Review Board under the Involuntary Psychiatric Treatment Act

ANNUAL REPORT

APRIL 1, 2022 – MARCH 31, 2023

NOVA SCOTIA

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Review Board
Involuntary Psychiatric Treatment Act (IPTA)
1894 Barrington Street, 3rd Floor
Halifax, Nova Scotia B3J 2R8

August 1, 2023

Honourable Brian Comer
Minister, Office of Addictions and Mental Health
Halifax, Nova Scotia

RE: IPTA Annual Report – 2022–23

Dear Minister Comer,

I am pleased to submit the Annual Report of the Review Board pursuant to the Involuntary Psychiatric Treatment Act for the year April 1, 2022, to March 31, 2023.

Sincerely,

Jasmine M. Ghosn
Chair, Review Board under IPTA for 2022–23

CC:

Thomas Hill, Coordinator, Office of Addictions and Mental Health
Natalie Cochrane, Project Executive, Office of Addictions and Mental Health
Francine Vezina, Executive Director, Office of Addictions and Mental Health
Review Board Members

Introduction

This annual report is made by the Review Board established pursuant to Section 65 of the Involuntary Psychiatric Treatment Act (IPTA), (S.N.S. 2005, c. 42). Section 80 of the act requires that the Review Board report to the Minister of Health on its activities during the preceding fiscal year. Section 7 of the regulations requires that the board's annual report contain statistics of the board's activities and recommendations to the minister.

On March 31, 2022, Bill 120, An Act to Amend Chapter 42 of the Acts of 2005, the Involuntary Psychiatric Treatment Act, was introduced into the Nova Scotia Legislature by the Honourable Brian Comer, Minister Responsible for the Office of Addictions and Mental Health (OAMH). Bill 120 received royal assent on April 22, 2022.

Bill 120, once proclaimed in force, will impact the work of the Review Board and others who work within the IPTA's framework. In anticipation of this, OAMH has continued to collaborate with the Review Board chair and key stakeholders to help make the necessary transitions.

Efforts have included ongoing consultations with members of the IPTA Provincial Advisory Committee with representation from a patient with lived experiences, the Office of the Public Trustee, Nova Scotia Legal Aid, Patient Rights Advisory Services (PRAS), OAMH, Nova Scotia Health, and IWK Health.

This annual report is presented in four parts:

Part I	highlights important changes Bill 120 will make when it comes into force. The highlights are taken from the Review Board's previous annual report and are reproduced here for convenience.
Part II	looks at the types of reviews the Review Board is required to perform.
Part III	presents the statistics and trends of the Review Board's operational activities during the fiscal year from April 1, 2022, to March 31, 2023.
Part IV	outlines issues of concern and recommendations to the minister.

PART I

Highlights of Changes Under Bill 120

The following is a summary of how Bill 120, once proclaimed in force, will impact the function of the Review Board, and how the Review Board will be required to interpret the IPTA (S.N.S. 2005, c. 42).

New Language on Overriding Principles of Interpretation of the Act

Under Bill 120, Section 2 of the act is amended to require that the IPTA be interpreted, read, and applied in a manner that

(a) is consistent with Canada's accepted obligations under the United Nations Convention on the Rights of Persons with Disabilities

(b) ensures all persons are treated with consideration of cultural safety and competency

(c) ensures that persons with mental illness are entitled to treatment that is equal to that provided to those with other kinds of health issues and those with other kinds of mental illness

New Language on Criteria for Involuntary Status

Under Bill 120, when admitting a patient to the hospital involuntarily, pursuant to Section 17, a psychiatrist will be required to have "reasonable and probable grounds to believe" that an individual meets the criteria for involuntary status, as opposed to being "of the opinion" that the patient meets the criteria.

With regard to a patient's risk of serious physical impairment or serious mental deterioration, there must be "reasonable and probable grounds" that the patient "will" suffer one or both of these risks, as opposed to being "likely to" suffer one or both of these risks.

The new "reasonable and probable grounds" test also applies to community treatment orders (CTOs).

New Language on Definition of "Capacity"

Under the current language, a psychiatrist must consider whether the patient "fully" understands and appreciates the elements of consent.

Under Bill 120, the term "fully" is deleted, and a psychiatrist must consider whether the patient "has the ability, with or without support, to" understand and appreciate the elements of consent.

The elements of consent remain the same, and comprise an understanding of the nature of the condition for which specific treatment is proposed; the nature and purpose of the specific treatment; an appreciation of the risks and benefits involved in undergoing the specific treatment; and an appreciation of the risks and benefits of not undergoing the treatment.

A Written Treatment Plan Required for Involuntary Psychiatric Treatment

Under Bill 120, a new requirement has been added as Section 20A, mandating the psychiatrist, within 30 days of issuing a declaration of involuntary admission, to prepare a "written, individualized treatment plan for the patient" which must be provided "promptly" to the patient and their substitute decision maker (SDM).

