

Government of Alberta
Criminal Code Review Board



Own Motion Investigation
October 2023

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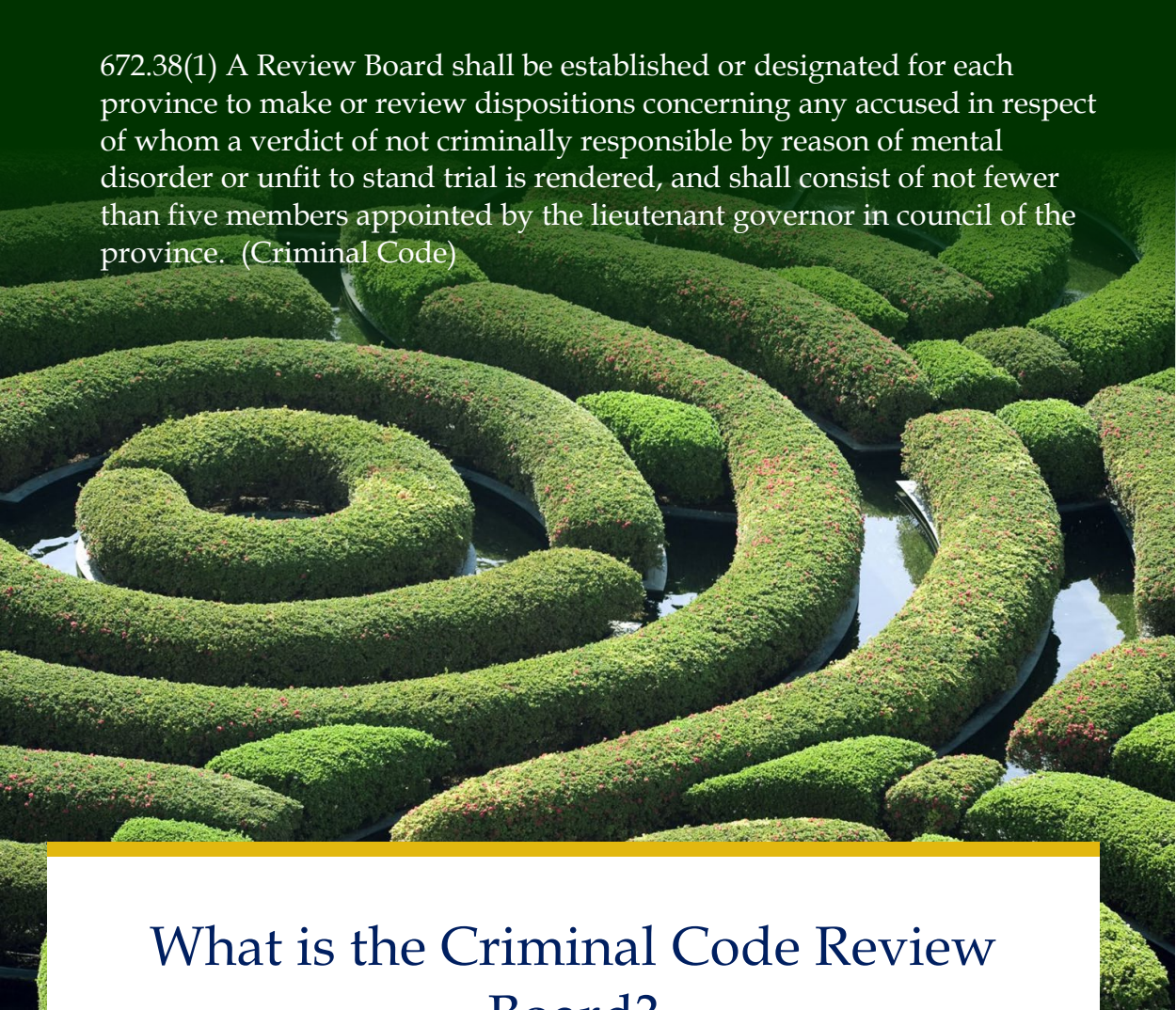
Alberta Ombudsman's Mandate

Every Albertan has the right to be treated fairly in the delivery of public services. As an Officer of the Legislative Assembly of Alberta, the Ombudsman reports directly to the Legislative Assembly and operates independently from the Alberta government, political parties, and elected officials. The Ombudsman has jurisdiction over Alberta government departments, agencies, boards, and commissions including the Criminal Code Review Board previously named the Alberta Review Board. The Ombudsman is not an advocate for complainants nor a representative for government departments or professional organizations.

