X.1 of the Criminal Code of Canada are the protection of the public and treating mentally disordered accused persons fairly and appropriately: [Par. 21, 22, 30].*
- *The aim of Part X.X.1 is twofold: to improve protection for society against those few 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 operative considerations or decision-making criteria which govern the Board's dispositions are contained in s. 672.54 of the Criminal Code:

*s. 672.54: "Where a court or Review board makes a disposition pursuant to subsection 672.54(2) or section 672.47, it shall, **taking into consideration the need to protect the public from dangerous persons, the mental condition of the accused, make on of the following dispositions that is the least onerous and least restrictive to the accused:***

- 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;*
- by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or*
- 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. 1991. C43, s.4"*

2.0 THE RECRUITMENT, SELECTION AND APPOINTMENT OF ADJUDICATIVE MEMBERS OF THE BCRB: POLICIES, PROCEDURES, PARAMETERS

The professional qualifications and the policies and procedures intended to govern the recruitment, selection and appointment of adjudicative members of the BCRB are embodied in the following enactments and instruments:

2.1 The Criminal Code of Canada (R.S.C. 1985, c. C-46, Part XX.1)

Establishes the Review Board and prescribes qualifications of Membership:

672.38 (1) A Review Board shall be established or designated for each province to make or review dispositions concerning any accused in respect of whom a verdict of not criminally responsible by reason of mental disorder or unfit to stand trial is rendered, and shall consist of not fewer than five members appointed by the lieutenant governor in council of the province.

(2) A Review Board shall be treated as having been established under the laws of the province.

672.39 A Review Board must have at least one member who is entitled under the laws of a province to practise psychiatry and, where only one member is so entitled, at least one other member must have training and experience in the field of mental health, and be entitled under the laws of a province to practise medicine or psychology. 1991, c. 43, s. 4.

672.4 (1) Subject to subsection (2), the chairperson of a Review Board shall be a judge of the Federal Court or of a superior, district or county court of a province, or a person who is qualified for appointment to, or has retired from, such a judicial office.

2.2 The Administrative Tribunals Appointment and Administration Act, (S.B.C. 2003, Ch. 47)

The A.T.A.A. Act codifies the processes governing Tribunal recruitment, appointments, re-appointments, termination and role of the Chair:

2 (1) The chair of the administrative tribunal may be appointed by the appointing authority, after a merit based process, to hold office for an initial term of 3 to 5 years.

(2) A member may be reappointed by the appointing authority as the chair of the administrative tribunal for additional terms of up to 5 years.

3 (1) A member, other than the chair, may be appointed by the appointing authority, after a merit based process and consultation with the chair, to hold office for an initial term of 2 to 4 years.

A member may be reappointed by the appointing authority as a member of the administrative tribunal for additional terms of up to 5 years.

11 Sections 1 to 5 and 8 to 10 apply to the review board established or designated under section 672.38 of the *Criminal Code*.

2.3 The Memorandum of Understanding Concluded Between the Attorney General and the Chair of the BCRB, (M.O.U., November 13, 2003)

Under the provisions of the M.O.U., the A.G. and the Chair mutually agree to determine the process, procedures and criteria for recruiting, selecting and recommending members for appointments and reappointment to the Tribunal:

The tribunal is responsible:

- As lead agency, initiating, implementing and managing a merit based process for the recruitment and selection of tribunal members in accordance with the Appointment Guidelines (BRDO, 2.4, below),
- Determining, in advance and in consultation with Attorney General, the composition and make-up of selection panels and any additional qualifications desirable for appointment to the tribunal,
- Making recommendations to the Attorney General on the reappointment of members, taking into account the performance of those members measured against established objectives for monitoring their performance,

The Minister/Ministry is responsible:

- As supporting agency for co-operating with the tribunal in initiating, implementing and managing a merit-based process for the selection and appointment of tribunal members in accordance with the Appointment Guidelines for Administrative Tribunals issued by the Board Resourcing and Development Office;
- assisting the tribunal chair in advance in determining the composition and make-up of selection panels and any additional qualifications desirable for appointment to the tribunal;
- consulting with the chair prior to making any recommendations to Cabinet for the appointment or reappointment of tribunal members.

2.4 The Appointment Guidelines for Administrative Tribunals, (BRDO/AJO, October 26, 2003)

The Appointment Guidelines further the A.T.A.A. Act and The M.O.U. by describing in greater detail the policies, procedures and documentary requirements for implementing a merit based recruitment and appointment process for B.C. Tribunals;

Key Aspects include:

- position descriptions for Tribunal appointees.
- a transparent/accessible merit-based appointment process;
- a multi-party selection committee;
- objective evaluation/screening criteria based upon position description;
- pre-appointment consultation with tribunal chair;
- documentary requirements;
- due diligence;
- **Full details of the appointment guidelines may be found at the BRDO Website:
<http://www.fin.gov.bc.ca/brdo/>**

3.0 BCRB Principles Relating to Appointments

3.1 Principles

- The recruitment, appointment and conduct of Board members should inspire public confidence in the integrity of the process, and in the competence, ethics, and impartiality of appointees.
- The recruitment process and the criteria for appointment should be rational, transparent, consistent, public, fair and competency based; and should promote and safeguard the credibility, effectiveness and independence of the Board;
- The composition of the Board should reflect the province's cultural, gender, ethnic and regional diversity, including adequate representation from equity communities; as well as reflecting the Board's functions, objectives and stakeholder populations.
- **See also BRDO Appointment Guidelines, Part 4. Governing Principles, at <http://www.fin.gov.bc.ca/brdo/>.**

3.2 Expectations of Board Membership

- That appointees possess the qualifications, knowledge, skills, and capacities outlined below and prescribed by the Criminal Code of Canada.
- That appointees are committed to the needs and objectives of the Board.
- That appointees undertake to comply with the Board's policies, guidelines, code of conduct and performance expectations. (Appendix 'A')
- That appointees are prepared to commit time to training and development opportunities made available to them.
- That appointees agree to execute an oath of membership. (Appendix 'A')
- That the appointee and the Board have a clear prior understanding of the individual's time commitment and travel expectations.

