



# **HEALTH PROFESSIONS REVIEW BOARD 2023 ANNUAL REPORT**

***COVERING THE REPORTING PERIOD FROM  
JANUARY 1 – DECEMBER 31, 2023***



# Health Professions Review Board

Suite 900, 747 Fort Street, Victoria BC V8W 3E9

Tel: (250) 953-4956

Website: [hprb.gov.bc.ca](http://hprb.gov.bc.ca)

Toll free: (888) 953-4986

Email: [hprbinfo@gov.bc.ca](mailto:hprbinfo@gov.bc.ca)

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July 31, 2024

The Honourable Niki Sharma  
Minister of Attorney General  
Room 232, Parliament Buildings  
Victoria, British Columbia  
V8V 1X4

Dear Minister Sharma:

Re: **Health Professions Review Board Annual Report**

On behalf of the Health Professions Review Board, it is my pleasure to respectfully submit the Annual Report of the Health Professions Review Board for the period January 1, 2023, to December 31, 2023.

This report is submitted as required by Section 50.65(1) of the *Health Professions Act*.

We remain committed to fulfilling the important mandate entrusted to the Review Board to ensure the highest levels of accountability and transparency in BC's health professions.

Yours truly,

David Hobbs, Chair  
Health Professions Review Board

Enclosure

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# Health Professions Review Board

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# Message from the Chair

## The Year in Review

### Applications for Review Overall

The Review Board's mandate is to respond to applications for review made under part IV of the *Health Professions Act*. For the past few years, overall applications for review have dropped from a pre-COVID-19 pandemic high of 237 in 2019, to 195 in 2020, and further to 142 in 2021. In 2022, this number rebounded with the Review Board receiving a total of 174 applications for review. In 2023 there were a total of 164 applications – a slight drop from last year, but still significantly higher than the COVID-19 low of 142 applications in 2021.

### Applications for Review of Complaint Dispositions

Applications for review of complaint dispositions fluctuate year over year:

#### ***Applications for review of complaint dispositions***

Year	Applications received
2020	162
2021	132
2022	157
2023	131

### Applications for Review of Complaint Dispositions (Three Largest Colleges)

As in previous years, the Review Board received the largest number of applications for review in relation to complaint dispositions. Of these the majority were related to dispositions made by inquiry committees of the three largest colleges – the College of Physicians and Surgeons of BC, the BC College of Oral Health Professionals, and the BC College of Nurses and Midwives.

The number of complaint disposition review applications related to the BC College of Oral Health Professionals and the College of Physicians and Surgeons remained relatively stable in 2023, compared to previous years. The number for the BC College of Nurses and Midwives were high in 2022, perhaps in relation to factors related to the pandemic, but in 2023 dropped back to typical levels.

***Applications for review of complaint dispositions - three largest colleges***

Year	College of Physicians and Surgeons	BC College of Oral Health Professionals*	BC College of Nurses and Midwives
2019	101	14	11
2020	100	11	8
2021	93	14	10
2022	103	12	23
2023	93	12	12

Applications for Review of Registration Decisions

The number of registration decision review applications received by the Review Board rebounded from 10 in 2021 to 28 in 2023. This is still significantly lower than the number of pre-COVID applications (46 in 2019) but, with registration applications more than doubling since 2021, numbers can be expected to continue to increase as mobility and other issues associated with the pandemic subside. Of the 28 registration review applications received, ten were withdrawn; about half of these withdrawals were due to the parties being able to reach a mutually accepted solution on their own. In contrast, none of the 131 complaint disposition review applications received (being made in a higher conflict context) were withdrawn.

### Applications for Review of Delayed Investigations

There were four applications for review of delayed investigations in 2023 (down from the pre-pandemic number of 38 in 2019, and six in 2022). This is not unexpected: the requirement for colleges to provide complainants and registrants with notices of delay was still suspended in 2023, while the public health emergency declared under the *Public Health Act* continued. Notably, the provincial state of emergency, which was declared under the *Emergency Program Act* (repealed by the *Emergency and Disaster Management Act* on November 8, 2023) was lifted in June of 2021, but throughout 2023 the public health emergency was still in place.

The four applications for review occurred because some colleges still opted to send notices of delayed investigation. As noted in last year's annual report, when the public health emergency is lifted, timelines for colleges to provide notices of delayed investigation will resume, and in turn, so will requests for review of delayed investigations. Notably, when the new *Health Professions and Occupations Act* comes into force in future (no date has yet been determined), the existing scheme of an expected timeline of 120 days for the conclusion of an investigation will no longer apply. While the Review Board will continue to be responsible for hearing applications for review of delayed investigations, policy in this area has not yet been determined.

### Decisions Issued: Complaint Disposition Reviews

The Review Board issued 82 complaint disposition review decisions in 2023, 10 percent more than in 2022 (75 decisions). Of those, only 11 percent were remitted back to the college for reconsideration, which is consistent with previous years.

### ***Complaint Disposition Reviews – Outcomes by College***

<b>College</b>	<b>Confirmed</b>	<b>Remitted</b>	<b>Total</b>
BC College of Nurses and Midwives	9		9
College of Chiropractors of BC	1		1
BC College of Oral Health Professionals	6	1	7
College of Dietitians of BC	1		1
College of Pharmacists	1		1
College of Physical Therapists of BC	1	1	2
College of Physicians and Surgeons of BC	50	6	56
College of Psychologists	2		2
College of Massage Therapists of BC	2		2
College of Optometrists	1		1
Totals	74	8	82

#### Decisions Issued: Registration Decision Reviews

There were 10 registration decision reviews issued in 2023. All either confirmed the registration committee decision, or dismissed the application for review. The distribution among the colleges was College of Nurses and Midwives (seven confirmed) College of Physicians and Surgeons of British Columbia (one dismissed for lack of jurisdiction) College of Naturopathic Physicians of British Columbia (one confirmed) and College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia (one dismissed for lack of jurisdiction).

#### Extensions of Time and other Applications for Review

In 2023, the Review Board adjudicated seven applications for extensions of time to file for review, of which only one was granted and six denied. There has been a decline in both the number of applications received, and the number of applications granted: In 2022, of nine applications, two were granted and seven denied; and in 2021, of 11 applications, five were

granted and six denied. This high rate of denial is likely a function of the Review Board's obligation to balance the interests of three parties in complaint disposition reviews (the complainant, registrant and college).

### Preliminary Applications

By far the most common preliminary application made in review hearings is a college request for the Review Board to receive information in the investigative record in confidence from another party. In 2023, the Review Board adjudicated three such applications, under s.42 of the *Administrative Tribunals Act*. All three applications were granted in part.

### Time to Complete Reviews

In 2023, it took the Review Board 116 days to complete a review, from the date the application for review was received to the time a decision was issued. This is more than 2022 (105 days) but less than 2021 (123 days), and well within the timeline set out in Practice Directive 1, which specifies a usual time of 220 days for completing a review.

## **New Health Professions and Occupations Act**

The *Health Professions and Occupations Act (HPOA)*, which will replace the current *Health Professions Act (HPA)*, received Royal Assent on November 24, 2022. However, the *HPOA* will come into force by regulation at a future date. In 2023, the Review Board's legal counsel held education sessions on the new legislation for members, providing detailed analysis on what can be expected under the new Act. The Review Board will continue with its core review work under the new legislation but, there will be some important new features:

- The new *HPOA* sets out in s. 14 (2-4) a number of important and overarching Guiding Principles which are new to the health professions regulatory system, and which will



apply to both the Colleges and the Review Board. Accordingly, these will be incorporated into the Review Board's Rules of Practice and Procedure, and look to have significant effect on how health professions regulation works in future:

(2) In exercising powers and performing duties under this Act, a person must act in accordance with the following principles:

(a) to protect the public from harm and discrimination;

(b) to support and promote awareness of all of the following, as they relate to the oversight and review of regulators, the governance of designated professions and occupations and the provision of health services:

(i) reconciliation with Indigenous peoples;

(ii) the United Nations Declaration on the Rights of Indigenous Peoples;

(iii) the need to address racism and anti-racism issues that are specific to Indigenous peoples, including acknowledging the rights, interests, priorities and concerns that are specific to First Nations peoples, Métis peoples and Inuit peoples, based on distinctions among them;

(c) without limiting paragraphs (a) and (b), to take and promote anti-discrimination measures;

(d) to act in a fair manner, including by demonstrating respect for the principles of procedural fairness;

(e) to act in a manner that is respectful of the privacy of persons who participate in regulatory processes.

(3) Unless it would conflict with a principle under subsection (2), in exercising powers and performing duties under this Act, a person must act in accordance with the following principles:

(a) to promote a holistic health care system that encourages collaboration between regulators and between persons who provide different types of health services;

(b) to identify and remove barriers to the practice of a designated profession or occupation, in British Columbia, by extrajurisdictional practitioners;

(c) to act in a manner that is transparent, including by providing opportunities for meaningful public engagement.

(4) If, in applying the principles under this section, a conflict arises or a balance must be struck between the interests of the public or an individual and the interests of a regulated health practitioner, the conflict must be resolved or the balance must be weighted, to the extent reasonable in the circumstances, in favour of the public or the individual.

- The Act establishes a new Office of the Superintendent of Health Profession and Occupation Oversight. This office is expected to provide advice and recommendations to the Minister of Health regarding certain issues, promote awareness of and adherence to guiding principles, develop and implement a merit-based selection for the board members of regulatory colleges, promote consistency among regulators, superintend regulators within the *HPOA*, and publish information and records in the public interest. The Review Board must provide the Superintendent with a copy of any order made after a licensing decision, complaint disposition or timeliness review. The Review Board may also assist the Superintendent in establishing or adopting policies and guidance by making recommendations to the superintendent respecting transparent and fair licensing, investigation and discipline processes, including reasonable timelines for completing one or more steps.
- The Act changes the current scheme for regulating the timeliness of a complaint investigation. The current scheme is prescriptive: it sets out a requirement for colleges to send three notices of delayed investigation, once an investigation takes longer than a certain number of days, with the third notice advising the Complainant and Registrant of their right to seek review of the delayed investigation (see s. 50.55 of the *HPA* and Practice Directive 7).

Per ss. 307 and 320 of the new *HPOA* the Review Board will determine, on application, whether a college conducted certain investigative processes (such as acknowledging a complaint, or providing progress reports) in a "reasonably practicable" manner under all of the circumstances. By introducing the "reasonably practicable" standard, the *HPOA* provides the Board with more flexibility regarding adjudication of timeliness but, how this new process will work remains to be seen. After completing its review, the Review Board will no longer have jurisdiction to take over an investigation (a power it has never exercised), but must give the Superintendent a copy of its order.

