



# Ontario Review Board Business Plan 2021-2024

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## Introduction

The Ontario Review Board (the “Board”) is an adjudicative tribunal established under Part XX.I of the *Criminal Code of Canada*. Every province and territory in Canada is required to have a Review Board in order to supervise and determine the issues of liberty for those persons found by the courts to be either unfit to stand trial (‘unfit’) or not criminally responsible (‘NCR’) on account of mental disorder, to maintain jurisdiction over these accused persons and to provide dispositions which maximize the liberty of the individual while safeguarding the public.

## History

**1892** – In adopting the 19<sup>th</sup> century draft British *Criminal Code* as its first *Criminal Code*, Canada adopted a system for dealing with this population of mentally disordered accused. Within the statutory provisions of that system, the Lieutenant Governor of each province had custody of the mentally disordered accused. The decisions made by the Lieutenant Governor did not require formal input from anybody but in most cases an advisory board reviewed and made recommendations to the Lieutenant Governor.

In Ontario, that board was called the Lieutenant Governor’s Board of Review, and it was restricted by law to reporting only its findings, opinions and conclusions to the Lieutenant Governor. Persons who were subject to a Lieutenant Governor’s Warrant were kept in strict custody until the Lieutenant Governor’s pleasure was known through Warrants issued in his or her name.

**1991** - The Supreme Court of Canada struck down the system that the *Criminal Code* set out for dealing with persons found unfit to stand trial or not guilty by reason of insanity, ruling that parts of the system violated the rights of the accused as defined by the *Canadian Charter of Rights and Freedoms*. The Court directed the federal government to develop a new system for the supervision of mentally disordered accused. On February 4, 1992, Bill C-30 was enacted creating Review Boards in every province and territory.

**1992** - The Bill C-30 amendments modernized the language of the *Criminal Code*. Prior to this time, some of the language had been in use for over 100 years. For example, the verdict “not guilty by reason of insanity” was changed to “not criminally responsible” (NCR). Bill C-30 converted the “advisory” boards into adjudicative Review Boards with an expansion of their responsibilities to include the actual making of the “order,” which was now referred to as a “Disposition.” Bill C-30 eliminated automatic “strict custody” following a verdict of NCR in court. Instead, the court is now able to hold a Disposition hearing immediately following the verdict and to make its own Disposition for the accused, although this task is most often left to the Review Boards. The main part of Bill C-30 is found in Part XX.I of the *Criminal Code*. Further, for the first time the test of ‘unfit to stand trial’ was included in the *Criminal Code*.

Bill C-30 also eliminated the role of the Lieutenant Governor in the review process, putting an end to what had been referred to as the Lieutenant Governor’s Warrant system.

**2014** – On July 10<sup>th</sup>, 2014, Bill C-14 came into force. With this legislation many un-controversial amendments were made. At the same time many changes were made in the face of evidence that those changes would be counter-productive. Of those, the main change surrounds the designation of High Risk Accused. This designation removes the ORB's involvement in the making of an accused's Disposition and places the accused into a maximum secure facility whether or not such a placement is clinically indicated. As a result, this costly amendment may worsen the prognoses of those accused that are so designated.

## **Mandate**

The Board's mandate is to review the cases of individuals who have been found unfit to stand trial or not criminally responsible for the commission of a crime due to a mental disorder.

As mentioned, the *Criminal Code* mandates that each province and territory establish or designate a Review Board that will oversee people whom a court has found unfit to stand trial or not criminally responsible due to mental disorder:

*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... a Review Board shall be treated as having been established under the laws of the province. (s.672.38)*

The Ontario Review Board is an independent adjudicative tribunal governed by the *Criminal Code of Canada* and portions of the *Public Inquiries Act*. Unlike adjudicative agencies that are created by provincial statute, the Ontario Review Board is not subject to the provisions of the *Statutory Powers and Procedures Act*. Appeals from decisions of the Ontario Review Board are made directly to the Court of Appeal for Ontario.

The Board is required by law to make annual dispositions for each accused person under its jurisdiction, and in doing so it must take into account 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. In meeting this mandate, the Board must accord proper consideration to the interests of all those involved in its process. In practical terms, the Board is responsible for conducting over 2000 hearings annually for nearly 1700 persons under its jurisdiction and to process dispositions and reasons for those dispositions to meet its statutory obligations.

Through quasi-judicial hearings, the Board makes or reviews Dispositions, which delineate the restrictions on the liberty of the accused. Parties to a hearing include: the accused; the person in charge of the hospital in which the accused is detained or to which the accused reports, and may include the Attorney General of the province where the disposition is to be made or from which the accused is transferred; and any other person

who has a substantial interest in protecting the interests of the accused.