4.0 The Recruitment/Screening Process

4.1 Qualifications

Section 672 of the Criminal Code establishes the Review Board and provides the following minimum qualifications for Board (panel) members:

- Psychiatrists;
- Training, experience in and entitled to practice medicine or psychology;
- A Federally appointed Judge or person qualified for appointment thereto;

In addition to the legislated qualifications above the Board may also include 'lay members' which have over time consisted of individuals who are knowledgeable about mental health issues, from such fields as social work, psychiatric nursing, family medicine, criminology or other relevant disciplines.

In addition to these specific qualifications, applicants should possess the following combination of knowledge, skills, experience, and attitudes:

Knowledge

- The Criminal Code and the mandate of the Review Board;
- Administrative law, procedure and practice;
- Mental health law and the Mental Health Act;
- The Forensic Psychiatry Act;
- Rules of Evidence;
- Understanding of issues and approaches to Forensic Risk Assessment.
- The Provincial Mental Health and Forensic Psychiatric Services Systems;

Experience/Skills

- Critical analysis;
- Conducting/participating in hearings;
- Ability to interpret evidence and legislation;
- Decision-making, research, writing skills;
- Experience in collateral matters touching upon the Board's mandate;

Desirable Values/Attitudes

- Respect for culture and diversity;
- Impartiality/objectivity/open-mindedness;
- Empathy, ethics, judgment and integrity;
- Availability; ability to travel;
- Commitment to public service;
- Decisiveness;
- Commitment to relevant professional development;
- Compliance with Board's Conduct expectations;

* See formal position description for adjudicative members Appendix 'B'

4.2 A Transparent/Accessible Application Process

The appointment process is initiated with the filing of a request for appointment document (Tribunal) which advises the Ministry and BRDO of upcoming appointment needs. It is submitted six months prior to the date appointments are required. It highlights among other matters pending vacancies and recruitment strategies.

The Board will prepare public notices inviting applications for Board membership; these will include the following information:

- The mandate of the BCRB;
- Required qualifications of members, including 'lay' members;
- The role/expectations of part-time adjudicators;
- Required knowledge, skills, experience;
- Terms and conditions of appointment and reappointment, including performance/conduct expectations; orientation and training requirements;
- Remuneration and benefits;
- Description of key aspects of the selection process;

Public notice regarding the process of applying for membership will be posted on an ongoing basis on the websites of the BCRB, BRDO, and BCCAT.

Periodic/specific invitations for applications will include the above media, selected public news periodicals, and relevant professional publications and journals.

As lead agency the Board's Chair will be the initial recipient of and repository for applications (see M.O.U.).

4.3 Screening/Evaluation of Applications

The lead agency will conduct an initial screening of all applications received against qualifications and competency criteria at 4.0 above, sorted by professional affiliation.

Applicants who do not satisfy key competency requirements will be so informed by the Chair.

Applicants who satisfy key requirements will be informed. These applications will be maintained in a "qualified list" pending need for new Board members;

A 'selection committee' consisting of the BCRB Chair, a senior representative from AJO or the M.A.G. and another Tribunal Chair, will be established subject to consultation/confirmation with the Attorney General. (see BRDO Guidelines 8.3.2).

The Chair will develop competency based interview protocols and ratings guides for use by, and with the input of the selection committee;

Depending on the needs of the tribunal, qualified applicants from the relevant professional group(s) will be invited to participate in suitability/evaluation phase interviews.

Suitability evaluation/assessment is conducted by the selection committee and may consist of:

- Structured personal interview to assess essential knowledge/skills and personal attributes;
- Submission and evaluation of applicant's written work or performance of a written test or case study;
- Due diligence (BRDO) and professional and personal reference checks;
- Certificates of good standing from relevant professional regulatory body (where relevant);

Applicants are evaluated/assessed against rating criteria. A final list of acceptable/eligible candidates is developed and submitted along with tribunal candidate profile and declaration to BRDO as and when new appointments are considered/required.

Eligible candidates must also undertake to comply with such terms and conditions as conduct expectations and participation in training and orientation opportunities.

Applicants are informed of the appointment process and in particular made aware that, despite their successful participation in the evaluations/assessments process, they are not assured of an appointment.

4.4 Appointment Process

For new appointees, recommendations and Tribunal profile documents are filed with Ministry (AG) and BRDO 6 months prior to target date for appointment.

Reappointment of existing members is based on satisfactory performance assessment by and recommendation of the Tribunal Chair. Performance is evaluated against the Board's conduct expectations and criteria agreed to by members. (See BRDO guidelines Part 10 Reappointments).

5.0 Orientation and Preparation of Appointees

As part of orientation, new members are expected to:

- Execute Code of Conduct and Oath;
- Review training materials (provided by Board);
- Attend/observe at hearings;
- Sit as non-voting 4th panel member for a number of hearings, as determined by the Chair;
- Attend recommended administrative justice courses as and when offered.