

Mental Health Act Tribunal 2022-2023 Annual Report

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Preamble

Honourable Minister Fitch and Minister Wilson, members, and stakeholders,

It is my pleasure to submit the 2022-2023 Annual Report for the *Mental Health Act* Tribunal as required under the *Accountability and Continuous Improvement Act*.

The *Mental Health Act* provides several procedural protections or safeguards for the seriously mentally ill of society, two of which are provided through Tribunal and Review board hearings.

Within these quasi-judicial tribunal hearings, the chairperson determines if the thresholds of the *Mental Health Act* criteria are met for involuntary admission and the giving of routine clinical medical treatment without consent of persons experiencing serious mental illness.

These individuals are potentially denied their rights and freedoms due to the risk their mental illness represent to themselves or others.

When the thresholds are not met, the tribunal denies the application and the person is voluntary and regains their right to self-determination and more specifically as it pertains to their psychiatric needs.

This past year, 11 chairpersons presided over 863 tribunal hearings to determine whether an involuntary detention and treatment of seriously mentally ill persons would be approved and upheld within a Psychiatric Facility. The nature and volume of work brings many challenges, challenges that were met with professionalism and integrity.

Sincerest gratitude is extended to all Chairpersons, Psychiatric Patient Advocates, and other stakeholders for their contribution to protecting and advocating for society's most vulnerable, the seriously mentally ill.

Respectfully,



Ginette Vautour-Kerwin
Director of Psychiatric Patient Advocate Services
Health Services Collaboration
Health

Mandate

The tribunal is an independent provincial structure that conducts hearings under the *Mental Health Act*. They hear, authorize, or reject requests for involuntary admission and the giving of routine clinical medical treatment without consent of the person. This protective structure allows the person to voice their concerns and objections to the applications. Chairpersons must ensure that judicial fairness is respected while establishing whether the criteria of the *Mental Health Act* are met. The onus is on the psychiatrist to prove that the person suffers from a serious mental illness, that their behaviour demonstrates that, because of the serious mental illness, they are likely to cause serious harm to themselves or to another person or to suffer substantial mental or physical deterioration, that the person is not suitable for admission as a voluntary patient, and that less restrictive alternatives would be inappropriate.

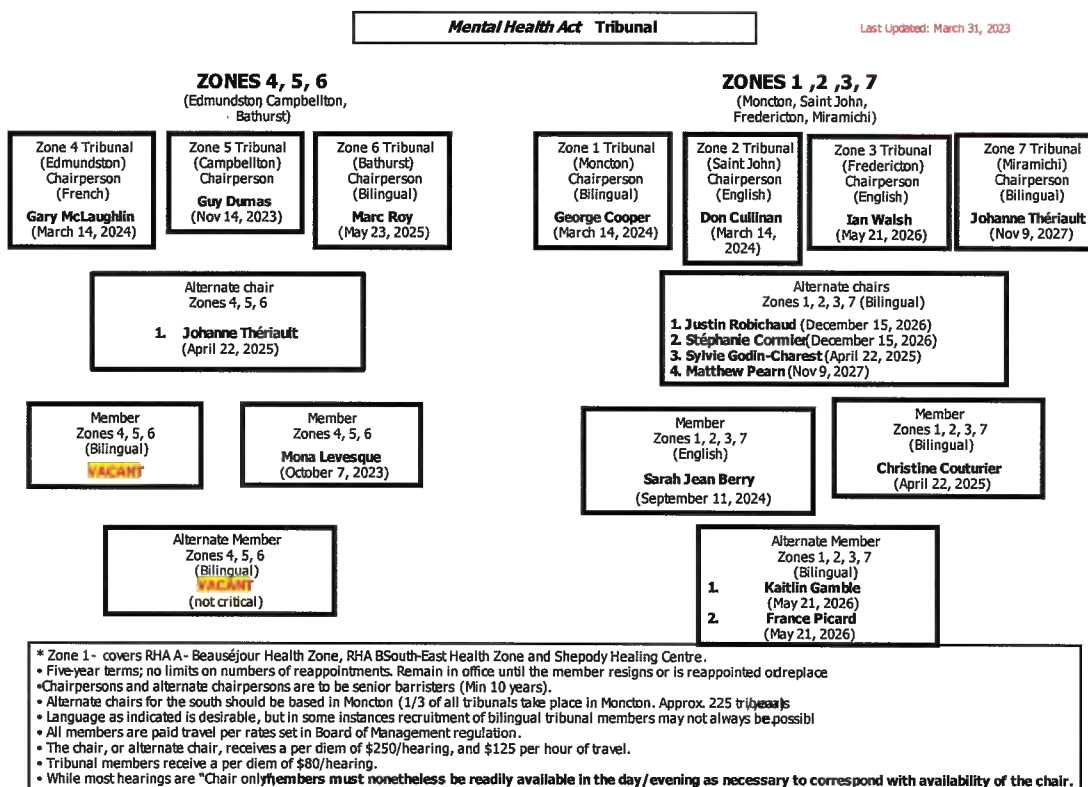
The tribunal chairperson must also have regard for the best interest of a person when informing their decision. The best interest is based on whether the mental condition of the person will be or is likely to be substantially improved by routine clinical medical treatment, whether the mental condition of the person will improve or is likely to improve without routine clinical medical treatment, whether the anticipated benefit from the routine clinical medical treatment outweighs the risk of harm to the person, and whether routine clinical medical treatment is the least restrictive and least intrusive treatment.

Tribunals are established for seven health zones and grouped into two main categories: North (zones 4, 5, 6) and South (zones 1, 2, 3, 7), with primary chairpersons assigned to each zone.