## **Overview of Board's Current and Forthcoming Programs/Activities**

### ***Core Functions:***

The Board's core function is to hold hearings and to make dispositions and render decisions in accordance with Part XX.I of the *Criminal Code*.

When a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is rendered, the Review Board must hold a hearing and make a Disposition not later than 45 days after the verdict was rendered. In the event that the court makes an initial disposition, the Review Board has 90 days to review that disposition and make its own.

At the conclusion of a hearing, the Ontario Review Board renders one of three Dispositions:

- 1) An absolute discharge (for NCR's only), if the accused person is not a significant threat to the safety of the public;
- 2) A discharge subject to conditions; or
- 3) Detention in a hospital, subject to conditions.

After making a Disposition, the Review Board must hold another hearing within 12 months, and every 12 months thereafter for as long as the Disposition remains in force, to review any Disposition that it has made in respect of an accused, other than an absolute discharge.

The Review Board issues its Reasons for Disposition as soon as it is practicable after issuing its Disposition.

### ***Accused:***

At present, the Board maintains jurisdiction of nearly 1700 persons. Hearings must be held in accordance with the provisions of the *Criminal Code of Canada*.

### ***Pre-Hearing Conferences:***

The Board convenes pre-hearing conferences to manage complex or potentially lengthy cases, for any case identified by the Board or any party as requiring more than 1.5 hours of hearing time. This process has allowed the Board to best rationalize the time allotted for annual review hearings. This process also plays a key role in ensuring that the Board acts in a proactive manner to identify and narrow issues and to allot appropriate resources to cases that have greater complexity.

The ongoing influx of new accused continues to have a significant financial impact on the Ontario Review Board. The initial hearings for these new accused are more expensive to convene as they must be scheduled on an *ad hoc* basis and typically require more travel and accommodation. The hearings are held where the accused is being detained or resides. These matters are usually heard singly rather than organized with a group of other cases as are the annual hearings because they need to be conducted within 45 days of the court verdict. There had often been adjournments when insufficient information was available as to the mental condition of the accused or what, if any, threat the accused posed to the safety of the public.

To address this problem, pre-hearing conferences are initiated for all initial hearings where the accused is either detained in jail or living in the community, in order to narrow issues, determine if an assessment is required, and witnesses need to be called. Where an accused is not connected to a hospital at the time of an initial hearing the ORB ensures that there is sufficient information to conduct a hearing. We have reached an arrangement whereby ORB ordered assessments made at this juncture will be funded by the Health Boards Secretariat.

***Potential Efficiency Measures Being Developed:***

- 1) We continue to develop the members' login section of the ORB website where members can access resources.
- 2) We continue to train alternate chairs and legal members on the use of the electronic exhibit stamp as an additional step to transitioning the Board's hearing process electronically. The electronic stamp allows alternate chairs to mark exhibits digitally on their respective devices and return the exhibits electronically through the Board's secure portal, *DeliverySlip*. The Board no longer produces hard copies of any of the hearing materials. This will eliminate the production of the exhibit package as well as the storage and physical archiving of the exhibits.
- 3) The successful implementation of *DeliverySlip*, a secure portal using technology compliant with Government privacy policies for members and parties to electronically access documents. The next phase of this platform is to direct all parties on how to electronically transfer hearing documents through the site allowing for faster and more secure distribution of hearing materials.
- 4) Supporting electronic records management and archiving by synchronizing a process for filing hearing documents received via the Board's new secure site in combination with future case management enhancements and electronic scanning systems.
- 5) The Board has struck a committee and organized educational sessions with the provincial forensic facilities in order to deal with the escalating problem of

excessively lengthy hospital reports. The Board's efforts in this regard have, to date, been received well by the hospitals who have so far been approached.

### ***Practice Directions:***

In response to confusion as to legal obligations resulting from restrictions placed upon an accused's liberty by a hospital, the Board has issued Practice Directions which have been posted on the Board's website and published in the Ontario Reports. It is anticipated that this notice to the profession (legal) and stakeholders will reduce confusion and increase efficiency in dealing with restrictions of an accused's liberty.

## **Organizational Structure**

### ***Board Members:***

The Lieutenant Governor in Council appoints each member of the Review Board by an Order-in-Council. The *Criminal Code* requires the Board to have no fewer than five members. It specifically states that at least one member must be qualified to practice psychiatry. In the event that there is only one such member, there must be one other member who has "training and experience in the field of mental health and is entitled to practice medicine or psychology." Members of the Ontario Review Board must be residents of Ontario.

The Chairperson must be a judge of the Federal Court or of a provincial superior, district or county court, or a person who has retired from or is entitled to be appointed to such a judicial office. "Chairperson" by definition includes not only the Chairperson as appointed by the provincial Cabinet, but also any other qualified member who the Chairperson designates as an "Alternate Chairperson" to act on the Chairperson's behalf. A quorum of the Board consists of the Chairperson, a psychiatrist and "any other member."