Amended Language on Time Limitations – For Clarity

Amendments have been made to various sections of the act which change references from "month" to "days." This should help improve clarity on the calculation of the number of days required for renewals of declarations of involuntary admissions, CTOs, and automatic review board hearings.

Duty on Facility To "Immediately Notify" the Review Board

A new Section 37(2) will require the facility to "immediately notify the Review Board" of a deemed application, in writing. This aims to ensure no delays beyond the 21-day limit to setting down mandatory reviews before the board.

Similarly, a new Section 58(4) mandates that a psychiatrist who issues or renews a CTO shall notify the board in writing immediately upon a deemed application being made to the board.

Expanded Duty To Inform Patients of Their Rights

Section 26 has been amended to expand the duties and obligations of the chief executive officer (CEO), or designate, of the psychiatric facility where a patient has been detained under a declaration of involuntary admission or declaration of renewal. Under the current version of Section 26, the CEO must inform the patient and SDM in writing (and with reasons) that the patient (a) has been admitted or continues to be; (b) has the right to apply to the Review Board for a review of the patient's status; and (c) has the right to retain and instruct counsel without delay.

Under the new Section 26, the CEO must also

(a) inform the patient and SDM "in language that the patient is likely to best understand"

(b) inform the patient of the function of the Review Board

(c) inform the patient on

- how to make an application to the Review Board
- steps the patient may follow to obtain free legal counsel
- the function of the PRAS
- the patient's right to obtain free and timely access to the patient's medical records under the Personal Health Information Act and the IPTA
- the steps the patient may follow to do so

(d) give the patient a copy of the declaration

(e) consult with the patient on whether they wish to consult with PRAS, and notify PRAS

(f) consult with the patient on whether they wish to consult with legal counsel, and assist the patient in contacting legal counsel

Similarly, amendments to Section 47(5) of the act impose the same duty on psychiatrists to inform patients of their rights when issuing CTOs or renewals.

New Express Language for Renewals of CTOs

Section 52(1) of the act deals with the renewal of CTOs. The test is now made expressly clear that the following three conditions for renewal are required, in addition to the usual requirements:

(a) The CTO has demonstrated efficacy.

(b) The criteria listed in 47(3)(a) continue to exist.

(c) The SDM has consented to the renewal.

New Language for "Requests" for Reviews to "Applications"

The new provisions clarify that a "request" under sections 36, 42(1), 68(3), 68(4), and 76(1) are considered an "application" and the person making the request is considered an "applicant" under the act.

Expanded Obligations for SDMs

Section 39 of the act, which governs the basis for decisions by SDMs, is to be repealed, with a new section in place governing the process by which SDMs must be guided when making treatment decisions for involuntary patients. Under the current Section 39, the guiding process is limited to the SDM considering the following sequence:

(a) The patient's prior capable informed expressed wishes

(b) In the absence of (a), or if following (a) would endanger the physical or mental health or safety of the patient or another person, in accordance with what the SDM believes to be in the patient's best interests

The new Section 39 adds more steps in the decision-making process for the SDM. These new steps must be read in conjunction with the new interpretation principles, including cultural safety and competency, and the new definition of "capacity," which includes the notion of "support" for the patient in making treatment decisions.

Hence, the new provisions for SDMs will require consideration of the following:

(a) Following any clear and relevant instructions given by the patient while the patient had capacity (as newly defined), including any instructions contained in the most recent personal directive made by the patient, unless the patient subsequently expressed a contrary wish while the patient had capacity (as newly defined), or the SDM has reasonable and probable grounds to believe that

to do so would endanger the physical or mental health or safety of the patient or another person.

(b) In the absence of instructions in (a), act in accordance with the patient's current wishes, unless the SDM has reasonable and probable grounds to believe that to do so would endanger the physical or mental health or safety of the patient or another person.

(c) In the absence of (a) or (b), act in accordance with what the SDM reasonably believes the wishes of the patient would be, based on what the SDM knows of the values and beliefs of the patient.

(d) In the absence of (a) or (b) and where the SDM is not able to determine (c), the SDM must act in a manner that the SDM reasonably believes would best promote and protect the patient's best interests.

The legal test for determining "best interests" of the patient remains as is, pursuant to Section 40 of the act. Essentially, the SDM shall determine whether

(a) the mental condition of the patient will be or is likely to be improved by the specified psychiatric treatment

(b) the mental condition of the patient will improve or is likely to improve without the specified psychiatric treatment

(c) the anticipated benefit to the patient from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient

(d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b), and (c)

In addition to the decision-making process above, the SDM has added obligations to consult with the patient, advise the patient of options that are reasonable and practically available, encourage and facilitate the patient's participation in the decision-making process, and make reasonable efforts to consult with any person whom the SDM has reason to believe may be familiar with the patient's instructions, wishes, values, and beliefs.