- Under the *HPA*, the Review Board has (limited) jurisdiction, and discretion to decline jurisdiction, when applying the *Human Rights Code*. Under the *HPOA*, the Review Board will no longer have jurisdiction to apply the *Human Rights Code*.
- Last but not least, the *HPOA* regulates "Support Programs" in Division 5 (sections 276-306) of Part 5. According to s. 283, individuals subject to sexual misconduct, sexual abuse, or discrimination will be eligible to receive support services or assistance from a support worker, provided certain conditions are met. The person receiving support is called the "recipient," while a "support worker" is someone assigned under s. 287 to assist a recipient. A support worker who is assisting a recipient may give recommendations to a person who receives regulatory complaints or conducts investigations, and disciplinary proceedings or proceedings before the Health Professions Review Board. A support worker assisting a recipient can request certain information from a registrar, health occupation director, the director of discipline, and the chair of the Health Professions Review Board.

## **COVID-19 Pandemic**

In 2023, there were only a handful of in-person visitors to the board office. Review Board staff continued to have the option to work remotely. Remote work arrangements are

reportedly well received, and do not appear to have had any impact on efficiency. Review Board operations are now conducted almost exclusively electronically, although a paper option is available.

## **Annual General Meeting**

In October of 2023 the Review Board held its first in person Annual General Meeting (AGM) since 2019. The Annual General Meeting was well received by participants, being an opportunity for members to share their experiences with the review process and the health professions regulatory system, and to learn more about the new *HPOA*. Deputy Premier Shannon Salter, former Chair of the Civil Resolutions Tribunal, made opening remarks, which were recorded for future use by other tribunals. She spoke eloquently about the importance of justice and a just society and the role of tribunals in the justice sector, referencing former Chief Justice of Canada Beverley McLachlin's observations that only a small percentage of the public ever interacts with the court system, but a majority will have reason to deal with an administrative tribunal. She also commented on the use of technology by tribunals including the responsible use of artificial intelligence, which sparked some valuable discussion. Guests included legal counsels for the College of Physicians and Surgeons of BC, the College of Massage Therapists of BC, and the BC College of Nurses and Midwives, and Michael Bryant, former attorney general of Ontario and (then) Chief Executive Officer of Legal Aid BC. Review Board counsel Alison Latimer, K.C., delivered presentations on the Review Board's year in review, the *HPOA*, and an administrative law update. Kudos to Member John Orr, K.C., who was instrumental to the success of the AGM, and who ably led a panel including Members David Blair, and Denese Espeut-Post which stimulated general discussion between members about managing challenging parties in review cases.

## *Apology Act*

Notably, Member Gregory Cran delivered a presentation at the AGM titled “Doukhobors in BC: Administrative Justice and the *Apology Act*.” He described how in the 1950s, the Province of BC, in response to acts of civil disobedience by Doukhobors, such as missing school and protesting nude, forcibly removed hundreds of Doukhobor children from their families and placed them in institutions. As part of addressing this historic injustice, the government passed the [Apology Act](#) in 2006. This short three-section act allows a person to make an apology in connection with any matter without the apology constituting an admission of fault or liability. Colleges may find this a useful tool to assist in resolving complaints, as the power of a sincere apology is well known: this was demonstrated in February, 2024, when the BC Government itself formally apologized to the Doukhobor community for its past actions.

## **Improving Review Board Operations**

### Operational Records Classification Systems (ORCS)

Operational records are unique to each government ministry, agency or broader public sector organization. They document the specific operations or services of each government body. An ORCS contains information schedules used to classify, file, retrieve and dispose of operational records. Without an ORCS, a government body has no authority to dispose of its operational records. Keeping any paper or electronic record beyond when it should be disposed of is costly and consumes resources better spent elsewhere.

Until 2023, the Review Board did not have an ORCS, had not been able to destroy any of its operational records since the Board was established in 2009. This included over 3,000 case files, each of which contained the complete written record of the application for review, including the college record and associated correspondence.

In January 2023, the Review Board Office received formal approval of its ORCS from the Information Management Advisory Committee of the Office of the Chief Information Officer, Ministry of Citizens' Services. This document was developed by Review Board staff over two years, in consultation with three consecutive archivists from the Government Information Management Branch, which provides advice and support on records management to BC government ministries and broader public sector organizations.

With its ORCS now approved, the Review Board can be said, in records management terms, to be on the "path to destruction." Approved ORCS are available at the online [ORCS Library](#).

### Strengthening Indigenous Relations

At the end of 2023, Review Board staff met with representatives from the First Nations Health Authority regarding improving our forms and processes to be more inclusive. This work is still ongoing.

### Review Board Members

Sadly, late in 2023, member Marilyn Clark resigned from the Review Board due to terminal illness. Marilyn was an original member appointed when the Board was first established, and brought a human quality to the over 120 decisions she made.

In 2011, Marilyn wrote the decision in [Complainant v. College of Physicians and Surgeons of British Columbia, 2011 BCHPRB 57](#), which sparked a ten year journey that led to the BC Court of Appeal's definitive decision on the Review Board's jurisdiction. Marilyn's decision was set aside by the BC Supreme Court in [Moore v. College of Physicians and Surgeons of British Columbia, 2013 BCSC 2081](#) ("Moore"), and the appeal dismissed by the Court of Appeal in [Moore v. College of Physicians and Surgeons of British Columbia, 2014 BCCA 466](#). However, a 5-member panel of the Court of Appeal reversed itself in [The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board, 2022 BCCA 10](#) (referred to in Review Board decisions as "*Dawson*"), finding that *Moore* was

incorrect in applying a reasonableness standard to the adequacy of investigations: “[r]ather, adequacy is a matter for the Review Board to determine, based on its own assessment of the purposes and goals of the investigation.”

On a happier note, I extend a warm welcome to seven new Review Board members in 2023: Ben Parkin, Charlotte Ensminger, Dena Bryan, Denese Espeut-Post, Jenifer Khor, Jonathan Chaplan, and Kim Polowek were appointed to the Review Board. Their considerable skills and experience are noted in [short bios on the Crown Agencies and Board Resourcing Office website](#). The Review Board ended 2023 with 21 members including the Board Chair, four more than in 2022.

***Thank you***

In closing, I would like to recognize the Review Board members, our esteemed counsel Alison Latimer K.C., the staff of the Environmental Appeal Board which provides us with financial and administrative support, and the dedicated team at the Victoria office for their work on behalf of the Review Board.

A handwritten signature in black ink that reads "David Hobbs". The signature is written in a cursive, flowing style.

David Hobbs, Chair  
Health Professions Review Board

## Rule Changes

On October 24, 2023, the Review Board passed amendments to require a complainant or applicant to attach the disposition or registration decision they wish reviewed and clarify it must be in a format acceptable to the Review Board – the Review Board forms and website will specify that the Review Board does not accept cell phone pictures of documents and that they must be in .pdf format, remove unnecessary requirements regarding address for delivery in Rule 22, and correct a typo in Rule 37(4).

Rule	Previous	New
<p>Rule 4(1) Information required in an application</p>	<p><b>Rule 4 Information required in an application</b></p> <p>(1) An application must:</p> <p>a) be in writing;</p> <p>b) identify the decision or investigation or disposition for which a review is being requested;</p> <p>c) state the relief being sought, and in the case of a decision or disposition, why the decision or disposition should be changed;</p> <p>d) contain the name, address and telephone number of the person applying for review, and if that person has an agent acting on their behalf in respect of the review, the name of the agent and the telephone number at which the agent may be reached during regular business hours;</p> <p>e) include an address for the purpose of delivery of any notices in respect of the review by the review board or another party;</p> <p>f) if made more than 30 days after receiving notification</p>	<p><b>Rule 4 Information required in an application</b></p> <p>(1) An application must:</p> <p>b) <del>identify</del> <del>attach</del> the decision <del>or</del> <del>investigation</del> or disposition for which a review is being requested, <del>in a format acceptable to the review board and specified on its website</del>;</p> <p>...</p>



	<p>of the decision or disposition to be reviewed, contain a request to extend the time limit under Rule 5(2); and</p> <p>g) be signed by the applicant or the applicant's agent.</p>	
<p>Rule 22 Address for delivery</p>	<p><b>Rule 22 Address for delivery</b></p> <p>(1) All participants must provide notice in writing of an address for delivery of communications regarding the review to the review board and to all other participants.</p> <p>(2) If a participant is represented by a lawyer or agent, the postal address of the lawyer or agent is the participant's address for delivery.</p> <p>(3) In addition to an address for delivery, participants may provide an email address if they wish to receive documents electronically.</p>	<p><b>Rule 22 Address for delivery</b></p> <p>(1) All participants must provide notice in writing of an address for delivery of communications regarding the review to the review board and to all other participants.</p> <p>(2) If a participant is represented by a lawyer or agent, <del>the postal address of the lawyer or agent's</del> <b>is the participant's</b> address for delivery.</p> <p><del>(3) In addition to an address for delivery, participants may provide an email address if they wish to receive documents electronically.</del></p>
<p>Rule 37(4) Confidentiality</p>	<p><b>Rule 37 Confidentiality</b></p> <p>...</p> <p>(4) Notwithstanding subsections (1) – (3), the fact that a party did not attend mandatory mediation may be disclosed as permitted by rule 38(4).</p>	<p><b>Rule 37 Confidentiality</b></p> <p>...</p> <p>(4) Notwithstanding subsections (1) – (3), the fact that a party did not attend mandatory mediation may be disclosed as permitted by rule <del>38(4)</del> <b>C.</b></p>

## About the Review Board

The Health Professions Review Board has been in operation since 2009 and is the only province other than Ontario to establish an independent health professions regulatory review body.

The Review Board is an independent quasi-judicial administrative tribunal created by the *Health Professions Act*, R.S.B.C. 1996, c. 183 (the Act). The Act provides a common regulatory framework for health professions in British Columbia. As of the end of 2023, there were 26 regulated health professions, of which 25 were governed by 15 regulatory colleges under the Act. The Review Board is responsible for conducting reviews of certain decisions of the Inquiry and Registration Committees of these 15 colleges. As such, the Review Board is an integral component of the health professions regulatory system in British Columbia. It is a specialized administrative tribunal, with a specific mandate and purpose, designed to address a few carefully defined subjects outlined in the Act. The Review Board's decisions are not subject to appeal and can only be challenged in court (on limited grounds) by judicial review.

One health-related profession (emergency medical assisting) is regulated by a government-appointed licensing board under a separate statute and is not subject to Review Board scrutiny.

The health professions colleges designated under the Act and whose decisions are subject to review by the Review Board are listed below:

- Chiropractors
- Oral Health Professionals (Dental Hygienists, Dental Surgeons, Dental Technicians, and Denturists)
- Dietitians
- Massage Therapists
- Naturopathic Physicians
- Nurses and Midwives

- Occupational Therapists
- Opticians
- Optometrists
- Pharmacists
- Physical Therapists
- Physicians and Surgeons
- Psychologists
- Speech and Hearing Professionals
- Traditional Chinese Medicine Practitioners and Acupuncturists

## PIDA Disclosures

The review board did not receive any disclosures as defined under the *Public Interest Disclosures Act* over the reporting period. The Tribunal is unaware about any disclosures of which it, its staff, or its members (past or present) is alleged to have committed any wrongdoing.