As of December 31, 2020, the Ontario Review Board had 153 members. In addition to a full time Chair, the Ontario Review Board's part time members include 31 alternate chairs, 23 legal members, 62 psychiatrists, 24 psychologists, and 12 public members. All are residents of Ontario. The members of the Ontario Review Board are appointed by Order-in-Council.

The Board's ability to perform its mandate requires timely appointments and reappointments of members. We must schedule and hold over 2000 hearings annually.

Members of the Board are located around the province and hearings can be provided in English or in French.

# Staff Numbers

The Board’s operations are supported by a staffing complement of 18 members consisting of the positions listed below.

1. Chair
2. Registrar and Senior Manager
3. Executive Assistant
4. Deputy Registrar
5. Board Order Administrator
6. Board Order Administrator
7. Board Order Administrator
8. Case Coordinator
9. Case Coordinator
10. Case Coordinator
11. Case Coordinator
12. Distribution Coordinator
13. Distribution and Records Clerk
14. Coordinator, Business Operations
15. Administrative and Financial Assistant
16. Bilingual Receptionist/Secretary
17. Secretary to Chair/Counsel
18. Systems Officer

# Strategic Direction

The work of the Review Board continues to evolve quantitatively and qualitatively. There has been a well-documented increase in the number of accused persons coming under the jurisdiction of the Review Board. In addition, with the 2010 Supreme Court of Canada decision in *Regina v. Conway*, every Review Board’s jurisdiction to rule on *Charter* applications and to provide remedies that fall within their statutory jurisdiction has been confirmed. These factors require the Board to upgrade and provide continuing legal supports for Members to ensure that both the Board’s processes, and the application of substantive law to its decision making, are on solid legal ground. Ensuring this serves the administration of justice, the public and the parties who appear before the Board.

Accordingly, the Ontario Review Board must be able to adapt and react to changing circumstances to provide the best system possible for carrying out its mandate, and to accommodate and strengthen relationships with its stakeholders. Regular education sessions are essential in order to inform new members and keep current members up to date. In 2021-2024 the Ontario Review Board continues to focus on the following key areas:



## Initiatives Involving Third Parties

### ***The Ontario Review Board:***

- Was instrumental in the establishment of the Mental Disorder Court ('102 Court') in the City of Toronto which was initiated to identify and expedite the assessment of mentally disordered persons who have come into conflict with the law in order that their cases may proceed expeditiously. This court also assists in connecting those accused individuals with mental health workers, and provides follow-up treatment in the community. This model has been instrumental in providing a model for, and assisting, the now seven mental health courts in the province who continue the work to improve the system and increase the quality of outcome for the participants. The Court regularly receives visitors from around the globe who are interested in establishing similar courts in their home jurisdictions.
- As one of the busiest Review Boards in Canada, the Ontario Review Board often finds itself in a leadership role. The Board has also continued to support a collaborative relationship with other provincial Review Boards through increased communication and an annual meeting with the other provincial Review Boards.
- The Board fields and responds to inquiries from judicial, legal, medical and academic communities across Canada about its mandate and jurisdiction.
- The Board is accessible to courts and the judiciary for consultation on issues that may arise when an accused person is found NCR or unfit, endeavours to enhance the timeliness and quality of service provided to the criminal justice system and the community at large and fosters support for the accused persons who come within our jurisdiction.
- The Board works with the federal government and other provincial Review Boards to support research and recommend policy development by way of amendments to the *Criminal Code*.
- The Board will continue its efforts to rationalize and promote efficient hearings, especially in respect of Initial and Restriction of Liberty hearings. This may involve consultation with stakeholders and initiating pilot projects to test scheduling and hearing procedures. Pre-hearing conferences continue to be convened for all initial hearings where the accused is either detained in jail or living in the community, in order to narrow issues, determine if an assessment is required, and witnesses need to be called. Where an accused is not connected to a hospital at the time of an initial hearing the ORB will have to ensure that there is sufficient information to conduct a hearing.

## Information Management and Information Technology

### ***The Board will:***

- Continue to provide Dispositions and Reasons for Dispositions to QuickLaw, and WestLaw, allowing the legal community access to Ontario Review Board decisions and promoting the transparency of the process;
- Continue to update and expand its web site to inform the public and the media about the Ontario Review Board.
- Continue to keep the Ontario Review Board's website fully compliant with the Accessibility for Ontarians with Disabilities Act (AODA) and the French Language Services Act (FLS).
- Continue to develop capacity for electronic communication with Board members and parties in an effort to increase efficiency.
- Continue to engage in green initiatives by promoting electronic distribution of documents, and maximize records management efficiencies by scanning and electronically filing hearing and exhibit materials.
- Continue to build a Member Resources section on its web site which will include up to date legal support, member-accessible versions of Part XX.I of the *Criminal Code*, provide links to caselaw and Board dispositions, and include an e-binder of significant decisions with a detailed Table of Contents and Member-supported tools, including informational Bulletins of legal and clinical interest.
- The Board is currently working to improve the use of technology and modernize service delivery with respect to the following:
  - Collaborating with I & IT staff to continue to enhance the process around Delivery Slip, the cloud managed solution which allows for secure messages not to travel via the internet and enables efficient exchange of information and collaboration between the Board, its members and parties
  - A new Case Management system for more efficient scheduling processes and to enhance prehearing conference tracking