The SDM must also ensure that the patient is informed of significant decision making made on the patient's behalf.

Express Right To Access Personal Health Information

A new Section 39A gives the SDM express authority to access personal health information, only to the extent it is relevant to a decision the SDM is required to make under the IPTA, and is given authority to access, use, or disclose the information for the purpose of making a decision. The IPTA gives the SDM this authority, notwithstanding the Personal Health Information Act.

New Powers of Review Board To Review the Status of an SDM

Under a new provision, Section 68(1)(f), the Review Board is granted new authority to review the status of an SDM pursuant to Section 38(1)(c) through (g). Status relates to

the legislated hierarchy of spouses, immediate family, and other next of kin.

And, pursuant to a new Section 76(2)(c), the Review Board, upon an application, may appoint another person to be the patient's SDM, or may refuse to do so.

Mandatory Disclosure of Relevant Psychiatric Records

A new Section 68(7) mandates that as soon as possible after an application or deemed application is made, and prior to any hearing by the Review Board, the patient, the patient's legal counsel, and any person appointed under subsection 71(2) must be given access to all personal health information about the patient that is relevant to the application, except for personal health information that the facility is entitled to refuse pursuant to Section 72 of the Personal Health Information Act.

Conduct of Review Board Hearings

Section 69 has been amended to add that the conduct of Review Board hearings will also be subject to regulations.

Section 69 also includes amendments to expressly state that the Review Board is deemed to have received an application for review when an application is delivered by the patient to the facility where the patient is admitted.

Section 69A is amended to permit the Review Board to hold hearings by means of synchronous telecommunication, video conferencing, or other electronic medium.

As well, there is a new regulatory power under 83(1)(ga) to prescribe the types of hearings and circumstances in which a full oral hearing may not be required, and under 83(1)(gd) respecting rules and conditions which are not full oral hearings.

Board's Mandatory Obligations Under Section 71(2)

Section 71(2) has been amended and offers greater options to address circumstances when a patient is unable or unwilling to attend a hearing. The new language reads:

> *"Subject to the regulations, where the patient is unable or unwilling to attend a hearing before the Review Board, or where the Review Board determines that the patient is not capable of effectively representing the patient's interests in a hearing before the Review Board, and the patient has not appointed someone to act on the patient's behalf, the Review Board shall appoint a person to attend the hearing and act on behalf of the patient, or represent the patient's interests, and where necessary, to instruct legal counsel for that purpose, subject to such conditions as the Review Board may require."*

In addition, there is new regulatory power under 83(1)(gg) respecting the appointment of a person to attend a hearing and act on behalf of a patient, or represent the patient's interests under subsection 71(2).

Errors in Forms

A new Section 74(3) is added to read:

> *"(3) Provided that no party is prejudiced thereby, the Review Board may disregard trivial, minor, or insubstantial errors in forms or other documents."*

New Powers of the Board To Cause the Issuance of a CTO, with respect to patients who are subject to involuntary admission to a psychiatric facility

An amended Section 76(2)(a) gives the Review Board jurisdiction to change a patient's status from an involuntary inpatient to a patient subject to a CTO. The section reads as follows:

> *"(a) [W]here an application is made to review a declaration of involuntary admission or a declaration of renewal, or to cancel a declaration of involuntary admission or a declaration of renewal, the Review Board may, or may refuse to, (i) cancel the declaration and change the patient's status to that of a voluntary patient; or (ii) where the Review Board is satisfied that the criteria set out in clause 47(3)(a) exist, require the chief executive officer to cause the issuance of a community treatment order in accordance with clauses 47(3)(d), (e), (f), (h) and (i) and subsections 47(5) and (6), within a reasonable time, and a community treatment order issued pursuant to this sub-clause is deemed to be a community treatment order made under Section 47 for all purposes under this Act."*

PART II

Overview of the Review Board's Function

The Review Board is a legislated body comprising members appointed by the governor-in-council. During the 2022–23 fiscal period, the Review Board comprised six lawyer members, four psychiatrist members, and 10 layperson members who have an interest in mental health issues.

The primary role of the Review Board is to hold hearings and to review the status of patients who are subject to involuntary psychiatric treatment in the Province of Nova Scotia, whether under a declaration of involuntary admission to a psychiatric facility or renewal thereof, or under a CTO, or renewal thereof. Some of these hearings are mandatory pursuant to Section 37 of the act (involuntary hospital admissions) and Section 58(3) of the act (CTOs).

After concluding its review, the Review Board may confirm the patient's involuntary status if all of the legislated criteria are met. If any one of the criteria is not met, the board must rescind the declaration in question, thereby changing the patient's status to voluntary. The Review Board has no authority with respect to voluntary patients.