## The Mandate of the Review Board

Through its reviews and hearings, the Review Board monitors the activities of the colleges' complaint inquiry committees and registration committees, to help ensure they fulfill their duties in the public interest and as mandated by legislation. The Review Board provides an impartial body for members of the public seek review of health regulatory colleges' decisions.

The Review Board's mandate is found in s.50.53 of the Act. Under this section the Review Board has the following two types of specific powers and duties:

1. On request to:
  - review certain registration decisions of designated health professions colleges;
  - review the timeliness of college inquiry committee complaint dispositions or investigations; and
  - review certain dispositions by the inquiry committee of complaints made by a member of the public against a health professional.
  
2. The Review Board has potentially broad remedial powers after conducting a review in an individual case. In the case of registration and complaint decisions it can either:
  - confirm the decision under review;
  - send the matter back to the registration or inquiry committee for reconsideration with directions; or
  - direct the relevant committee of the college to make another decision it could have made.

In cases where a review has been requested of the college's failure to complete an investigation within the time limits provided in the Act, the Review Board can either send the matter back to the inquiry committee of the college, with directions and a new deadline, to complete the investigation and dispose of the complaint, or the Review Board can take over the investigation itself, exercise all the inquiry committee's powers, and dispose of the matter.

3. On its own initiative the Review Board may:

- develop and publish guidelines and recommendations to assist colleges to develop registration, inquiry and discipline procedures that are transparent, objective, impartial and fair.

This particular power of the Review Board allows for preventive action to be taken, recognizing that while the review function of deciding individual requests for review is important, it may not have the same positive systemic impact as a more proactive authority to assist colleges, in a non-binding process, to develop procedures for registration, inquiries and discipline that are, in the words of the Act, transparent, objective, impartial, and fair.

Further information about the Review Board's powers and responsibilities is available from the Review Board office or the website: <http://www.bchrpb.ca>

## Review Board Members

The Review Board is a tribunal consisting exclusively of members appointed by the Lieutenant Governor in Council (usually referred to as “cabinet”). In contrast, colleges are professional regulatory bodies with board members elected or appointed by the Minister of Health in accordance with the Act. Appointment of Review Board members by cabinet ensures that the Review Board can perform its adjudicative functions independently, at arm’s-length from the colleges and government. This is reinforced by s.50.51(3) of the Act which states that Review Board members may not be registrants in any of the designated colleges or government employees.

The Review Board consists of a part-time Chair and a number of part-time members. The Act does not specify a minimum or maximum number of members required. The members of the Review Board, drawn from across the province, are highly qualified citizens from various occupational fields who share a history of community service. These members apply their respective expertise and adjudication skills to hear and decide requests for review in a fair, impartial, and efficient manner. In addition to adjudicating matters that proceed to a hearing, members also conduct mediations and participate on committees to develop policy, guidelines, and recommendations.

### Tribunal Members as of December 31, 2023

Member	Profession	From
David A. Hobbs (Chair)	Lawyer	Vancouver
Shannon Bentley	Lawyer	Bowen Island
David Blair	Physician (Retired)	Victoria
Dena Bryan	Lawyer (Retired)	Kamloops
Jonathan Chaplan	Lawyer	Vancouver
Gregory J. Cran	Academic Consultant	Lund
Douglas S. Cochran	Lawyer	Vancouver

Charlotte Ensminger	Lawyer (Retired)	Victoria
Denese Espeut-Post	Lawyer	Summerland
Celia Francis	Adjudicator	Victoria
Jeanne Harvey	Judge (retired)	Victoria
Jennifer Khor	Lawyer	Vancouver
Amanda McReynolds	Public Administration (retired)	Victoria
David Newell	Lawyer	Vancouver
John O'Fee, K.C.	Lawyer/University Lecturer	Kamloops
John M. Orr, K.C.	Lawyer	Victoria
Ben Parkin	Lawyer	Richmond
Kim Polowek	Legal Professor	Port Moody
Helen J. Roberts	Mediator	Vancouver
Katherine Wellburn	Lawyer (Retired)	Vancouver



## The Review Board Office

The administrative support functions of the Review Board are consolidated with the Environmental Appeal Board/Forest Appeals Commission (EAB/FAC) offices, which also provide administrative services to a number of other tribunals.

The Review Board staff complement currently consists of the following positions:

- Executive Director
- 3 Case Managers
- 1 Intake and Administration Officer
- 1 Administrative Assistant
- Finance, Administration (provided by EAB/FAC)

The Review Board may be contacted at:

Health Professions Review Board  
Suite 900 - 747 Fort Street  
Victoria, BC V8W 3E9

Telephone: 250-953-4956  
Toll-free number: 1-888-953-4986

**Website Address:** [www.bchprb.ca](http://www.bchprb.ca)

**Mailing Address:**

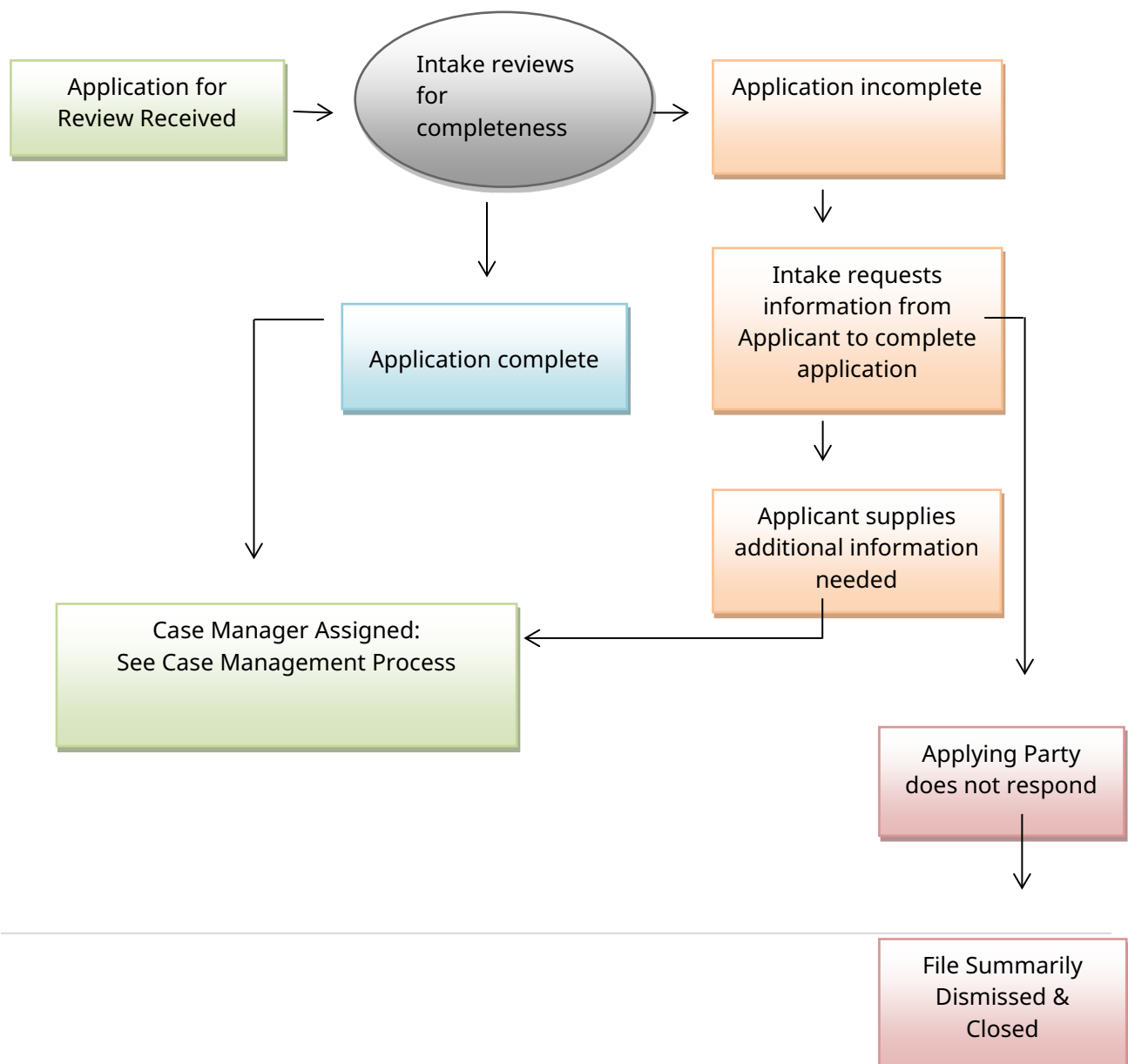
Health Professions Review Board  
PO Box 9429 STN PROV GOVT  
Victoria, BC V8W 9V1

## The Review Process – Flow Charts

The following is a visual overview of the review process. For more detailed information, a copy of the Review Board's *Rules of Practice and Procedure* and other information can be accessed at the Review Board website or obtained from the Review Board Office.