## Education and Continuous Learning

The Board has a firm commitment to providing a high quality of service and expertise for the community and the accused persons who come before the Board. Board member education and training is a key component of this commitment and will be carried out in a number of ways throughout 2021-2024:

- New Board Member Training: New members will continue to receive reading materials and resources directed specifically to their needs including slides, case law, and textbook material. In addition, new members are provided with training and on-site opportunities to observe hearings prior to being scheduled to sit on hearings. While less than ideal, at this time, due to logistics surrounding COVID-19, training sessions for new members are being held in small groups by video conference.
- Annual Education: The Board will continue to provide education every year for all members. In consultation with the Board's Chair and legal counsel, the Board will provide professional members and public members with the most up-to-date clinical information relevant to their day-to-day work as decision-makers. Pursuant to approval from the Ministry, an Annual Conference and/or other educational /training sessions may be conducted in accordance with all relevant government policies and directives, including the OPS Travel, Meal and Hospitality Expenses Directive. Trainings and demonstrations are given to members
- Periodic Communiqués: The Board will communicate updates and changes in the law and forensic psychiatry/psychology to its members throughout the year. The Board will ensure that its members (lawyers, judges, laypersons, and mental health professionals) are kept up-to-date with the scientific, clinical and legal developments relevant to the adjudicative, forensic and decision-making processes that members must engage in.
- The Board will provide the resources, training and team building to both staff members and Board members, which are appropriate for the roles and responsibilities of each group.

It is essential that Board members be kept up to date with new case law, changes in legislation, and evolving technology both at the Board and within the health care system. This is accomplished through interactive sessions with our members.

## **Relationship with the Ministry of Health**

The *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (ATAGAA) strives to ensure that the Board functions accountably, transparently and efficiently, while remaining independent in its decision-making. The *Act* was fully proclaimed in June 2011.

As required by ATAGAA, the Board has filed and made publicly available eight governance and public accountability documents. The Board has participated in two administrative reviews of the tribunal which is required by the Act once every six years. The Board, and the Ministry, have agreed to move forward collaboratively with implementation planning on some of the ATAGAA Review recommendations such as improving technology.

The following eight documents have been completed by the ORB and made publicly accessible through the ORB's website:

- 1) Memorandum of Understanding
- 2) Mandate and Mission Statement
- 3) Consultation Policy
- 4) Service Standard Policy
- 5) Ethics Plan
- 6) Member Accountability Framework
- 7) Business Plan
- 8) Annual Report

The Board has implemented a recommendation from the first ATAGAA review and continues to develop/expand further the plan to modernize operations by improving the use of technology to modernize service delivery and continue to meet its goals.

## **Environmental Scan: Assessment of Issues Facing the Board**

### ***An Increasing Caseload:***

At present, the Board has nearly 1700 persons subject to its jurisdiction. Each of these individuals has come under the Board's jurisdiction following a verdict in court of either unfit to stand trial, not criminally responsible due to mental disorder or not guilty by reason of insanity, due to mental disorder. The latter verdict refers to those persons who entered the system prior to 1992 when Bill C-30 changed "not guilty by reason of insanity" to "not criminally responsible."

### ***An Increase in Hearings:***

The Board is not only required to hold an initial hearing for each new accused person within a prescribed time period, but must hold an annual hearing for every accused person already in the system. Therefore, as the number of accused persons entering the system increases, the number of initial hearings increases. When more individuals are entering the system than are exiting it, the subsequent increase in annual hearings exerts ongoing pressure. (See Performance Measures and Targets section for specific timelines.)

### ***Virtual Hearings:***

Due to COVID-19, ORB members and parties currently attend hearings by video conference. The ORB must comply with legislated timelines as mandated by the CCC and, as a necessity, is using video conference technology to convene hearings and to continue to meet the Board's mandate.

A number of changes and additional administrative functions puts a strain on staffing resources. For each Hearing Notice issued, the Board must also send individual 'invites' to parties and panel members which allows them to access the virtual hearing room. The administrative staff activate a number of security features for each hearing to protect against unauthorized access to hearing and chat rooms.

