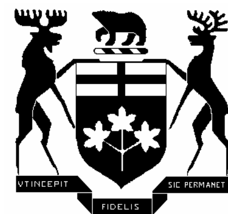
Consent and Capacity Board

2000/2001 Annual Report



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December 7, 2001

The Honourable Tony Clement
Minister of Health and Long-Term Care
80 Grosvenor Street
Toronto, ON M7A 2C4

Dear Minister:

On behalf of the Consent and Capacity Board, it is my pleasure to submit our Annual Report for the fiscal year 2000/2001.

The Consent and Capacity Board, previously the Psychiatric Review Board, has a history going back to the mid-1960's when a farmer from the Bruce Peninsula refused to pay his property taxes. When the local tax collector arrived, the farmer met him with a shotgun. Police were called and the farmer was taken to the Oak Ridge psychiatric hospital. He then hired a lawyer who immediately did two things: went to court asking for a writ of *habeas corpus* and went to the *Toronto Star* giving them a big news story. The judge felt that he needed expert assistance and requested that a board consisting of a lawyer, a psychiatrist and a community person consider the matter. Although the farmer was discharged before the board heard his case, those events led to the passage of the *Mental Health Act* in 1968 and the establishment of our system of review. Similar tribunals exist in most Western democracies.

The Board has the difficult job of balancing issues of personal and public safety with a person's right to autonomy, liberty and self-determination while observing rigorous time constraints. Hearings must be convened within seven days of application. Decisions must be issued within twenty-four hours of the hearing. While the mandate and structure of the Board has changed over the years, its fundamental role of balancing competing rights in a tight timeframe has remained the same. This unusual level of responsiveness, together with the specialized expertise of the Board, provides a level of service that could not be afforded by the courts or other mechanism. It is a level of service contingent on a high degree of commitment by the Board's members, staff and stakeholders.

In 1995, the Consent and Capacity Board replaced the Psychiatric Review Boards. The earlier board had dealt exclusively with in-patient mental health issues. As a result of amendments to the legislation in 1995, 1996 and 2000, the Board now deals with a variety of matters relating to in-patient and out-patient mental health, elder care, financial capacity, residential care, and other health-related matters.

With the substantial amendments that came into effect in December 2000 both the *Mental Health Act* and the responsibility of the Board underwent revolutionary change. It is anticipated that the new

Community Treatment Orders, treatment-based committal criteria and other changes will result in a significant increase in the sensitivity and complexity of the Board's work.

In addition to addressing these important changes for the Board in its adjudicative role, the Board contributed significantly to the level of practice of its members and stakeholders with the production of a volume of headnotes summarizing Board decisions appealed to the courts. As well, on an administrative level, the Board achieved an organizational transformation in the last year (described on page 6 of this report).

The Consent and Capacity Board has always emphasized the importance of providing exemplary customer service in the most cost-effective way possible. These combined goals foster the entrepreneurial culture for which the Board is well known.

Sincerely,

Michael Bay
Chair and Chief Executive Office

TABLE OF CONTENTS

OVERVIEW OF THE BOARD ---- 4

JURISDICTION OF THE BOARD ---- 5

ORGANIZATIONAL REVIEW ---- 6

MENTAL HEALTH LEGISLATIVE REFORM 2000 ---- 7

BOARD MEMBERSHIP ---- 8

BOARD STAFF ---- 10

FINANCIAL ANALYSIS ---- 10

OVERVIEW OF THE BOARD

The Consent and Capacity Board is an independent body created under the *Health Care Consent Act* by the provincial government. The Board conducts hearings under the *Mental Health Act,* the *Health Care Consent Act*, the *Substitute Decisions Act* and the *Long-Term Care Act*. The Board functions under statutory requirements and a memorandum of understanding between the Chair, the Minister of Health and Long-Term Care, and the Deputy Minister of Health and Long-Term Care.

Board members are psychiatrists, lawyers or members of the general public. For the vast majority of its cases, the Board is required, by law, to sit in panels of three (lawyer, psychiatrist and community member) or in panels of five. A small number of cases may be heard by a Senior Lawyer Member (who meets certain legislated criteria) sitting alone. For administrative purposes, the Board is divided into nine regions and members belong to the region in which they live or work. For the most part, members adjudicate within their own region but travel to other regions as required.