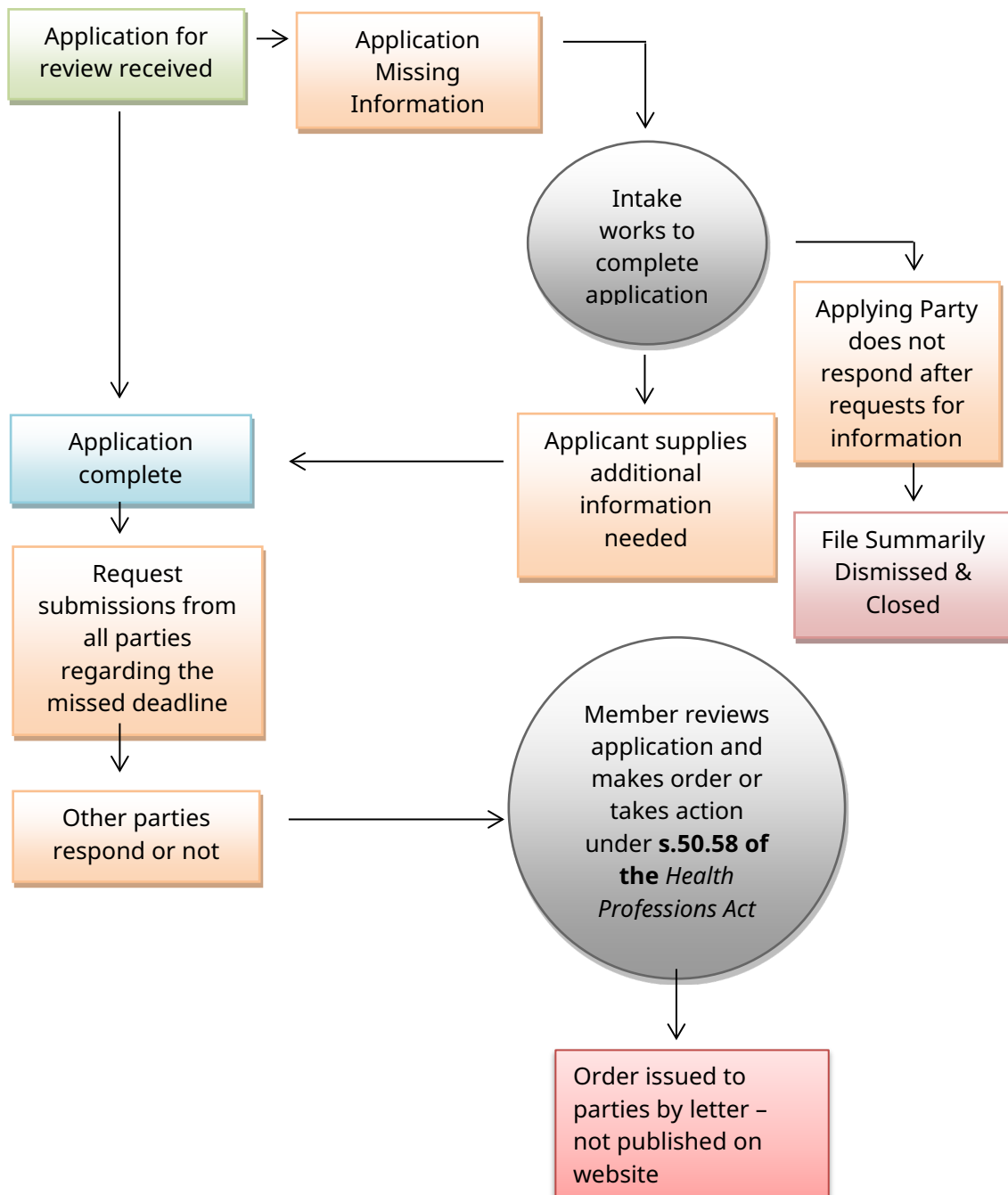
Few applicants who submit applications for review to the Review Board have had any exposure to administrative law or process. For that reason, intake staff assist applicants to go through the steps necessary to "perfect" an application so that it meets the requirements of the *Health Professions Act* and the Rules of the Review Board. The chart below illustrates how Review Board staff do that.

### Intake Process



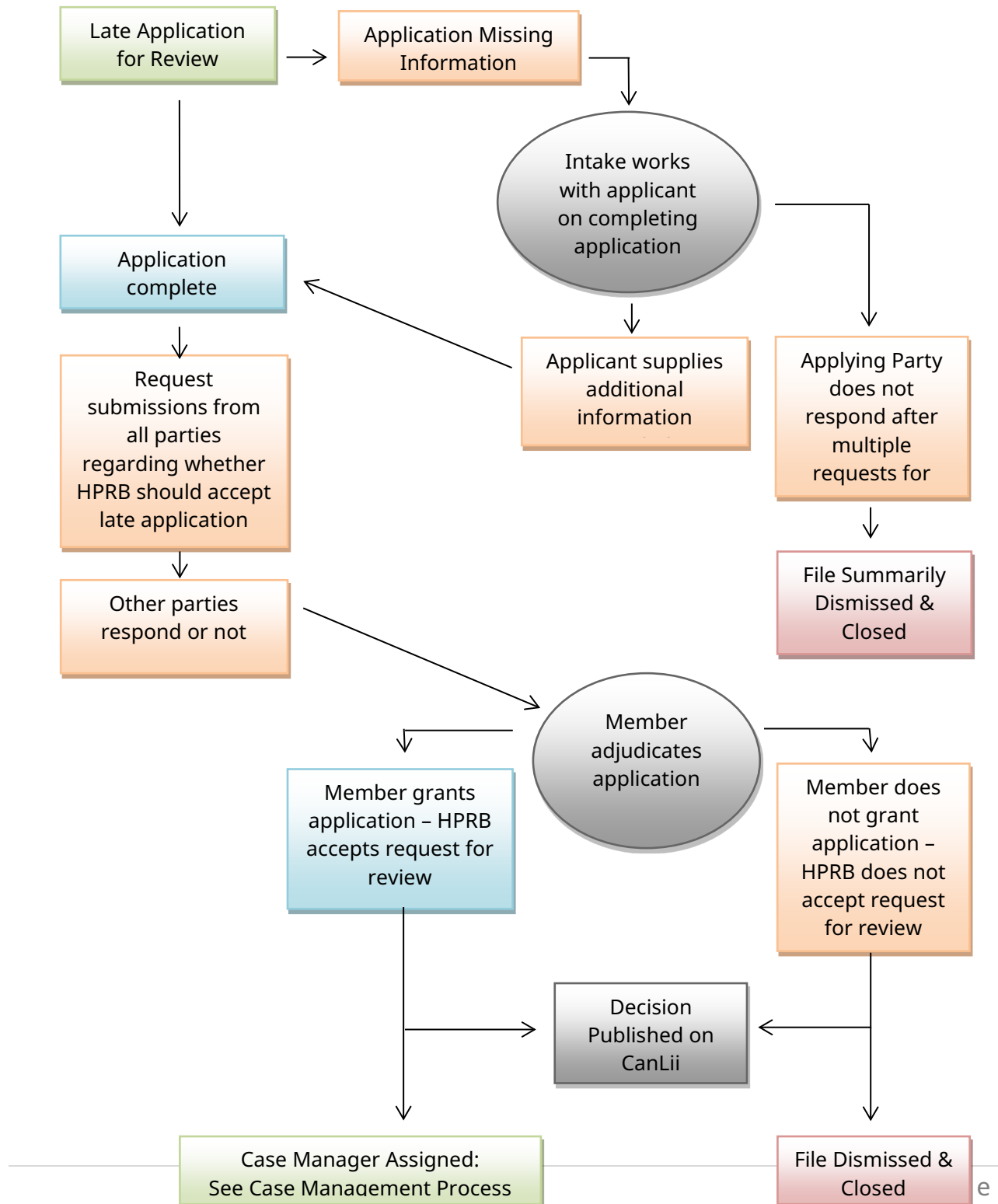
## Process for Review of Investigations Not Completed within Statutory Deadlines

Complainants who are waiting for a college to complete its investigation into the circumstances of the complaint may, after the amount of time specified in the legislation has elapsed, apply to the Review Board for a review of the delay. This chart describes the delayed investigation review process.



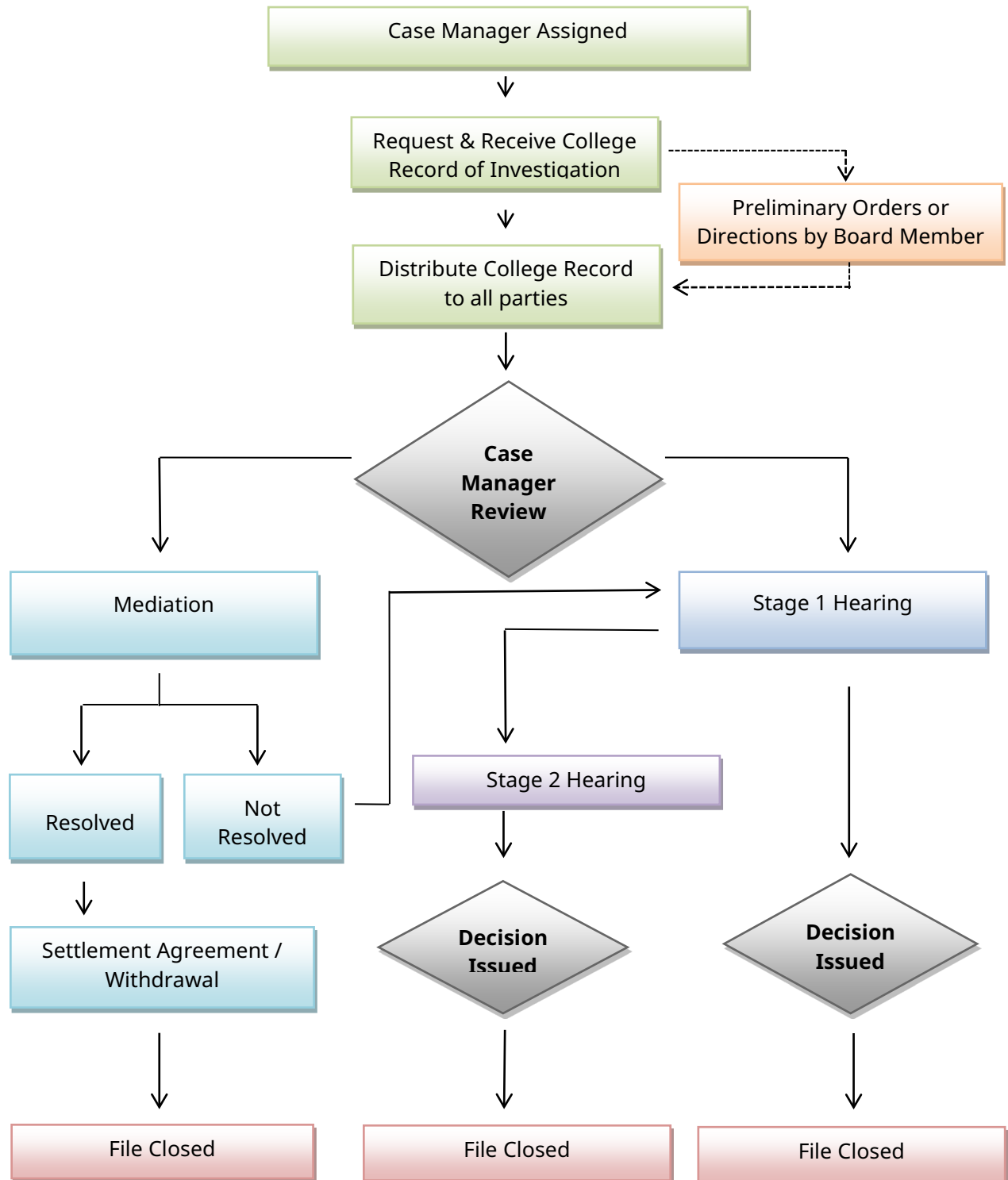
## Process for Applications Submitted Outside Legislated Deadline

The Review Board has authority under s.24 of the Administrative Tribunals Act to accept applications outside legislated deadlines if special circumstances exist. Review Board staff ensure that such applications are put to a member for adjudication.



## Case Management Process

The Chart below illustrates the steps in the process for managing a case from assignment of a case manager through to resolution, either by way of a mediated settlement or a decision of a Review Board member following a hearing.