Reviews of Involuntary Admissions to Psychiatric Facilities or Renewals

When reviewing the status of a patient admitted to hospital involuntarily, the Review Board must determine whether the criteria for involuntary admission to hospital, as set out in Section 17 of the act, were met when a declaration of involuntary admission or a declaration of renewal was filed in respect of a patient. The Review Board must also consider whether the criteria continue to be met as of the date of the hearing. In order to admit a patient to a psychiatric facility involuntarily, the act requires that the psychiatrist assess the patient and be of the opinion that the patient

(a) has a mental disorder

(b) is in need of psychiatric treatment provided in a psychiatric facility

(c) as a result of the mental disorder, is (i) threatening or attempting to cause serious harm to themselves or has recently done so, has recently caused serious harm to themselves, is seriously harming or is threatening serious harm towards another person or has recently done so, or (ii) is likely to suffer serious physical impairment or serious mental deterioration, or both

(d) is not suitable for inpatient admission as a voluntary patient

(e) does not have the capacity to make admission and treatment decisions as a result of the mental disorder

Under Section 37 of the act, the Review Board is mandated to review the file of every patient detained under a declaration of involuntary admission

- 60 days from the date of the initial declaration of involuntary admission
- at the end of the 6th-, 12th-, 18th-, and 24th-month stage from the date of the initial declaration

- every 12 months thereafter where a declaration of involuntary admission is still necessary after 24 months

*[**Note:** a "month" is defined in the regulations as 30 days.]*

Reviews of CTOs or Renewals

When reviewing the status of a patient who is subject to a CTO, or renewal thereof, the Review Board must consider the criteria as set out in Section 47 of the act. Criteria for a CTO include the requirement for an assessment by a psychiatrist within 72 hours of issuing the order or renewal thereof, and a psychiatric opinion that the patient

(a) has a mental disorder for which the patient requires treatment or care and supervision in the community

(b) is posing a threat of harm to self or others, or is at risk of serious physical impairment or serious mental deterioration as per (c) above

(c) lacks capacity as per (e) above

(d) has, in the previous two-year period, been detained in a psychiatric facility for a total of 60 days or longer, or has been detained on two or more occasions, or has been previously the subject of a CTO

(e) requires services that exist in the community, are available, and will be provided to the patient

Under Section 58 of the act, a person who is subject to a CTO, or the SDM, may apply to the Review Board to inquire into whether the criteria for issuing or renewing it have been met. An application may be made each time a CTO is issued or renewed. A review is mandatory when a CTO is renewed, and on the occasion of every second renewal thereafter, unless an application has already been made in the preceding month.

Other Reviews by the Review Board

The Review Board must also hear applications under Section 68 of the act in respect of

(a) a declaration of competency for involuntary patients pursuant to subsection 58(1) of the Hospitals Act

(b) whether a capable informed consent by an SDM has been rendered, pursuant to Section 42(1) of the act

(c) a certificate of cancellation of leave

Reviews of Declaration of Competency Under the Hospitals Act

The Review Board is not aware of any reviews conducted within the past several years pursuant to Section 58(1) of the Hospitals Act.

Reviews of Treatment Decisions by the SDM

Section 42(1) of the act states:

> *"Where a substitute decision-maker approves or refuses treatment on behalf of a person pursuant to subsection 38(1), the Review Board may review the provision*

or refusal of consent when requested to do so by the attending psychiatrist or the patient to determine whether the substitute decision-maker has rendered a capable informed consent."

Reviews under this section are rare. In the 2022–23 fiscal period, there was one application made under this provision.

Reviews Respecting Certificates of Leave

Certificates of leave (COLs) are governed by sections 43 to 46 of the act. In regard to patients who are subject to a declaration of involuntary admission or renewal, a psychiatrist may issue a COL for up to six months, allowing the patient to live outside the psychiatric facility, subject to written conditions. Should the psychiatrist issue a cancellation of the COL, the patient may request a hearing, in which case the Review Board may confirm or rescind the certificate of cancellation of leave.

In the 2022–23 fiscal period, there were no applications heard in regard to COLs.

Persons Who May Request Reviews

Matters come before the Review Board by way of a "request" or "application," some of which are made automatically, as mandated by the act, and as discussed above.

Section 68(4) sets out the persons who may request a review:

(a) the patient
(b) an SDM
(c) a guardian appointed by law
(d) a person authorized to give consent under the Medical Consent Act
(e) a person authorized by the patient to act on the patient's behalf
(f) the CEO
(g) the Minister of Health
(h) the Review Board where it believes it is in the patient's interest to have a review

Psychiatrists are not expressly listed as persons who may request a hearing. However, a psychiatrist could initiate a hearing by writing to either the CEO of the psychiatric facility, or to the board, asking to initiate a hearing under subsections (f) or (h).