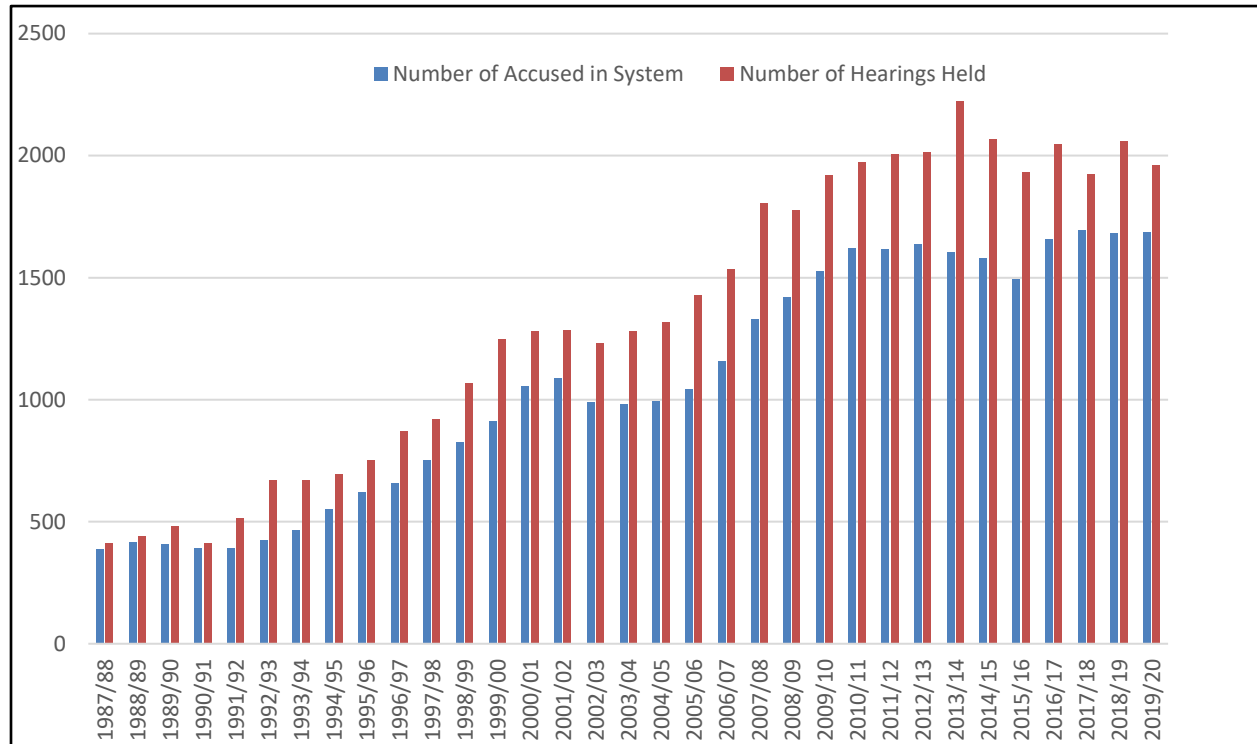
Members often have the additional expense of technical devices to review and mark-up exhibit materials while participating on hearings.

### ***Legal Challenges:***

The Board has been confronted with legal challenges regarding our jurisdiction to proceed in this manner. One such challenge resulted in a ruling that the Board was not able to proceed electronically without the accused's consent. If this adverse ruling from the court stands the Board is not able to carry out its mandate.

The Board has retained counsel to argue this adverse ruling at the Court of Appeal. The Ministry has approved this course of action as it is essential in order to preserve the Board's mandate which has as its paramount consideration the protection of the public.

**Number of Accused vs. Number of Hearings:**



The number of accused persons who are subject to the jurisdiction of the Board has increased by approximately 84% since 1999 (*Winko* decision). For example, in 1999/2000, the number of accused persons under the Board’s jurisdiction was 913. Over the past ten years, there has been an average of 250 new accused per year. This resulted in an increased number of hearings. In comparison to 2002/2003 when the Board held 1233 hearings, in 2019/2020, the Board conducted 1960 hearings.

It seems to be the case that as lawyers, representing the Attorney General and the accused person, become more familiar with Part XX.I of the *Criminal Code*, there is a consequential increase in the number of unfit and NCR verdicts. At the same time, hearing complexity, public scrutiny, and media attention and government concern/comment over high profile cases is also increasing. Most hospitals have now elected to be represented at their hearings by counsel. Additionally, recent appellate decisions have re-emphasized the need to schedule and conduct certain hearings without delay, increasing administrative and fiscal pressures. The Board has no control over these trends.