The Ombudsman ensures administrative fairness through impartial and independent investigations, recommendations, and education. People who believe they are affected by an unfair decision can raise their concerns to the Ombudsman and he may investigate. The Ombudsman is an office of last resort. Complainants must try to resolve their complaint first through all other avenues of review or appeal before the Ombudsman can consider an investigation.



Pursuant to section 12(2) of the *Ombudsman Act*, the Ombudsman may initiate an investigation on his own motion when questions arise about the administrative fairness of a program. Recommendations stemming from these investigations are generally aimed at addressing systemic issues.



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

What is the Criminal Code Review Board?

When an individual is charged with a crime and the court determines they were Not Criminally Responsible on Account of Mental Disorder or Unfit to Stand Trial, the court notifies the Criminal Code Review Board (CCRB). The CCRB is established under the *Criminal Code* which says that each province and territory must have a review board to oversee these individuals. The CCRB panel is responsible for conducting all hearings for patients and determining one of three dispositions: detention in hospital, conditional discharge, or absolute discharge.

The CCRB serves both the patient and the public. In deciding about a patient's rights and freedoms, the CCRB holds public safety as the highest priority. Hearings take place, at minimum, once every 12 months for each patient.

Complaint to the Ombudsman

The individual in this case was found Not Criminally Responsible on account of Mental Disorder in 2003. He was detained in custody at Alberta Hospital Edmonton per annual decisions by the CCRB.

The individual wrote to the Ombudsman in November 2021, with concerns about the CCRB's decision at the time to maintain his committal in hospital and continue his treatment. He believed the decision was unfair, given the progress he demonstrated.

The individual highlighted the following concerns:

- He was unable to fully participate in the hearing;
- The CCRB did not consider his evidence;
- He believed the decision makers showed a bias against him; and
- He was unaware of the process and available appeals.



Ombudsman Investigation

Own Motion Initiated

After receiving the complaint, our office contacted the CCRB Registrar to understand the board's decision-making process. Initially, we learned the CCRB follows what is mandated in the *Criminal Code*, but does not have formal or written policies.

At the time, the CCRB had 160+ patients under its review. Given the caseload and the gravity of its decisions on patients, victims and their families, any potential Ombudsman recommendations could impact future CCRB hearings. With this systemic aspect to consider, the Ombudsman chose to open an Own Motion Investigation.



Issue for Investigation

The Ombudsman's goal in this investigation was to determine if the CCRB had sufficient rules, policies and procedures in place to ensure administratively fair hearings and decisions.

We wanted to know what rules were in place and how the CCRB followed those rules. We questioned how the CCRB knew how to perform its job without formal policies and processes and how we can be sure the CCRB is treating patients in a consistent and fair way.

Jurisdictional Scan

For this investigation, we conducted a scan of review boards from other Canadian provinces and territories. We found that Ontario, Québec, and British Columbia have dedicated websites for their review boards, including comprehensive information about the role and process. Other provinces and territories, aside from Alberta and New Brunswick, have select public information. Alberta has little public information about its review board. Information about the CCRB is limited to what is provided by private law firms, news articles and Alberta Health Services.

Review of CCRB Procedures

The Ombudsman opened this investigation with concerns about people's ability to fully participate in the CCRB decision-making process. Individuals should expect to participate in a process that is consistent, regardless of the CCRB personnel involved. There was limited information about what would happen to the CCRB process should there be staff turnover. Upon investigation, the CCRB provided several packages of information outlining how it performs its duties. We reviewed each document in detail.



Hearings

In October 2022, the investigative team attended 20 virtual CCRB hearings. We discovered that despite varying CCRB Chairs, panel members, treatment team, Crown and defense counsel, the process ran the same way every time. We witnessed a high degree of consistency and adherence to the process outlined in the *Criminal Code*.



File Reviews

The investigative team attended the CCRB office twice to review files and documents. From our discussion with the Registrar, we created a checklist to determine the administrative documents that should be in a patient's file. We reviewed 21 panel hearings spanning over 20 years and saw consistency in every random file we reviewed.



External Authorities

To further our understanding, we interviewed external parties that interact often with the CCRB, including two defense lawyers, a Legal Aid Manager, two AHS liaison staff and the Edmonton North Zone Section Chief. We learned that there is a high degree of regular and transparent communication between the CCRB administration and external parties. However, we also learned that there is no easy way for external parties or the public to find information on the CCRB's process and how it functions.

Consultations with CCRB

Throughout the investigation, the Ombudsman's office met with the CCRB Registrar and the Director of Provincial Court Administration.

Both individuals took the time to thoroughly explain the CCRB's process and answer any questions we had. The Registrar demonstrated an exceptional knowledge of the CCRB's purpose and processes.