## The Adjudication Process

The Review Board's written review process, which finds its authority in Part 4.2 of the Act and in the provisions of the ATA, is codified in the Review Board's *Rules of Practice and Procedure under the Health Professions Act*, R.S.B.C. 1996, c.185. These Rules provide for the efficient adjudication of questions that may arise at the beginning of a Review Board proceeding, such as:

- Does the Review Board have jurisdiction (legal authority) to hear this particular complaint?
- Was the complaint not filed in time, and should an extension of time for filing be granted?
- Should certain confidential or sensitive third-party information in a health college Record of investigation be withheld from an applicant?

A formal review before the Review Board is conducted as a "review on the Record," subject to any additional information or evidence that was not part of the Record that the Review Board accepts as reasonably required for a full and fair disclosure of all matters related to the issues under review. What constitutes the "Record" is defined in the Rules.

Hearings at the Review Board are primarily conducted in writing using the previously mentioned 2 Stage process. They can however also be conducted in person (an oral hearing) or by using an electronic format such as video or teleconferencing or by any combination of these formats. An oral hearing gives the parties an opportunity to present their information, evidence, and submissions to the Review Board in person. Reviews conducted by way of an oral hearing are generally open to the public unless the Review Board orders otherwise. Since 2018, all review board hearings have been written.

If a written hearing is held, the Review Board will provide directions regarding the process and timeframe for the parties to provide their evidence, arguments, and submissions to the Review Board in writing.

The Chair of the Review Board designates one or more members of the Review Board to sit as a Panel for each individual hearing. After a written or oral review hearing, the Review Board will issue a written decision, deliver a copy to each party and as required by the Rules, post it to the CanLII website.

## Noteworthy Decisions

The following are a selection of noteworthy Review Board decisions issued in 2023.

### ***Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2023 BCHPRB***

**34**

The Complainant complained that the Registrant wrongfully pressured his patients to fill prescriptions at a pharmacy owned by the Registrant's wife. The Inquiry Committee found there was no conclusive proof to substantiate the allegations and, based on similarities between letters from various witnesses, queried whether the letters could have been authored by the Complainant. The Inquiry Committee dismissed the complaint.

The Complainant applied for review on the basis that the Inquiry Committee ignored witnesses and did not conduct appropriate interviews.

The Review Board Panel Chair found the investigation was inadequate because the Inquiry Committee relied on unsafe assumptions to dismiss the evidence in the witness letters. The Inquiry Committee should have interviewed the witnesses.

The Panel Chair also found the disposition was unreasonable, holding that similarity of language is not a reasonable basis on which to dismiss evidence. Overall, the College disposition did not transparently or rationally deal with the evidence provided by the Complainant.

The Panel Chair referred the matter back to the College for reconsideration.

### ***Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2023 BCHPRB***

**60**

The Complainant complained about multiple incidents of bullying and harassment by the Registrant, the Complainant's co-worker. There were allegations of inappropriate behaviour towards the Complainant and towards others who did not complain to the College. The College also received a separate complaint about the Registrant's behaviour in the workplace.



In the complaint at issue, the Inquiry Committee concluded that the Registrant had engaged in unprofessional conduct. The Inquiry Committee determined that, in consideration of unexplained “statutory options for resolving the matter,” the Registrant should complete remedial education and provide a written commitment to ensure professional communication in the future. The Inquiry Committee also required the Registrant to attend a concluding interview with the registrar’s staff to discuss what he learned.

By the time of the Inquiry Committee’s disposition, the Registrant had already completed the coursework identified by the Inquiry Committee, pursuant to the resolution of the other complaint against him. This fact was not communicated to the Complainant in the summary of the disposition of her complaint.

The Complainant applied for review of the adequacy of the College’s investigation and the reasonableness of the Inquiry Committee’s disposition. She argued that the College did not fully investigate. She said, in particular, that the College failed to interview her and other employees subject to bullying/harassment. She also alleged that the College failed to identify a systemic pattern in the Registrant’s behaviour. The Complainant alleged that the disposition was unreasonable because the remedy was inappropriate.

The Review Board Panel Chair found that the investigation was adequate but that the disposition was not reasonable. With respect to the former, the Panel Chair held that the information gathered by the Registrar was sufficient to allow the Inquiry Committee to fully consider the allegations. In addition, it was reasonable for the Registrar to focus the investigation on allegations of behaviour towards the Complainant.

In evaluating the reasonableness of the disposition, the Panel Chair highlighted the need for coherent, intelligible, and transparent reasons for the Inquiry Committee’s conclusions. The Panel Chair endorsed the reasonableness of the Inquiry Committee’s finding that the Registrant’s behaviour was unprofessional and warranted criticism. The Panel Chair also held that it was reasonable for the Inquiry Committee to focus on allegations of behaviour towards the Complainant, rather than on systemic allegations. However, the Panel Chair found that the Inquiry Committee did not provide a reasonable explanation of the “statutory options”

available to it or its reasons for selecting the remedial options chosen. Further, the Panel Chair identified a failure of transparency in the non-disclosure of the fact that the complaint was considered alongside the second complaint against the Registrant, and that the Inquiry Committee's remedial education directions applied to both matters.

The Review Board returned the matter to the College for reconsideration.

***Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2023 BCHPRB***  
**61**

The Complainant complained that while she was training to become an operating room nurse, the Registrant, a surgeon, forcibly placed an oxygen mask on her, hurting her, restraining her and making it difficult for her to breathe, as she was already wearing a surgical mask with a visor and glasses. The Complainant further alleged the Registrant was physically intimidating and made offensive religious comments during the incident. The incident happened after the Registrant observed the Complainant placing an oxygen mask on a patient and took exception to her technique.

The Inquiry Committee accepted the Complainant's statement of events and characterized the Registrant's "lack of professionalism as abhorrent". The Inquiry Committee determined that the Registrant "demonstrated a lack of awareness in regard to the inappropriateness of helping a colleague 'mask up'."

By the time the complaint was before the Inquiry Committee, the Registrant had already apologized to the Complainant for the incident. During the complaint process, the Registrant consented to completing education related to respectful team-based communication and professionalism, and to attending an interview with the registrar's staff. The Inquiry Committee resolved the complaint on the basis of the Registrant's commitments.

The Complainant applied for review of the reasonableness of the Inquiry Committee's disposition and the adequacy of the College's investigation. She emphasized that the incident was significant and traumatizing to her. She expressed concern that the Registrant's apology did not acknowledge the seriousness of the incident and was only with respect to how he

spoke to her, not for the physical harm. The Complainant requested, among other things, that the Review Board direct the College to issue a citation against the Registrant.

The Review Board Panel Chair found the investigation “was adequate to uncover the truth, to determine that the conduct in question did not meet the standard required of the Registrant, and [that] the information is sufficient to allow an effective remedy to be crafted.”

The Panel Chair found the disposition unreasonable. The Inquiry Committee had found that the Registrant behaved inappropriately in “helping [the Complainant] ‘mask up’” but there was no evidence this was what the Registrant was doing. The Panel Chair held that the Inquiry Committee’s characterization of the incident trivialized the Registrant’s physical interference with the Complainant. The Panel Chair further found the Disposition unreasonable because the Inquiry Committee did not address what remedial measures were appropriate in light of the physical interference.

The Panel Chair resolved to return the complaint to the Inquiry Committee with directions. After issuing the decision noted here, the Panel Chair heard submissions on the directions that ought to be given at a hearing convened on September 7, 2023. The Panel Chair’s final decision remained pending at the end of 2023.

***Complainant v. College of Physical Therapists of British Columbia (No. 1), 2023 BCHPRB 80***

The Complainant complained of treatment he received for injuries following a motor vehicle accident, including concerns about unprofessional behaviour, an alleged conflict of interest with the Insurance Corporation of British Columbia, excessive fees for record production and the timing and way the Complainant was discharged from the Registrant’s care. The Complaint was addressed by way of summary disposition by the Registrar, under s. 32(3) of the Act.

In March 2022, the Registrar sent an email to the College Coordinator, the Inquiry Committee, and the Discipline Committee, outlining her findings and “summary thoughts”. In April 2022, a kinesiologist who had treated the Complainant, and had been interviewed by College investigators, contacted the College to amend her evidence. The College informed the kinesiologist she could not do so because the Registrar had already made her decision.

In August 2022, the Deputy Registrar and the Inquiry Committee reviewed a draft decision on the complaint. In October 2022, the Inquiry Committee dismissed the Complaint on the basis proposed in the draft decision.

The Complainant applied for review of the adequacy of the College's investigation. She also applied for review of the reasonableness of the disposition, asserting that the College preferentially weighed evidence in favour of the Registrant, applied the wrong standard of proof, misapprehended the facts and evidence, failed to consider submissions and lacked objectivity in its assessment of the arguments and evidence.

The Review Board Panel Chair allowed the application for review. The Panel Chair's primary concern was with the treatment of the kinesiologist's evidence. The Panel Chair found that the Registrar had not made a final decision when the kinesiologist contacted the College to amend her evidence in April 2022. Failing to permit the kinesiologist to amend her evidence undermined the adequacy of the investigation and the reasonableness of the disposition. An adequate investigation required taking steps to ensure the interview summaries accurately reflected the witnesses' evidence. The analysis of the complaint could be impacted by the new or revised evidence of the kinesiologist.

The Review Board remitted the matter to the College with instructions to conduct further investigations.

***Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2023 BCHPRB 84***

The Complainant complained about the medical care that 8 registrants provided to her daughter. The daughter suffered from anorexia nervosa and died from organ failure. The Complainant complained that her daughter died an avoidable death from a treatable mental illness. The Complainant sought systemic changes and better practices in relation to patients who pose a danger to themselves. The Complaint also raised concerns about whether the Registrants complied with the *Mental Health Act*.

The College had the investigation materials reviewed by the College of Physicians and Surgeons of Alberta ("CPSA") because the Complainant was related to an employee of the

British Columbia College. The CPSA investigator interviewed the Complainant and received communications from her but did not provide copies of these documents to the Registrants. The CPSA delivered a report to the Inquiry Committee which contained errors, included failing to set out the standards against which the Registrants' conduct was assessed; referring to wrong standards; and failing to discuss the requirements for physicians under the *Mental Health Act*.

Despite these errors, the Inquiry Committee accepted the conclusions of the CPSA investigator and made no regulatory criticism of seven of the registrants. The Inquiry Committee criticized the final registrant, finding her documentation management concerning coverage while she was on leave to be inadequate, although no concerns about that registrant's document management were raised in the Complaint or in the CPSA report.

The Complainant applied for review to the Review Board, raising concern about the CPSA report including that the CPSA investigator missed some of the issues set out in the complaint and in the Complainant's and Registrant's submissions.

The Review Board Panel Chair found that the Inquiry Committee's investigation was inadequate. Neither the CPSA investigator nor the Inquiry Committee adequately investigated the document management of the registrant subject to criticism. The CPSA also failed to adequately investigate the complaint about compliance with the *Mental Health Act*.