## ***Changes to the Criminal Code:***

In 2006, Part XX.I was amended in a number of ways. Some of these amendments have altered the jurisdiction of the Board and assisted it in its mandate to seek out and obtain information. Others have increased the obligations of the Board and resulted in increased costs. The following amendments are worthy of note:

- Victim Impact Evidence and the Participation of Victims:

The Board is satisfying the requirement that it notify victims of upcoming proceedings and of their statutory right to provide a victim impact statement in writing or to attend and read their victim impact statement to the Board in person. Since the 2006 amendments to the *Criminal Code*, and continuing to date, increased administrative time is required to meet the Board's obligations to victims, and to provide them with information about the Board. The Board's database of notified victims surpasses the number of accused persons under the Board's jurisdiction.

- Board Ordered Assessments:

The ability of the Review Board to order assessments under section 672.121 of the *Criminal Code* enhances the ability of the Board to carry out its inquisitorial function and to carry out its mandate. The Review Board makes assessment orders and receives a report from a psychiatrist in accordance with each of those orders. In 2019/2020, the Board ordered 14 assessments.

- Board Recommended Stays of Proceedings for Permanently Unfit Individuals:

Pursuant to the Supreme Court of Canada's decision in the *Demers* case, the Review Board may now make a recommendation that the court which found the accused unfit hold a hearing and grant a stay of proceedings. That is contingent upon the Board concluding that the person is both permanently unfit and no longer a significant threat to the safety of the public. This legislated change allows the courts to retain the final decision-making power, but includes the Review Boards in making recommendations. This amendment permits mentally disordered persons who are permanently unfit to be discharged from the system who would, under the previous statutory regime, not be eligible for an absolute discharge despite no longer being a threat to the public. In 2019/2020, 2 unfit accused were recommended for stays of proceedings under this section.

- Bill C-14 came into force on July 10, 2014. The Board's new responsibilities have added considerably to the time required to manage our case load. The Board is now required to notify victims whenever an accused is either absolutely or conditionally discharged, every time the Board sends a High Risk Accused ('HRA') to court for review, and every time the Board receives a new accused with a verdict of NCR. The Board must also ensure hearings are

adjourned at any of the junctures to permit the victim time to file statements.

***Divestment of Provincial Psychiatric Hospitals:***

All provincial psychiatric hospitals formerly operated by the Ontario government have now been divested, including the Waypoint Centre for Mental Health Care, the single institution designated as maximum secure. The governance of these hospitals has been transferred to public controlling bodies, such as Boards of Directors. So far this change in governance has not had a profound effect on the processes and overall service delivery of the Ontario Review Board.

**Resources Needed To Meet Goals and Objectives**

***Financial Resources:***

The Board receives its annual funding allocation through a separate Vote and Item. The Board’s allocation remained constant at \$3,975,400 from 2008-09 through 2011-12 and throughout this period the Board exceeded its budget in order to meet its statutory obligation. The deficit was a result of an increasing caseload and related operational costs of the Board. The government ‘right-sized’ to an allocation of \$7,375,400 in the 2012-13 fiscal year. However, based on recent trends, the Ontario Review Board does not anticipate any change in the cost pressures flowing from caseloads.

	<b>2016-2017</b>	<b>2017-2018</b>	<b>2018-2019</b>	<b>2019-2020</b>
Printed Estimates	7,375,400	7,375,400	7,375,400	7,375,400
Expenditure	6,283,587	6,809,996	6,927,846	6,566,068

**Proposed Operating Expenditures**

<b>Standard Accounts</b>	<b>2020-21</b>	<b>2021-2022</b>	<b>2022-2023</b>	<b>2023-2024</b>
Salaries & Wages	1,270,187	1,295,591	1,321,503	1,347,933
Employee Benefits	184,177	187,861	191,618	195,450
Transportation & Communication	329,102	335,684	589,039	600,820
Services	4,494,000	4,583,879	4,601,550	4,693,581
Supplies & Equipment	19,424	19,812	20,416	20,824



<b>Total</b>	6,296,890	6,422,827	6,724,126	6,858,608
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### ***Human Resources:***

#### Board Members:

In order to ensure that the hearings are conducted efficiently and cost-effectively, it is critical that the Board continues to attract qualified, experienced individuals to adjudicate at its hearings as mandated in the *Criminal Code*. The *Code* requires that both a psychiatrist and alternate chair be in attendance at every hearing. These individuals must have had relevant experience in order to preside effectively. The Board continues to be well served by the retired justices and respected senior lawyers who preside as alternate chairs, but it is essential that the Board maintain an adequate number of forensic psychiatrists, including French-speaking psychiatrists, who must be available as members of the Board to attend hearings throughout the province. Given the volume of our caseload we must ensure senior members remain in order to mentor the new appointments. The Chair ensures that the diversity of Ontario is reflected through the Board's membership.

#### Staff:

The Staff are committed to working within the legislated time frames in order to meet the Board's mandate. The Board continues to review its operational processes regularly to ensure balance between caseload and staff resources.