A tribunal consists of three members, one of whom is a member of the Law Society of New Brunswick and is licensed to practise law in the province (for not less than 10 years), who shall act as chair, and two others who are not members of the Law Society. Note that the *Mental Health Act* does provide for the Chairperson to act alone if there are no witnesses to be called or cross examined. Chairpersons act alone in 99.9% of tribunals. The Lieutenant-Governor in Council may appoint alternate members for each tribunal to act in place of the member. Tribunal members hold office for a term not exceeding five years and are eligible for reappointment. Despite the expiry of his or her term, a member of a tribunal remains in office until the member resigns or is reappointed or replaced.

The chairperson of the tribunal sends the Executive Director (Associate Deputy Minister of Health Systems Collaboration) and the Minister of Health a copy of all decisions and orders made by the tribunal in relation to an application under section 8 or 12 of the Act. Since 2015, these copies are held within the Psychiatric Patient Advocate Services' files for the Executive Director and the Minister's consideration. More recently, in March 2023, digitized copies are held within the Psychiatric Patient Advocate Services Share drive; the statutory requirements were deemed met through the provisions of the *Electronic Transactions Act* and approved by the Executive Director as well as the Minister of Health in office.

Tribunal membership



Legislation, policies, and by-laws

The Tribunal processes are legislated under the *Mental Health Act* in accordance with its regulations and the members of the tribunal have all the powers conferred upon commissioners under the *Inquiries Act*.

Activities and metrics (KPIs)

MENTAL HEALTH ACT															
Tribunal Hearings															
Region	Service Center	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total	Cancelled *
Moncton	Vitalité	15	9	17	11	16	13	7	15	18	11	20	16	168	
	Horizon	11	14	11	19	7	11	15	7	9	9	12	10	135	
	Total Moncton	26	23	28	30	23	24	22	22	27	20	32	26	303	3
Saint John	Centracare											1		1	
	Saint John Regional Hospital	17	6	11	9	6	13	13	12	10	10	14	17	138	
	Total Saint John	17	6	11	9	6	13	13	12	10	10	15	17	139	4
Fredericton	Dr. Everett Chalmers Regional Hospital	15	13	6	15	14	9	15	10	11	11	13	9	141	
	Total Fredericton	15	13	6	15	14	9	15	10	11	11	13	9	141	3
Edmundston	Edmundston Regional Hospital	5	4	2	1	3	6	6	5	5	6	4	6	53	
	Total Edmundston	5	4	2	1	3	6	6	5	5	6	4	6	53	0
Campbellton	Campbellton Regional Hospital	3	2	3	1		3	4	1		1	1	3	22	
	Restigouche Hospital Center	1			1		1		2	2	1			8	
	Total Campbellton	4	2	3	2		4	4	3	2	2	1	3	30	0
Bathurst	Chaleur Regional Hospital	10	6	12	9	9	10	10	6	5	9	11	6	103	
	Total Bathurst	10	6	12	9	9	10	10	6	5	9	11	6	103	0
Miramichi	Miramichi Regional Hospital	5	7	5	4	5	5	6	13	12	11	7	5	85	
	Total Miramichi	5	7	5	4	5	5	6	13	12	11	7	5	85	1
New Brunswick Other	Shepody Healing Center	1		1			1		2	2		1	1	9	
Total Province		83	61	68	70	60	72	76	73	74	69	84	73	863	11

* Tribunals were cancelled (never occurred); therefore, these are not included in the final totals

NOTE: 100% of tribunals were coordinated and held within 72 hours of an application for Admission of a person as an involuntary patient or applications for Admission of a person as involuntary patient and a Request for order authorizing the giving of routine clinical medical treatment without consent, as per *New Brunswick Regulation 94-33* under the *Mental Health Act*, subsection 9(1).

Financial information

Pursuant to subsection 17.1(1): A member of a tribunal shall be remunerated as follows:

- (a) if the member is the chairman of the tribunal, \$250 for each hearing and \$125 for each hour of travel time to attend a hearing; and
- (b) if the member is not the chairman of the tribunal, \$80 for each hearing.

In accordance with subsection 17.1(2) of the Regulation, travel and other expenses incurred by all members of tribunals are reimbursed in accordance with the GNB Travel Policy (AD-2801) set by Treasury Board.

The tribunals fall under the ABC category of a Regulatory/Adjudicative bodies under the approved *Remuneration Policy and Classification Framework for Agencies, Boards and Commission*. The above remuneration and expenses rates fall within the maximum rates set by the Policy.

<i>MENTAL HEALTH ACT TRIBUNALS</i> 2022-2023	
Number of Hearings:	863
Hearings:	\$ 218,171.00
Travel:	\$ 46,077.29
Disbursements:	\$ 16,027.17
HST:	\$ 30,615.12
TOTAL EXPENDITURES	\$ 310,890.58

Staffing

The Psychiatric Patient Advocate Services and its Psychiatric Patient Advocates bear the responsibility of engaging the process involving all hearings.

The Director of Psychiatric Patient Advocate Services orients all newly appointed tribunal members and is responsible for this structure's functioning, consistency in processes and overall performance.

The chairpersons have practices outside of these appointments and rely on their administrative assistants for support, if they have them, or function somewhat independently.

The Psychiatric Patient Advocates coordinate all hearings and ensure that the evidentiary documents are submitted for the hearings, that the patients have been prepared for their hearing, represent the patients within their hearings and ensure that their voices are heard, and their rights are known and respected.

When and where required, Psychiatric Patient Advocate Services provide support and problem solving for any issues, technical or otherwise, that may arise.

Psychiatric Patient Advocate Services codes and processes all members' invoices and ensures a thorough cross-checking procedure.