The Panel Chair found, in turn, that the College's disposition with respect to the document management issues and compliance with the *Mental Health Act* was unreasonable, as the disposition was not based on adequate evidence.

The Panel Chair remitted the matter to the College with directions to make efforts to obtain evidence on the document management issue and obtain evidence on all registrants' conduct in relation to the *Mental Health Act*. The College was further directed to identify the appropriate standards against which the Registrants' care should be assessed.

The Registrant, a family physician, terminated the physician-patient relationship with the Complainant after the Complainant made a complaint against the Registrant. Two years later, the Registrant ended the physician-patient relationship with the Complainant's daughter by refusing to book an appointment for her. The daughter was a minor at the time and was experiencing mental distress.

The complaint was addressed pursuant to s.32(3)(c) of the *Act*. The Inquiry Committee's disposition letter acknowledged that the handling of the daughter's care "could have been addressed with greater clarity," but concluded that the conduct complained of did not meet "the level at which regulatory criticism is warranted." The College further supported an assertion by the Registrant that it was important that she have a mutually trusting relationship with the daughter's primary caregiver to provide the best service.

The Complainant applied for review to the Review Board, challenging both the adequacy of the investigation and the reasonableness of the disposition. The Review Board Panel Chair found that the Inquiry Committee's investigation was inadequate. The daughter had three guardians other than the Complainant, including the daughter's father, stepmother, and aunt. To be adequate, the Registrar needed to have asked what steps the Registrant had taken to ascertain who was the daughter's primary caregiver. The disposition showed the Registrar made assumptions around the Registrant's thinking without proper investigation.

The Panel Chair found the inadequate investigation undermined the reasonableness of the disposition. The disposition was not justified in light of the facts because the investigation was insufficient to uncover some of the key facts. The disposition also failed to grapple with key issues and arguments raised by the Complainant. The Review Board found there was a lack of evidence about the Registrant endeavoured to ensure continuity of care for a vulnerable minor. Further, the Review Board found that reducing the Registrant's conduct to an issue of clarity was insensitive and failed to consider the way the Registrant terminated the physician-client relationship.

The Review Board returned the matter to the College for reconsideration.

***Complainant v. British Columbia College of Nurses and Midwives (No. 1), 2023 BCHPRB 50;***  
***Complainant v. British Columbia College of Nurses and Midwives (No. 1), 2023 BCHPRB 51;***  
***Complainant v. British Columbia College of Nurses and Midwives (No. 2), 2023 BCHPRB 99;***  
***and Complainant v. British Columbia College of Nurses and Midwives (No. 2), 2023 BCHPRB 100***

Two Complainants brought separate complaints about two Registrants who had provided care to the Complainants' children, "Patient A" and "Patient B", in residential care facilities. Both Patients were young adults with severe disabilities and complex medical needs.

Patient A was a young man who was blind and had significant food allergies, as well as behavioural and sensory stimulation issues. The complaint in respect of the Registrants' treatment of Patient A alleged:

- (a) The Registrants delegated their nursing duties to a non-nursing supervisor who then gave nursing instructions to non-nursing staff.
- (b) The Registrants did not ensure Patient A received safe, hygienic and appropriate care and feeding to meet his complex health care needs, causing him to rapidly gain weight, to have food reactions, to develop an oral herpes infection, and to increase self-stimulation and self-mutilation behaviours.
- (c) The Registrants took and/or supported aggressive, punitive, actions against the Complainant when she attempted to advocate for Patient A.

Patient B was a young woman who required total care for her basic needs. She passed away at age 21. The complaint in respect of Patient B alleged:

- (a) The Registrants did not ensure that Patient B received appropriate medical care, despite signs and symptoms of illness.
- (b) The Registrants failed to assess, monitor or recognize signs and symptoms of a bowel obstruction over a period of several months, causing Patient B pain and suffering. The bowel obstruction ultimately led to Patient B's death.

- (c) The Registrants told staff caring for Patient B that the Complainant had Munchausen by Proxy Syndrome and had caused unnecessary and painful medical interventions for Patient B. The Registrants directed staff not to communicate with the Complainant, under penalty of termination.
- (d) The Registrants allowed their personal feelings towards the Complainant to cloud their clinical judgement with respect to Patient B.
- (e) The Registrants were obstructive to the Complainant advocating for and receiving medical information about Patient B and misrepresented Patient B's condition as improved when it had not.

After receipt of the Complainant's complaints against the Registrants, the Inquiry Committee on its own motion initiated two further complaints against one of the Registrants. The Inquiry Committee addressed the complaints all together.

Following a prolonged investigation, the Inquiry Committee deliberated on the complaints in a series of meetings. The Inquiry Committee eventually elected to address the complaints by negotiated consent agreements with the Registrants. Some of the terms of the negotiated agreements were not consistent with the Inquiry Committee's findings in respect of the complaints, as documented in meeting minutes.

The Complainants applied for review of the disposition of the complaints. Both challenged the reasonableness of the dispositions. One also challenged the adequacy of the College's investigation.

In *Complainant v. British Columbia College of Nurses and Midwives (No. 1)*, 2023 BCHPRB 50 and 2023 BCHPRB 51 (the "Merits Decisions"), the Review Board Panel Chair found that the investigations were adequate but that the unexplained differences between the findings in the Inquiry Committee's meeting minutes and the terms of the consent agreements rendered the latter unreasonable. The Panel Chair also found the consent agreements failed to address some of the allegations in the complaints, the expectations of nurses in the circumstances at issue in the complaints, and how the Registrants fell short of such expectations. The Panel Chair indicated in the decisions that she intended to issue directions to the College pursuant to s. 50.6(8)(b) or (c) of the *Act*, and invited submissions on the appropriate directions.



On December 19, 2023, the Panel Chair issued final decisions on remedies in *Complainant v. British Columbia College of Nurses and Midwives (No. 2)*, 2023 BCHPRB 99 and 2023 BCHPRB 100 (“Remedy Decisions”). At the time of the Remedy Decisions, both Registrants’ standing with the College was “not authorized to practice – Cancelled”. However, it remained open to the Registrants to apply to the College for reinstatement.

The Panel Chair concluded that the proceedings were among “the unusual cases where it is appropriate [to] give directions pursuant to s.50.6(8)(b) of the Act to direct the Inquiry Committee to make a disposition that it could have made”. The Panel Chair directed the Inquiry Committee to cause citations to be issued against the Registrants under s.37 of the Act.

***Complainant v. College of Physicians and Surgeons of British Columbia (No. 1)*, 2023 BCHPRB 87**

The Complainant, a nurse, sent a letter to the Registrant, a senior administrative with the Health Authority. The letter contained the statement “to the addressee only”. Despite this, the Registrant forwarded the Complainant’s letter to the Health Authority’s “Human Resources Consulting Team,” and advised the Complainant she was doing so. The Complainant continued to write to the Registrant, either individually or including other Health Authority staff members as addressees, with the notation “to addressee(s) only”. The Complainant later complained that the Registrant was not authorized to forward the initial letter, and that the Registrant failed to meet the standard expected of her as a member of the College.

The Inquiry Committee reviewed the complaint and did not investigate further. The Inquiry viewed the issues raised in the complaint as administrative in nature and related to the operations of the Health Authority; they did not pertain to conduct of the Registrant as a medical professional. The College determined that the matters raised fell outside its mandate in regulating the professional conduct of its members

The Complainant applied for review to the Review Board, challenging the adequacy of the investigation and the reasonableness of the disposition. The Complainant sought that the

Review Board, among other things, direct the College to issue a citation or reprimand against the Registrant.

The Review Board Panel Chair found the investigation was adequate and the Inquiry Committee disposition reasonable. Despite the College's limited investigation, the Panel Chair found the "uncontradicted facts before the Inquiry Committee were sufficient for it to determine whether it had jurisdiction to pursue this matter further".

With respect to reasonableness, the Panel Chair affirmed that the Registrant was acting in her role as a senior administrator with the Health Authority. The Panel Chair noted that the Review Board's role is "limited to determining whether the Inquiry Committee's assessment of the professional conduct of the Registrant, as a member of the College, was reasonable."

## Judicial Reviews of Review Board Decisions

Just as the Review Board was created to ensure that College decision-making is accountable, the Review Board is accountable for its decisions in British Columbia Supreme Court, in a process known as judicial review. Where a Review Board decision is challenged on judicial review, the court considers whether the Review Board's substantive decision was patently unreasonable, and whether its process was fair and impartial. The below information is current to December 31, 2023.

### 1. Judicial Decisions Since Last Annual Report

***College of Chiropractors of British Columbia v. Health Professions Review Board, 2023 BCSC 529*** (petition filed December 16, 2021)

Summary: The Complainant filed complaints against two Registrants, asserting that material on the Registrants' websites violated the College's bylaws and Professional Conduct Handbook with respect to marketing. At the time of the complaints, the Registrants were members of the College of Chiropractors' board and had announced their intentions to again run in upcoming elections.

The Registrar dismissed both complaints under s.32(3)(c) of the Act, that is, as complaints that, if proven, would not constitute serious matters subject to an investigation by the Inquiry Committee. A matter is a "serious matter" for the purposes of the Act if the allegations, if proven or admitted, would ordinarily result in an order being made imposing limits or conditions on a registrant's practice, or suspending or cancelling their registration.

The Complainant applied for review of the disposition of his complaints. The Complainant argued that the complaints should have been referred for investigation outside of the College, due to the Registrants' positions on the College board. In *Complainant v. College of*

*Chiropractors of British Columbia (No. 1)*, 2021 BCHPRB 125, the Panel Chair overturned the Registrar's dispositions. The Panel Chair found that the investigations were inadequate and the outcomes were not reasonable, for the following reasons:

- (a) The Complainant had raised concerns about the Registrar's ability to render an impartial decision. These concerns were not properly addressed.
- (b) The Registrar should have provided the complaint and proposed disposition to the Inquiry Committee before proceeding under s.32(3)(c) of the Act.
- (c) There was no record of investigative steps, except that the Registrar reviewed the websites. The Registrar did not document what was on the websites and the websites changed after the Registrar's review.

The College sought judicial review of the Review Board's decision. The Court found:

- (a) The Review Board's determinations on the adequacy of the investigations were patently unreasonable.
- (b) The Review Board's determinations on the unreasonableness of the College disposition were patently unreasonable.
- (c) The Review Board did not, as the College argued, fail to adhere to the principles of natural justice and procedural fairness.

With respect to the adequacy of the investigation, the Court found the Review Board did not express reasons tying its finding that the summary process was inappropriate due to concerns of bias to the adequacy of investigation. The summary process may be relevant to the adequacy of the investigation, but the decision to stream a matter into summary process per se is neither a matter of the adequacy of the investigation nor the reasonableness of the disposition. The Court interpreted the Review Board's finding to mean that if a complaint concerns a college board member, the summary process cannot be used. The Court clarified that this is not provided for in s. 32(3) of the Act.