Due to the high number of hearings, issuing Dispositions and Reasons for Dispositions in a timely fashion can also be challenging for the Board's administrative staff.

## **Performance Measures and Targets**

As mentioned, the core function of the Ontario Review Board is to conduct hearings and issue Dispositions in accordance with the *Criminal Code*, and within the legislated timeframes. For initial hearings this represents 45 or 90 days after the court verdict is rendered, as the case may be. Once an initial Disposition has been made, the Review Board must hold a hearing within every 12 months thereafter for as long as the Board retains jurisdiction over the person. Meeting these legislative requirements represents the primary measures of the Board's performance and requires that our membership complement remain optimal.

Board members, all of whom are appointed on a part time basis, are generally flexible in accommodating the fluctuating demands of scheduling hearings as dictated by the legislated deadlines. While hearing schedules are adequately met, the Board's

performance may be affected by the administrative requirements of each hearing. With respect to scheduling hearings, the larger the pool of members the better. Timely appointments and re-appointments are essential.

### ***Performance Management:***

Currently, Dispositions are generally issued from two days to two weeks post-hearing. Reasons for Dispositions follow. It is a priority of the Board to issue a Disposition within ten business days after the hearing.

The Board also continues to pursue initiatives which may assist in reducing hearing costs and facilitating the process, such as:

- Educating Board members on administrative issues;
- Working with the other provincial Review Boards to make recommendations to the federal government concerning proposed changes to the *Criminal Code of Canada*;
- Working with the province's designated psychiatric hospitals on measures to reduce overall hearing costs and to improve efficiency;
- Improving administrative efficiency through technology and streamlining processes;
- Focus on the four key target objectives identified below.

### ***Targets:***

Meeting the legislated timelines in the *Criminal Code of Canada* represents a chief target for the ORB as it is required by statute. The annual deadline is set according to the previous hearing for each accused person.

- The Board will convene hearings and issue dispositions 45 days post NCR/Unfit court verdicts;
- The Board will convene hearings and issue dispositions 90 days post NCR/Unfit verdict if the court makes a disposition;
- The Board will schedule hearings as soon as practicable following notification of Restriction of Liberty and when convening Early Reviews;
- The Board will schedule annual hearings 12 months post disposition date.

The Board will encourage all members to provide reasons for dispositions within four

weeks on routine matters and as soon as practicable for more complex cases. The Board maintains a tracking system to follow up and encourage compliance with these targets.

The Board will continue to pursue methods for increasing the efficiency of its operations and processes, and for delivering a high quality of service.

Key target objectives have been identified:

- Reduction in hearing times through more extensive pre-hearing conferencing
- Reduction in the time from hearing to the production of Reasons (with 4 weeks being the goal)
- Reduction in the number of adjourned hearings, accomplished through:
  - More extensive pre-hearing conferencing, and
  - Scheduling of hearings 9 months in advance (so as to avoid parties' 'conflicts')
- Pre-hearing conferences being conducted for all initial hearings where the accused is not in hospital in order to further reduce the number of adjournments

## Risk Assessment and Management

RISK	MANAGEMENT OF RISK
<p>The Board is an independent quasi-judicial tribunal and adjudicative decisions are made by a panel. Lack of evidence and/or information on significant risk and clinical assessment may affect the liberty and treatment of the accused and the safety of the public.</p>	<p>A panel consists of an alternate chair, a legal member, two psychiatrist members or one psychiatrist member and one psychologist member, and a public member.</p> <p>The panel has expertise in the fields of criminal law, forensic psychiatry, and mental health.</p> <p>The Board has the authority to order Assessments.</p>
<p>The <i>Criminal Code</i> specifically provides that there must be at least one member of the Board qualified to practice psychiatry, and, in the event there is only one such member, one other who has "training and experience in the field of mental health and is entitled to practice medicine or psychology".</p> <p>If there is a shortage of psychiatric or qualified legal members, hearings would be delayed, resulting in the Board not meeting its mandate.</p>	<p>Chair and management team review a number of psychiatric membership appointments regularly to determine which regions of Ontario require an increase in psychiatric membership.</p> <p>The Chair makes appropriate recommendations to the Public Appointments Secretariat to ensure new psychiatrist members are appointed and where applicable, existing members are reappointed prior to OIC expiration date.</p>
<p>Members of the Board are appointed by the Lieutenant Governor in Council for each province. An order-in-council is issued for each member appointed to the Board.</p> <p>Delay in appointments and re-appointments would result in membership not being adequate to convene hearings across the province within legislated timeframes.</p>	<p>Chair reviews membership listing regularly and makes appropriate recommendations to Public Appointments Secretariat to ensure new members are appointed and where applicable, existing members are reappointed prior to OIC expiration date.</p>