Time Required To Set Down a Hearing

Section 69 of the act requires that a hearing under the Review Board must be held as soon as reasonably possible after an application is received (or deemed to have been received), but no later than 21 calendar days from the receipt of the application.

The patient, the patient's psychiatrist, and the SDM are parties to all hearings before the Review Board. The CEO of the psychiatric facility is entitled to be a party.

PART III

Statistics and Trends

This part will involve a discussion of statistics kept by the Review Board regarding the volume, nature, and result of hearings held between April 1, 2022, to March 31, 2023. A comparison of past years will be referred to and any trends noted.

Statistics of note will include

- the total number of files for review, broken down by category
- the number of hearings held and the outcomes
- the extent of legal representation
- the length of time for matters to be scheduled

Overview

Between April 1, 2022, and March 31, 2023, the Review Board processed 268 applications for review. This number reflects an increase of 33 files, or a 14.0 per cent increase, over the number of files processed in the previous fiscal period. It is noted that the previous fiscal period had a similar increase of 13.1 per cent as compared with its previous fiscal period.

Of the 268 applications to the Review Board for hearing, 117 applications were automatic reviews pursuant to Section 37 of the act, while 151 reviews were applied for by a patient or other person.

The Review Board made an application in five matters under Section 68(4)(h) on the basis that the Review Board believed it would be in the patient's interest to have a review. This reflects an increase by three matters, as compared with the previous fiscal period.

Two hearing requests were in regard to reviews of an SDM's ability to make an informed consent on behalf of the patient. Only one of those requests proceeded to a hearing.

The Review Board held 110 hearings during 2022–23. The number of hearings held for the review of a patient's status has increased by eight over the previous year, or a 7.8 per cent increase. This represents a lower level of increase as was observed in the previous fiscal period.

Outcomes of Requests

As stated, 268 applications for review were processed from April 1, 2022, to March 31, 2023.

One hundred ninety-seven were in regard to inpatient hospital admissions, as compared with the previous year's number of 176 inpatients.

Seventy-one were in regard to CTOs, as compared with the previous year's number of 59 CTOs.

With respect to the 268 applications processed:

- 19 hearings were adjourned pending assignment of an amicus curiae
- 110 hearings were held
- 16 patients withdrew their request for a hearing
- 15 patients were put on a CTO after a hearing was scheduled, thereby causing cancellation of the hearing
- 121 patients were declared voluntary by the psychiatrist, thereby causing cancellation of a hearing, with 55 of these patients subject to a change in status before the hearing was scheduled, and 66 after the hearing was scheduled

Note: *Annex B to the annual report of 2019–20 provided a summary of statistics over the previous five years, indicating an average of 87.2 hearings per year. Thus, the number of hearings held for the 2020–21 fiscal year (89) is consistent with that average, with a very slight increase of 1.02 per cent.*

The 102 hearings held in 2021–22, as compared with the 89 hearings held in the previous fiscal, represents an increase of 13 hearings, which is a 14.60 per cent increase compared with the previous fiscal period.

The 110 hearings held in 2022–23, as compared with the 102 hearings held in 2021–22, represents an increase of eight hearings, which is a 7.80 per cent increase compared with the previous fiscal period.

Adjournments and Reasons for Adjournments

In 2022–23, there were 72 adjournments in relation to the 268 processed applications, representing 26.86 per cent of matters, representing a slight 3.88 per cent increase from the previous fiscal's percentage of adjournments, which was 22.98 per cent of matters.

One must factor in that 19 of the 72 adjournments were necessary as a consequence of the patient not attending the hearing, and the need for the appointment of an amicus curiae, representing 26.38 per cent of all adjournments. Despite this statistic, the overall percentage of adjournments remains below the 35.29 per cent of matters, as compared with the 2020–21 fiscal period.

Reasons for the 72 adjournments are summarized in the table below.

Reasons for Adjournment	Central Zone	All Other Zones/IWK	Total
Patient unable or unwilling to attend hearing	16	6	22
Additional documentation required to proceed	5	0	5
Legal Aid unable to attend hearing	7	7	14
Legal Aid required more time to review file and prepare	8	7	15
Patient requested adjournment or requested legal aid	2	7	9
Other (e.g. technical or emergency issue)	5	2	7
Total	43	29	72

Legal Representation

Applications for legal representation during the 2022–23 fiscal period were made in 202 of the 268 cases that were processed. This accounts for 75.73 per cent of the cases, and represents a very slight increase from the previous fiscal period, which saw 75.32 per cent of patients applying for legal aid. For comparison purposes, the percentage of patients who applied for legal aid in previous fiscal years is as follows:

- 2022–23 fiscal period – 75.73%
- 2021–22 fiscal period – 75.32%
- 2020–21 fiscal period – 79.41%
- 2019–20 fiscal period – 67.00%
- 2018–19 fiscal period – 80.00%

Of the 202 applications for legal aid, 165 were for inpatients and 37 were for patients on CTOs.