Further, while the Review Board found the Complainant raised concerns about impartiality in both complaints, the Court found it was not clear that bias was raised in either complaint. Rather, concerns of bias crystalized at the Review Board.

The Court also found the Review Board had erred in its understanding of the order of events under the summary process. Contrary to the Reivew Board's finding, there is no requirement that the Registrar provide the Inquiry Committee with a complaint and seek approval in advance of making a disposition.

Regarding the Review Board's finding that the Registrar had not documented the material on the websites and the websites had changed by the time of the review, the Court found the website material it was included in the Complaints and therefore, was available for the Review Board to review and consider.

Regarding the Review Board's finding that no real investigation had taken place, the Court found the complaints did not warrant further investigation outside of reviewing the website. With respect to the reasonableness of the disposition, the Court found that in the summary process, it is not necessary for the Registrar to determine the merits of the complaint. The question is how objectively serious the alleged misconduct is and whether significant restrictions on a registrant's practice would be required to protect the public interest. The Registrar's determination on the serious matter issue is reviewable by the Review Board. In this case, there was no suggestion that if the Complaints were proven or admitted they would constitute serious matters. Accordingly, the Registrar's decision to dismiss the complaints was within the range of outcomes.

Finally, with respect to procedural fairness, the College took issue with some of the language in the Review Board decision. The College argued the language "impugned the characters of the registrar and deputy registrar" who did not have an opportunity to respond to the assertions they say the Review Board was making.

The Court found that looking to the context of the Review Board's language revealed there were no issues of procedural fairness. The Review Board's comments did not express concerns of dishonest investigating, dispositions of complaints for an improper purpose, intentionality in undermining the inquiry committee, or nefarious intent regarding an incomplete record, any of which may have required giving the Registrar, Deputy Registrar, and the College of Chiropractors an opportunity to respond.

The Court set aside the Review Board's decision and reinstated the College's disposition.

***Ooms v Health Professions Review Board, College of Physicians and Surgeons of British Columbia and Dr. Abram Karrel*** (Petition filed February 14, 2019)

Summary: The Complainant complained about advice the Registrant, an employee and medical advisor for WorkSafeBC, gave WorkSafeBC about the Complainant. The Complainant alleged the Registrant's comments about him were "simply not true".

The College dismissed the complaint, finding that it had limited jurisdiction in WorkSafeBC matters. The Complainant applied to the Review Board to review the College's disposition. He argued that the College's investigation was inadequate and that the disposition was unreasonable.

The Panel Chair dismissed the review in *Complainant v. College of Physicians and Surgeons of British Columbia*, 2018 BCHPRB 114. The Complainant applied for judicial review of the Review Board's decision.

In oral reasons for judgment, the Court found that the Review Board's decision that the investigation was adequate was not patently unreasonable. The Court reasoned that in the context of the complaint, the investigation balanced the goals of public accountability, uncovering the truth, and the efficient use of investigative resources. Moreover, sufficient evidence was gathered to enable a disposition to be crafted.

The Court applied the decision in *College of Physicians and Surgeons of British Columbia v Health Professions Review Board*, 2022 BCCA 10 and concluded that the College's disposition was reasonable, on the administrative law standard of "reasonableness".

***Maroofi v the Health Professions Review Board et al.*** (petition filed June 12, 2020)

Summary: The applicant was educated as a medical doctor outside of Canada and sought to become registered as a physician in British Columbia. The Registration Committee approved, with conditions, the applicant's application for registration in what was the college's "Educational-clinical trainee class." The applicant applied to the Review Board for review of both of these decisions. The Review Board confirmed both decisions. No judicial review was filed from this decision. Instead, years later, the applicant applied to the Review Board to reopen this decision. The application to reopen was dismissed (Decision 212). The applicant sought judicial review of Decision 212. The British Columbia Supreme Court upheld Decision 212. The Court of Appeal upheld the Chambers Judge's decision. The applicant sought leave to appeal to the Supreme Court of Canada.

Status: On February 2, 2023, the Supreme Court of Canada dismissed the application for leave to appeal. The Supreme Court of Canada does not render reasons for its decisions on application or leave to appeal; however, the test was not met as to whether the matter raises issues of national or public importance.

## **2. Petitions Discontinued**

***Chandra v HPRB*** (petition filed December 17, 2021 and served February 3, 2022)

Summary: Petition challenges Review Board Decision HPRB-HPA-21-G004.

Status: The matter was discontinued on January 4, 2023.

***Quimet v Health Professions Review Board*** (filed November 18, 2013)

Summary The petitioner filed a complaint with the College of Dental Surgeons of British Columbia, which the College dismissed on February 21, 2021. The petitioner applied to the Review board for review. On September 5, 2013, the Review Board dismissed the petitioner's application. The petitioner filed a petition for judicial review outside of the statutory limitation period, on November 18, 2013. On December 24, 2013, the petitioner filed an amended petition. This was the last pleading filed and the last steps the petitioner took to advance this matter.

Status: On January 31, 2023, the Review Board filed an application to dismiss the petition for unreasonable delay. The Court granted the Review Board's application noting the importance of timeliness to the statutory scheme, the extensive delay, the lack of reasons for the petitioner's delay, and the fact that administrative law generally requires decisions to be made quickly.

***Battie v College of Physicians and Surgeons of British Columbia, et al.*** (filed April 11, 2016)

Summary: The petitioner filed four applications with the Review Board for review of a decision of the College of Physicians and Surgeons of British Columbia on July 3, 2015. The Review Board dismissed these applications on February 10, 2016. On April 11, 2016, the petitioner sought judicial review of the decision. Seven years after the petitioner filed its petition, the Review Board brought an application to the Court, seeking an order that the petition be dismissed for unreasonable delay.

Status: The Court granted the Review Board's application for dismissal on April 21, 2023, finding that timeliness is important to the underlying administrative scheme, which is comprised of the HPA and the ATA. The Court further found that the petitioner's delay undermined the importance of the judicial review to the petitioner, and that good public administration requires decisions to be made quickly and have finality.



***Millman et al. v Health Professions Review Board et. al*** (filed October 16, 2015)

Summary: On June 6, 2011, the petitioners, a mother and daughter, made a complaint to the College of Psychologists of British Columbia. On April 24, 2012, the College dismissed the petitioners' complaint. On May 7, 2012, the petitioners applied for review to the Review Board. On August 5, 2015, the Review Board dismissed the application for review. The petitioners sought judicial review on October 16, 2015.

Status: On May 3, 2023, the Review Board brought an application to dismiss the petition for unreasonable delay. The Court granted the Review Board's order noting that the delay in this matter was extensive. There was a concern about the service of the daughter so the Court ordered that its order dismissing the petition be sent to the petitioners by registered mail. Upon delivery, the daughter would have 14 days to apply to the court to set aside the order.

***Smith v Health Professions Review Board*** (petition filed August 22, 2019)

Summary: On January 6, 2017, the petitioner made a complaint to the College of Registered Nurses of British Columbia. On November 30, the College dismissed the complaint. The petitioner applied to the Review Board for a review of the College's Decision. The Review Board dismissed the application on June 21, 2019. On August 22, 2019, the petitioner filed a petition for judicial review. The petitioner died in early 2021. His mother signed a statutory declaration with the Review Board indicating that she was the Executor of the petitioners Will. She did not file anything with the court. However, she agreed to a consent dismissal order in respect of the petition.

Status: Given the unusual circumstances and out of an abundance of caution, the Review Board brought an application to dismiss to the Court. The Court granted the Review Boards application to dismiss in May 2023.

***Lohr v the Health Professions Review Board, et al.*** (filed June 29, 2015)

Summary: On September 11, 2014, the petitioner applied to the College of Chiropractors of British Columbia to be registered as a full member. On October 30, 2014, the College declined to approve the petitioner's application. On November 25, 2014, the petitioner applied for review to the Review Board. On March 24, 2015, the Review Board dismissed the petitioner's application for review. On June 29, 2015, the petitioner filed for judicial review. The petitioner made several unsuccessful attempts to schedule a hearing with the Court. His last attempt was on January 10, 2017/ Since that time, the petitioner had not taken any steps to advance his petition.

Status: On June 1, 2023, the Review Board filed an application to dismiss the petition for unreasonable delay. The Review Board experienced difficulty serving the petitioner. The petitioner did not respond to email correspondence, and he no longer resides at his address for service. The petitioner did not appear at the application. After being provided with the evidence that reasonable attempts were made to serve the petition, the Court granted the Review Board's order for dismissal for unreasonable delay.

***Afridi v Health Professions Review Board*** (filed March 9, 2021)

Summary: This petition challenges HPRB Decisions HPRB-HPA-20-188; HPRB-HPA-20-A189; HPRB-HPA-20-A190; HPRB-HPA-20-A191; HPRB-HPA-20-A193, HPRB-HPA-20-A194 that made certain orders and directions including directing the Alberta College to resume its investigation and to complete it as soon as possible and expedite its report. The petition seeks to quash or set aside the Review Board orders and an order directing the review board to reconsider those orders in accordance with the Court's judgement.

Status: Dismissed by consent order without costs August 23, 2023.

***Wissink v Health Professions Review Board, et al.*** (filed May 25, 2021)

Summary: Petition challenges the Review Board Decision HPRB-HPA-20-A147 in which the Review Board granted the College's application to withhold certain document sin the Record from the complainant pursuant to s.42 of the *Administrative Tribunals Act*.

Status: Dismissed by consent without costs in August 2023.

### **3. Petitions Outstanding**

***The Society of Canadians Studying Medicine Abroad, Kostanski, and Falconer v. The College of Physicians and Surgeons of British Columbia, Her Majesty the Queen in Right of the Province of British Columbia, The Canadian Resident Matching Service, The Association of Faculties of Medicine of Canada, and the Health Professions Review Board (Petition filed September 26, 2018)***

Summary: Petition challenges the decisions in Review Board files 2018-HPA-145, 2018-HPA-149, and 2018-HPA-150. Specifically, it seeks to overturn the decision made on July 27, 2018, denying that the Review Board had authority over the application for Review.

Status: Petition will be heard at the same time as the related SOCASMA judicial review. No hearing date has been set.

***Chow v Health Professions Review Board, College of Physicians and Surgeons of British Columbia, and Dr. Riaz Sinawin*** (petition filed September 23, 2019)

Summary: Petition challenges Review Board decision 2016-HPA-199(d)

Status: The Review Board was not served until a year after this petition was filed. At that time, the counsel for the petitioner indicated he was seeking instructions about whether to amend the petition. He agreed the Review Board could hold off filing a response until that was resolved. In June 2021, the petitioner delivered a notice of intention to proceed and an

incomplete application for substitutional service. On March 24, 2023, the petitioner filed a notice of application to renew the petition. This order was granted on April 18, 2023. On July 13, 2023, the petitioner applied under the slip rule to correct an issue with the order pertaining to alternative service. No further steps have been taken in this matter.