Findings

The Ombudsman's office began this investigation with the purpose to discover how the CCRB operates, if the patients are treated fairly, and how patients, victims and families become informed about the CCRB's processes. At the conclusion of the investigation, we can confidently answer that the CCRB has informal, written documents that outline its process. We also found these processes to be highly consistent. We attended 20 hearings, reviewed files, and spoke with external parties; in all discussions we found consistency rather than administrative weaknesses or issues. We found patients are provided the notice of hearing and medical reports, have access to legal representation, and that hearings occur at minimum every 12 months. The CCRB provides the decision after a hearing in an administratively fair manner. We found the CCRB follows the same hearing process and treats patients in an administratively fair manner, before, during and after hearings. Importantly, we also found that CCRB administrative staff and panel members care deeply about their role and believe in the importance of providing a fair process for all individuals involved. While there was strong evidence of compassion and a well-functioning system, the CCRB agreed with our team that there are always areas for improvement.

Finding #1

The CCRB is lacking in public facing information. Along with New Brunswick, the CCRB is the only other review board in the country that does not have some information publicly available online. Most review boards either have their own websites or information on the relevant government websites. The Mental Health Review Panel in Alberta, which is comparable in its function to the CCRB, provides information to the public through a webpage on the Alberta.ca site.

The *Criminal Code* has many sections that describe the actions the CCRB must take, but it does not provide the public with a concrete understanding of the CCRB and its functions. There is no public facing information that tells a patient, family member or victim what the purpose of the CCRB is and what they can expect before, during, and after a hearing. Any information for the patient and their families comes from external sources.

In discussions with external authorities, there is limited information about the CCRB process and other professionals learn about the procedures through experience. External authorities spoke highly of their relationship with the CCRB's Registrar but commented they are unaware of timelines and practices the CCRB administration and panel follow. While we determined the CCRB gives patients notice of the hearings, we

could not confirm whether individuals have adequate information about the role and functioning of the CCRB to fully prepare for and participate in the hearing process. Unless information is forthright, a patient's ability to participate may be limited. The lack of public facing information could also potentially contribute to the sharing of misinformation about the CCRB's function and process.

Finding #2

The CCRB is lacking formal internal policies. It has resources and guides it uses to ensure it is following the *Criminal Code*, but it does not have internal or formalized documents that explain its role and function. In the absence of rules for the CCRB panel to follow, it could be difficult to ensure consistency amongst panel hearings if there was staff turnover. That said, the CCRB currently follows a consistent process although this was not easily understandable outside a formal Ombudsman Own Motion Investigation. Nonetheless, this finding confirmed the CCRB's current practice in its hearings and review is administratively fair.



Recommendation and Observation

At the conclusion of an investigation, the Ombudsman can make recommendations and observations. Recommendations relate to improving the fairness of a decision or a process. The Ombudsman makes observations when there is no clear compromise of the administrative fairness guidelines. They are a comment by the Ombudsman which the department or program may wish to consider.

To address the findings above, the Ombudsman made one recommendation and one observation.

Recommendation

The Ombudsman recommends the CCRB develop publicly available information, explaining its role and process. The information should detail the CCRB's process before, during and after hearings. The CCRB may wish to look to other provinces and territories for examples of public facing information.

Observation

Today, patients can expect to be a part of a consistent process, but the expectation is fragile because the CCRB's rules and process are not formalized. The CCRB does not have approved rules in place to safeguard its processes and continue to meet the expectations of those involved in the hearings, regardless of who the administrative staff or panel members are (i.e., staff turnover). The CCRB may wish to consolidate its current manuals and guides into one formalized policy and consider creating rules regarding its practice and procedure under section 672.44(1) of the *Criminal Code*.

CCRB's Response and Closing

In June 2023, the Assistant Deputy Minister (ADM) for Court and Justice Services Division agreed with and accepted the Ombudsman's recommendation. The ADM confirmed the department had already initiated work to prepare information on its purpose and function and to formalize policy. She shared it will post this information to a newly created website, scheduled to be complete by the end of 2023. The Acting Deputy Minister confirmed her agreement as well at the end of June.

The CCRB Chair also contacted our office and expressed support for the findings and recommendation.

The Ombudsman wishes to acknowledge the positive working relationship between his office and the CCRB. Our office would like to recognize the CCRB Registrar and the Director of Court Administration for their exceptional knowledge, open communication, and cooperation.

The Ombudsman's office looks forward to seeing the new CCRB website in action.



If you have any questions about the Alberta Ombudsman, or wish to file a complaint with us, please get in touch.

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