Out of the 268 applications processed by the Review Board, 197 were with regard to inpatients, and 71 were with regard to patients on CTOs.

This means that 83.75 per cent of inpatients applied for legal aid during this fiscal period, as compared with 84.65 per cent in the previous fiscal period. And 52.00 per cent of patients on CTOs applied for legal aid during this fiscal period, as compared with 47.46 per cent of patients on CTOs in the previous fiscal period.

Despite a 4.50 per cent increase in the number of patients on CTOs applying for legal aid, the statistics continue to show a significantly low number of patients on CTOs initiating access to legal aid representation.

The statistics continue to support the importance of the board's initiative to develop a funded program for the appointment of an amicus curiae. The board's pilot project in this regard is discussed in the recommendation section of this annual report.

CTOs

Psychiatric facilities are required to file CTOs and renewals with the Review Board.

When a patient no longer meets the requirements for a CTO, the attending psychiatrist must file a declaration of change in status and the CTO is revoked.

The table below provides a summary, by health zone, of the number of CTOs filed, the number of CTO renewals, and the number CTO revocations filed with the Review Board.

	TOTAL
Total CTOs	85
# of initial CTOs filed	49
# of CTO renewals filed (no hearing)	36
# of CTO revocations filed	18

The 49 CTOs that have been initiated during this fiscal period represent a significant decrease in the number that were initiated in the previous fiscal period, which was 73. Meanwhile, CTO renewals have increased slightly as compared with the previous year: 49 (current year) vs. 44 (previous year)].

The number of CTOs revoked during this fiscal period is 18 compared with the 52 which were revoked in the previous fiscal period.

Meanwhile, the total number of CTOs (whether initiated or renewed) has decreased significantly during this fiscal period from 117 in the previous fiscal period to 85 in the 2022–23 fiscal period.

It's possible that this significant change was as a consequence of errors in IPTA forms in previous years that necessitated the issuance of new Form 9s, artificially raising that figure.

Certificates of Leave

Psychiatric facilities must file certificates of leave (COL) with the Review Board. COLs always involve patients who are subject to an involuntary admission to a psychiatric facility. These certificates are typically applied in cases where a patient can live outside of the psychiatric facility where the patient is detained, but the patient still requires psychiatric treatment provided by the psychiatric facility. COLs are generally

seen in cases where a patient does not yet meet the criteria for a CTO and/or the involuntary psychiatric treatment that the patient requires can only be provided by the psychiatric facility where the patient is detained.

Under Section 4(3)(iv) of the act, a patient must (in the preceding two-year period) either have been an involuntary patient in hospital for 60 days or more, have been an involuntary patient in a hospital on two or more occasions, or previously be the subject of a CTO in order to qualify for a CTO. Often, patients on COLs will be placed on a CTO after the 60-day hospital admission. Another criterion that impacts eligibility of a CTO is whether psychiatric treatment is available in the community. If not, the patient may be admitted to the psychiatric facility and placed on a COL.

	TOTAL
# of COLs initiated	11
# of COLs revoked	3

A total of 11 COLs were filed with the Review Board, as compared with seven the previous fiscal period. This is an increase of 42.85 per cent compared with the previous year.

Length of Time To Schedule a Hearing

The Review Board is required to hold a hearing within 21 days of receiving a request pursuant to Section 68 of IPTA. The Review Board met the time requirements in all the applications filed during this fiscal period.

For this fiscal year, the average time between a request and a hearing was 19.89 days, as compared with 18.35 days in 2021–22, and further compared with 18.07 days in 2020–21.

These statistics confirm that the IPTA administration has continued to maintain reasonable efficiency, particularly in regard to the increase in the number of applications being processed.

PART IV

Issues and Recommendations

The Review Board's 2022–23 fiscal period began on April 1, 2023, the day after Bill 120 was introduced in the Nova Scotia Legislature. With anticipation of the bill being proclaimed into force, the Review Board's focus this year was to develop and incorporate policy changes as envisioned by Bill 120. This has required ongoing collaboration and dialogue with relevant stakeholders, led by staff of OAMH.

Updating the Review Board's Governance Documents

A top priority for the Review Board this fiscal period has been to revise its policies, procedures, and training manual for board members, to ensure its governance framework is ready when Bill 120 is proclaimed into force. This work included the creation of a small subcommittee of the board comprising the board chair and experienced lawyer member, John Boddie.