***Abraham aka Friesen v Honourable Lisa Beare, Ministry of Citizens' Services, Office of the Information & Privacy Commissioner of British Columbia, Health Professions Review Board, Collage [sic] of Physicians and Surgeons*** (requisition filed April 29, 2021)

Summary: This requisition was filed without notice seeking court orders to have the Ministry of Citizens' Services designate an adjudicator under s.60(1) of the *Freedom of Information and Privacy Act* to investigate and review and enforce rights under that Act. Although the proceeding is styled as an action, the Review Board's position is that it is properly a judicial review and has been improperly constituted.

Status: Court filings have been completed. No date has been set for the hearing of this matter.

***Ooms v Health Professions Review Board, College of Physicians and Surgeons of British Columbia, Dr. Laura Chapman*** (petition filed July 16, 2021)

Summary: Petition challenges Review Board decision 2019-HPA-198 in which the Review Board found a decision of the Inquiry Committee to be reasonable and confirmed the disposition.

Status: Court filings have been completed. The hearing is set for March 11, 2024.

***The Society for Canadians Studying Medicine Abroad, Oliver Kostanski and Harris Falconer v The Health Professions Review Board and the College of Physicians and Surgeons*** (petition filed April 4, 2022)

Summary: Petition challenges Review Board Decision 219-HPA-G23

Status: Court filings are complete. This matter is to be heard at the same time as the other SOCASMA judicial review. No hearing date has been set.

#### **4. Petitions filed**

***Maroney v Doctor David Lindsey et al*** (Notice of Civil Claim filed October 3, 2022, and served February 15, 2023)

Summary: A Notice of Civil Claim was filed in October 2022 and served in February 2023. The Plaintiff had communicated with Review Board Staff in March 2022 and was told that if she wished to pursue an application for review in respect of a decision of the inquiry committee of the College of Chiropractors of British Columbia, she would need to apply for an extension of time. The plaintiff did not apply for an extension of time and made no further communications with the Review Board. The plaintiff pleads assault, battery, professional misconduct and negligence against a registrant of the college and/or the registrant's staff and/or the college and seeks to hold the Review Board vicariously liable for the alleged conduct. The plaintiff pleads the Review Board was negligent.

Status: The Review Board was served in February 2023 and filed its response in March 2023. The plaintiff refiled in March 2023. A registrar of the British Columbia Supreme court issued default judgement against the individual defendants on March 31, 2023. The individual defendants brought an application to have the order set aside. The Review Board will bring an application to strike this claim against it.

***Harun-ar-Rashid v College of Physicians and Surgeons of British Columbia*** (petition filed May 25, 2023)

Summary: Petition challenges Review Board Decision HPRB-HPA-22-A107. In this case, the Complainant applied to the Teacher Registration Branch (TRB) for certification as a teacher in British Columbia. The Registrant, a psychiatrist, wrote a medical-legal report regarding the Complainant's mental state. The report was made without the Complainant's knowledge or consent and was used by the TRB in its decision to deny the Complainant's application. The Complainant alleged that the Registrant acted unethically and illegally, as part of a conspiracy to destroy the Complainant. The Registrar found the Registrant was qualified to issue the Report. The Complainant did not make himself available for an in-person assessment; therefore, the Registrant was limited to preparing the Report from the materials provided to him. On review, the Review Board found that many of the Complainant's assertions both with respect to the adequacy of the investigation and the reasonableness of the disposition were illogical, outlandish, and baseless. The Complainant's Statement of Points with respect to the disposition was lengthy, convoluted, and very difficult to follow. The Review Board found the investigation adequate and the disposition reasonable.

Status: The Review Board was served in May 2023 and filed its response to the petition in June 2023. The petitioner filed an amended notice of civil claim in June 2023. The Review Board filed an amended response to the petition in July 2023 raising a claim that the petitioner is a vexatious litigant. The petitioner filed a response in July 2023. The petitioner attempted to set the matter down for a hearing at the end of 2023 but was unable to secure a date. No further steps have been taken in this matter.

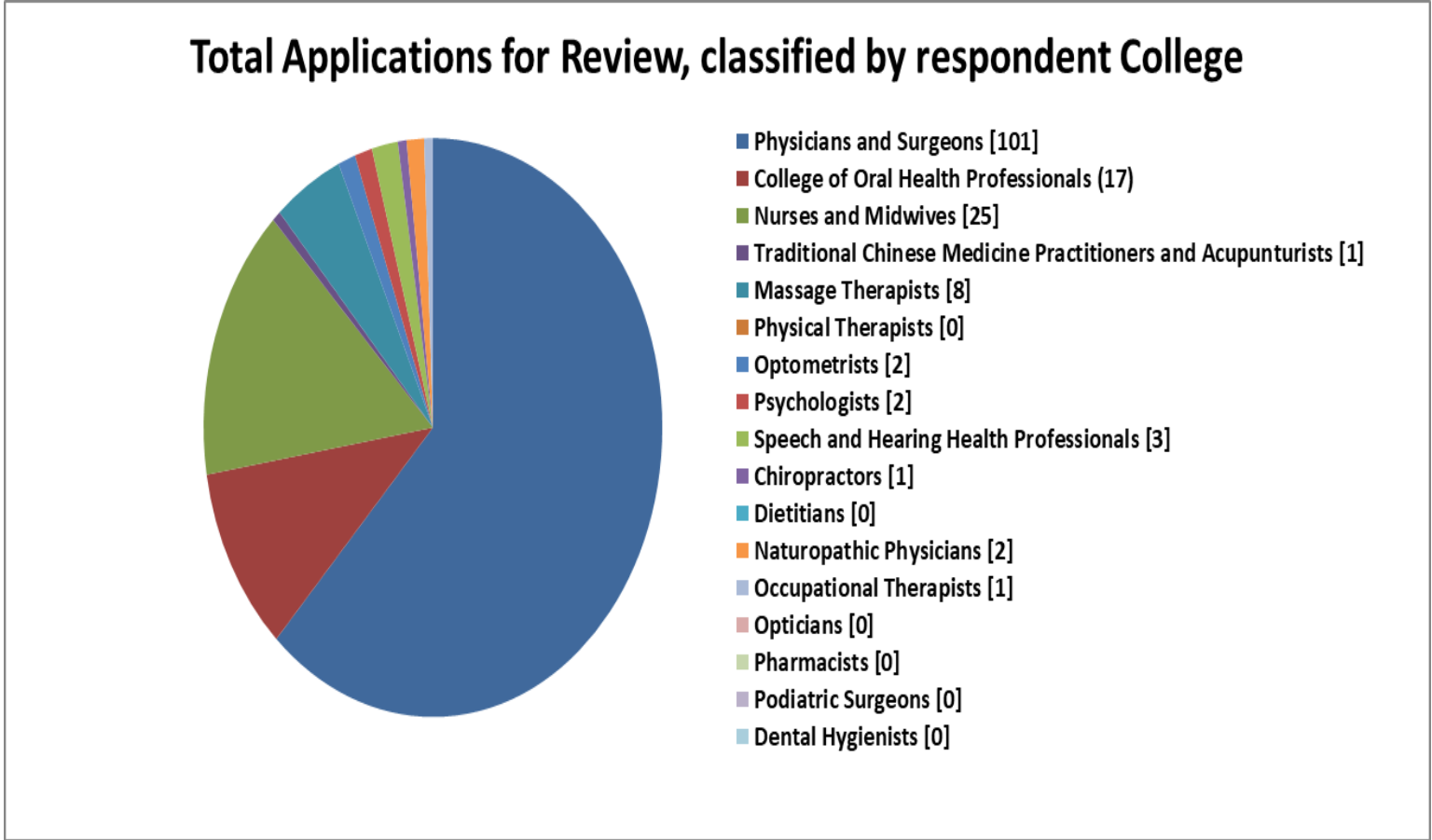
## Review Activity Statistics

For the reporting period from January 1, 2023 – December 31, 2023

**Figure 1: Number of Applications, by type and month**

Month, Year	Complaints (IC)	Delayed Investigation (DI)	Registration (REG)	Total # of Applications	%
January, 2023	12	0	3	15	9%
February, 2023	11	1	1	13	8%
March, 2023	10	0	2	12	7%
April, 2023	10	1	1	12	7%
May, 2023	9	0	1	10	6%
June, 2023	20	0	4	24	15%
July, 2023	9	0	3	13	8%
August, 2023	18	0	4	22	13%
September, 2023	14	1	1	16	10%
October, 2023	2	1	2	5	3%
November, 2023	9	0	5	14	9%
December, 2023	7	0	1	8	5%
<b>Total</b>	<b>131</b>	<b>4</b>	<b>28</b>	<b>163</b>	
<b>% of Total Applications</b>	<b>80%</b>	<b>2%</b>	<b>17%</b>		<b>100%</b>

**Figure 2: Total Applications for Review, classified by respondent College**





**Figure 3: Applications for Review, by college and type**

Respondent College	Complaints (IC)	Delayed Investigation (DI)	Registration (REG)	Total # of Applications	%
BC College of Nurses and Midwives	12	0	13	25	15%
BC College of Oral Health Professionals	12	4	1	17	10%
College of Chiropractors of BC	1	0	0	1	1%
College of Massage Therapists of BC	7	0	1	8	5%
College of Naturopathic Physicians of BC	1	0	1	2	1%
College of Occupational Therapists of BC	1	0	0	1	1%
College of Optometrists of BC	2	0	0	2	1%
College of Physicians and Surgeons of BC	93	0	8	101	62%
College of Psychologists of BC	2	0	0	2	1%
College of Speech and Hearing Health Professionals of BC	0	0	3	3	2%
College of traditional Chinese Medicine Practitioners and Acupuncturists of BC	0	0	1	1	1%
<b>Total</b>	<b>131</b>	<b>4</b>	<b>28</b>	<b>163</b>	
<b>% of Total Applications</b>	<b>80%</b>	<b>2%</b>	<b>17%</b>		<b>100%</b>

# Financial Performance

## 2023/2024 Year Expenditures

This reporting period covers the 2023 fiscal year of operation for the Review Board.

Following is a table showing the expenditures made by the Review Board during its 2023/2024 fiscal year.

### **Health Professions Review Board**

Operating Costs - April 1, 2023 – March 31, 2024

Salary & Benefits	\$ 621,914
Operating Costs	\$ 807,810
Other Expenses	\$
Total Operating Expenses	\$1,429,724

### Shared Services Administrative Support Model

Administrative support for the Review Board is provided by the office of the Environmental Appeal Board and the Forest Appeals Commission.

This shared services approach takes advantage of synergy and keep costs to a minimum. This has been done to assist government in achieving economic and program delivery efficiencies allowing greater access to resources while, at the same time, reducing administration and operational costs.

In addition to the Health Professions Review Board, the office for the Environmental Appeal Board and the Forest Appeals Commission provides administrative support to five other appeal tribunals.