RISK	MANAGEMENT OF RISK
<p>Threshold issue in each hearing is determining whether the accused person poses a significant threat to public safety. This can be a complex and difficult determination.</p> <p>Where so, a further decision must be made concerning how the accused person is then supervised. The Board must decide whether the accused is detained and if so what level of security, and what access, the accused person will have to the community.</p>	<p>Chair and legal counsel facilitate training of new members. Observation of hearings and training is confirmed immediately after OIC is received. New members are not assigned to hearings until training program is completed.</p> <p>The Board is of the view that education sessions on relevant topics and the communication of updates in the areas of law and forensic psychiatry is an essential part of our mandate. It is imperative that these initiatives receive government support.</p>
<p>The Board is mandated by the <i>Criminal Code of Canada</i> to schedule hearings within 45 or 90 days of the court verdict or every 12 months or more thereafter, according to the legislated timeline.</p> <p>Increased caseload and case management complexities will impact on the Board's ability to meet prescribed timelines as outlined in the <i>Criminal Code</i>.</p> <p>Failure of the Board to meet its mandate within the timeframes prescribed could result in serious consequences, such as increased appellate oversight, and a potential for loss of confidence in the processes of the Board, unwarranted intrusion into the liberty of those who are entitled to increased liberty or increased risk to the public due to delays.</p>	<p>Daily initial hearing and weekly caseload scheduling reports are automatically generated from the case management system and reviewed by management with staff.</p> <p>Disposition and Reasons for Disposition status reports are used by the staff board order administrators to verify with the Alternate Chairs the number of outstanding dispositions that need to be issued within the 45 and 90 days and reasons that need to be issued within the Board's standard of four weeks. These reports are a tool to manage both workload priorities and address backlog issues due to increased workload or staff absence with the assigned backup staff administrators.</p>
<p>The steady pattern of caseload increase of the Ontario Review Board may place a pressure on its allotted funding.</p>	<p>Keep Ministry informed of expenditures with timely financial reporting to prepare for and manage shortage of funds if necessary.</p>

<p>Board members and parties unable to attend hearings to conduct in-person hearings due to COVID pandemic.</p>	<p>The Board implements an audio-visual platform to convene all hearings. To date, the Board has successfully conducted approximately 1500 hearings employing this technology.</p>
<p>Legal challenges regarding our jurisdiction to proceed with hearings that are not in-person. One such challenge resulted in a ruling that the Board was not able to proceed electronically without the accused's consent. If this adverse ruling from the court stands the Board is not able to carry out its mandate.</p>	<p>Chair reviews / recommends the best course of action to the Ministry in order to preserve the Board's mandate which has as its paramount consideration the protection of the public.</p>

# Communications Plan

## ***Target Audiences:***

- Board Members
- Parties including accused persons, hospitals and clinical staff
- Other Review Boards in Canada
- Ministry of Health
- Federal government
- Federal Ministry of Justice
- Attorney General
- Police agencies
- Judiciary
- Public
- Victims

## Board Members:

- Annual Education Session – Advise and educate members on new issues and ongoing concerns of which they need to be aware
- Member-specific Education sessions throughout the year (these have been cut by government)
- On-going communication regarding major cases in Canada
- Web site: a Members-only Area to supplement on-going education and training and promotes exchange of ideas and information

## Parties:

- Advocacy outreach to all parties via written communications, speaking opportunities, participation in panels and seminars
- Dispositions and Reasons for Dispositions provided to legal reporting services to QuickLaw and WestLaw allowing the legal community access to Ontario Review Board decisions

## Provincial Review Boards:

- Meet annually with other Review Boards in Canada
- On-going communication throughout the year between Chairs, lawyers, administration
- Liaise with federal government via Standing Committee on Justice regarding recommended amendments, research initiatives, etc.

## Ministry of Health:

- Liaise with Corporate Management Branch to ensure timely and effective delivery of service and accountability

- Provide updates on communications activities that may directly impact the ministry

#### Attorney General:

- Advising and listening to representatives of the Attorney General's office with respect to policy, appeals, best practices advocacy and procedural imperatives of part XX.I of the *Code*
- Discussion and communication is frequent and on-going.

#### Public:

- Updating of web site regularly to keep public informed
- Web site information formatted to support access for people with disabilities
- QuickLaw and WestLaw legal reporting services post the Board's dispositions and reasons

#### Police Services:

- Informing regional police services of Disposition information by forwarding the OPP copies of all dispositions for data entry Canada-wide on CPIC
- Communicating with police regarding accused, explanation of community access, sex offender registry

The Board will continue to build relationships with stakeholders and interested parties in the forensic system, other Review Boards in Canada, parties and major partners including members of the judiciary, in working to solve mutual problems and to identify strategies for everyone to help deal with them.