IPTA Provincial Advisory Committee

The IPTA Provincial Advisory Committee is tasked with monitoring the impact of the IPTA process on individuals and stakeholders, with a view to recommending policy and practice changes to help improve IPTA stakeholder services.

Several meetings of the IPTA Provincial Advisory Committee were held during this fiscal period, with staff from OAMH bringing together representatives from Nova Scotia Health, IWK Health, PRAS, Nova Scotia Legal Aid, the public trustee, and the chair of the IPTA Review Board. Important consultations included dialogue on the following issues which will impact the board's function when the applicable regulations are enacted:

(a) Virtual examinations and assessments conducted by psychiatrists for the purpose of declaring patients involuntary under IPTA

(b) Circumstances when written hearings before the Review Board may be permitted

(c) An interpretative guide for "supportive decision making" within the meaning of Bill 120

(d) The expanded role of the PRAS

(e) Health records disclosure process for IPTA Review Board proceedings

(f) Circumstances when the Review Board may make a decision to cause a CTO to be issued for an involuntary in-patient

(g) How patients' interests may be represented before IPTA Review Board hearings pursuant to Section 71(2) of the act

The above list is by no means exhaustive of the consultative process engaging the IPTA Provincial Advisory Committee.

Amicus Curiae Program

The Review Board was pleased to see that a pilot Amicus Curiae program was established with funding from OAMH. This resulted in access to lawyers from the Dalhousie Legal Aid Service to act as amicus curiae when a patient was unable or unwilling to attend a hearing.

The pilot program is essential to ensuring the Review Board is able to comply with Section 71(2) of the act. The current wording of Section 71(2) makes it challenging for a person to "act on behalf of the patient" when that person is not able to receive instructions from the patient. This conundrum spawned the Amicus Curiae Program.

OAMH, Dalhousie Legal Aid, and the IPTA Review Board developed the Amicus Curiae Practice Direction for Stakeholders. This included a standard order for the appointment of an amicus curiae and records production, the terms of which were vetted by stakeholders impacted by such an order. As well, an internal process for the scheduling of hearings involving an amicus curiae has been established to ensure an efficient and consistent process of the Review Board.

During the 2022–23 fiscal period, there were 19 cases in which an amicus curiae was appointed, as compared with the six cases from the previous fiscal period. In other words, the number of cases involving an amicus curiae has more than tripled in this fiscal period. This statistic is significant and highlights the need to re-evaluate the process by which patients are able to retain and instruct legal counsel for the purpose of an IPTA Review Board hearing. This issue has been part of the dialogue at the IPTA Provincial Advisory Committee.

During this fiscal period, the Review Board received a comprehensive legal memo from Amicus Curiae Ms. Nadia Shivji of Dalhousie Legal Aid. The Review Board is grateful to Ms. Shivji for bringing certain issues to the board's attention for consideration, with a view to continuously improving the Review Board's Amicus Curiae Program.

Review Board's Power To Require Examination of Patient by a Second Psychiatrist – Section 74(2)

There were no hearings during this fiscal period where a panel of the Review Board determined it was necessary to invoke its powers pursuant to Section 74(2) and require that the patient be examined by a second psychiatrist. This provision is very rarely invoked, and it was applied only once in the previous fiscal period. The Review Board continues to recommend that a process be put in place for the purpose of this provision, and it is recommended that one be developed in consultation with the ministry and relevant stakeholders.

Reducing Delays and Improving Efficiency of Hearings

It is hoped that with the new legislative amendments around immediate right of access to records, there will be an improvement in the efficiency of setting matters down for a hearing and reducing the need for adjournments. This will require ongoing evaluation after Bill 120 comes into effect.

It is noteworthy 65 of the 72 adjournments were inexplicably tied to legal representation of the patient. In 19 of the adjournments, an amicus curiae was appointed. The other adjournments were explained by either a delay in access to records or because legal aid was not available or required more time to prepare and/or to connect with the patient.

It is recommended that the Review Board consider adopting a new case management process with a view to assisting the parties to confirm their readiness to proceed with a hearing at least 48 hours in advance of the scheduled hearing. Such a process will require stakeholder consultation.

Canadian Network of Mental Health Review Board Chairs

The Canadian Network of Mental Health Review Board Chairs is an informal group of colleagues from across Canada that has been committed to meeting three to four times per year since the fall of 2021. The meetings have allowed for tremendous opportunity for the exchange of ideas and learning on various topics, including access to existing tools and resources for the education and training of new members, as well as resources to assist members of the public who interface with mental health boards. An important agenda item during this fiscal period has been discussion on a pilot study being conducted in the Western provinces on the incorporation of a voluntary component to CTOs to incorporate culturally sensitive components.

Activities Planned for the Next Fiscal

In addition to the board's usual work, the top priorities for the next fiscal period remain as follows:

1. Ongoing collaboration and consultation with the Provincial Advisory Committee, OAMH, and Department of Justice, with a view to providing input into the government's initiative to develop IPTA regulations, policy documents, and other resources required to accompany the legislative amendments made under Bill 120
2. Ongoing development of governance documents for the Review Board, taking into account the new legislative and regulatory environment under IPTA
3. Developing a participant's guide to the IPTA Review Board process, to incorporate new changes under Bill 120
4. Identifying any circumstances that may warrant a hearing in writing, or any aspect of a hearing in writing, with particular focus on cases where an amicus curiae has been appointed on the basis that the patient is unwilling or unable to attend a hearing
5. Developing best practices for hearings before the Review Board, having regard to new policy as set out in Bill 120
6. Developing a Review Board practice direction to facilitate the correction of IPTA act forms during hearings, with a view to guiding the anticipated legislative change to Section 74(3) which reads:

"(3) Provided that no party is prejudiced thereby, the Review Board may disregard trivial, minor or insubstantial errors in forms or other documents."

Conclusion

Bill 120 continues to guide a new normal for the Review Board, as we update our governance model, implement new policies and procedures, and consider the educational needs for our members.

As chair of the Review Board, I have had the tremendous privilege to work alongside exceptionally dedicated colleagues on the board, and in collaboration with highly skilled administrative and executive staff at the Office of Addictions and Mental Health.

Review Board members continue to look forward to meeting the new challenges ahead, as we prepare for Bill 120 coming into force.

Special thanks must be extended to Mr. John Boddie, a lawyer who has served on the Review Board for over 10 years, and who has been a tremendous resource in guiding amendments to the Review Board policies as we aim to implement the legislative changes under Bill 120.

Special thanks must also be extended to the staff of the Office of Addictions and Mental Health, Department of Health and Wellness, and the Department of Justice, who continue to work diligently behind the scenes to facilitate positive change under Involuntary Psychiatric Treatment Act.

Annex A


Nova Scotia Health Authority
Management Zones
Sydney
Eastern Zone
Amherst
Northern Zone
New Glasgow
Antigonish
Truro
Kentville
Central Zone
Halifax
Bridgewater
Western Zone
Yarmouth
Management Zones
Western
Northern
Eastern
Central
City/Town with regional hospital
nova scotia health authority

Annex B

IPTA 2022–23 Statistical Overview

Requests	Total	268
	Requested	144
	Automatic	117
Hearings	Held	110
	Involuntary Inpatient	46
	CTO Renewal	64
	Adjourned	72
Hearing Outcome/ Status	Patient Involuntary Status Upheld	32
	Patient Status Changed to Voluntary`	14
	CTO Upheld	59
	CTO Vacated	5
Legal Representation	At Application Stage	202/268 75%
	At Hearing Stage	70/110 64%

IPTA 2021–22 Statistical Overview

Requests	Total	235
	Requested	138
	Automatic	97
Hearings	Held	102
	Involuntary Inpatient	48
	CTO Renewal	54
	Adjourned	54
Hearing Outcome/ Status	Patient Involuntary Status Upheld	38
	Patient Status Changed to Voluntary`	10
	CTO Upheld	49
	CTO Vacated	5
Legal Representation	At Application Stage	177/235 75%
	At Hearing Stage	69/102 68%

IPTA 2020–21 Statistical Overview

Requests	Total	203
	Requested	110
	Automatic	93
Hearings	Held	89
	Involuntary Inpatient	37
	CTO Renewal	52
	Adjourned	72
Hearing Outcome/ Status	Patient Involuntary Status Upheld	34
	Patient Status Changed to Voluntary`	3
	CTO Upheld	46
	CTO Vacated	6
Legal Representation	At Application Stage	156/203 77%
	At Hearing Stage	57/89 64%

IPTA 2019–20 Statistical Overview

Requests	Total	117
	Requested	98
	Automatic	79
Hearings	Held	76
	Involuntary Inpatient	26
	CTO Renewal	50
	Adjourned	58
Hearing Outcome/ Status	Patient Involuntary Status Upheld	20
	Patient Status Changed to Voluntary`	6
	CTO Upheld	44
	CTO Vacated	6
Legal Representation	At Application Stage	118/177 67%
	At Hearing Stage	48/76 63%

IPTA 2018–19 Statistical Overview

Requests	Total	206
	Requested	89
	Automatic	117
Hearings	Held	102
	Involuntary Inpatient	49
	CTO Renewal	53
	Adjourned	43
Hearing Outcome/ Status	Patient Involuntary Status Upheld	37
	Patient Status Changed to Voluntary`	12
	CTO Upheld	43
	CTO Vacated	10
Legal Representation	At Application Stage	165/206 80%
	At Hearing Stage	63/102 62%

NOVA SCOTIA