Each of the nine regions covers a defined geographic area of the province and has a regional office managed by a Regional Vice-Chair (RVC) who is accountable for all aspects of the Board's work in that region. As part of her or his own private business or professional practice, the RVC maintains an office, which also serves as the local Board office. RVC's assign Board-related administrative tasks to individuals in their offices who function as regional office personnel.

The regional office is responsible for all aspects of the hearings taking place in that region. This includes everything from receipt of applications, to scheduling Board members, to ensuring that decisions and reasons for decision are delivered within the statutory timeframes, to preparing the record for decisions that are appealed to the courts.

In keeping with its legislative mandate, the Board has adopted the following mission and purpose statement:

The Board will meet the individual needs of consumers and those who care for and about them with the highest level of customer service. This will include speed, courtesy, accessibility, sensitivity, and impartiality with a commitment to high quality decision making in keeping with the principals of fairness and fundamental justice.

The Board is committed to accommodating the diversity of Ontario's population.

The Board will help ensure acceptance and meaningful implementation of the requirements and principles of new and existing legislation by such activities as:

- *Adjudicating consistently*
- *Issuing, annotating and circulating clear reasons for decisions and other educational materials*

- *Preparing and distributing educational materials, facilitating educational opportunities and operating as an educational resource for stakeholders*
- *Maintaining ongoing liaison with all stakeholders*
- *Creating an environment of respect for the system as well as the tribunal and those who interact with it*

JURISDICTION OF THE BOARD

The Board has authority to hold hearings to deal with the following matters:

Health Care Consent Act

- Review of capacity to consent to a treatment, admission to a care facility or a personal assistance service.
- Consideration of the appointment of a representative to make decisions for an incapable person with respect to treatment, admission to a care facility or a personal assistance service.
- Consideration of a request to amend or terminate the appointment of a representative.
- Review of a decision to admit an incapable person to a hospital, psychiatric facility, nursing home or home for the aged for the purpose of treatment.
- Consideration of a request from a substitute decision-maker for directions regarding wishes.
- Consideration of a request from a substitute decision-maker for authority to depart from prior capable wishes.
- Review of a substitute decision-maker's compliance with the rules for substitute decision-making.

Mental Health Act

- Review of involuntary status (civil committal).
- Review of a Community Treatment Order.
- Review as to whether a young person (aged 12 to 15) requires observation, care and treatment in a psychiatric facility.
- Review of a finding of incapacity to manage property.
- Review of a finding of incompetence to access or allow others to access the clinical record.
- Consideration of the appointment of a representative for the purpose of access to, or disclosure of, records.
- Consideration of a request from a psychiatric facility to withhold access to a clinical record.

Substitute Decisions Act

- Review of statutory guardianship for property.

Long Term-Care Act

- Consideration of a request to withhold access to a clinical record.

ORGANIZATIONAL REVIEW

The Randolph Group conducted an organizational review of the CCB that was completed in fiscal 1999/2000 and which led to changes implemented in 2000/2001. They identified a number of critical strengths of the CCB.

Value for Money: The Board's demand-driven cost structure allows it to maintain response capability in regions with low demand at a very low cost. By using private legal offices, some costs are privately subsidized, for example office space and office technology. Board members honoraria are discounted relative to private rates.

Highly Connected Regional Teams: Regional Vice-Chairs and administrative staff often come as an "intact" team with local knowledge of institutions and participants and a familiarity with other Board members in the region.

Responsive: The Board is able to meet tight, legislated deadlines and to be available 7 days a week. The Chair and Vice-Chairs are easily accessible.

Productive: The Board maintains an enviable record of having no hearing backlogs. It is effectively managing a growing number of applications and hearings. The cost per application/hearing has been declining.

Key recommendations from the Randolph Group's organizational review included:
- Improvement of public access, information and education
- Strengthening of processes for quality assurance and Board education
- Extending the use of technology for communications, information sharing and case management
- Improving administrative processes and back-up
- Strengthening and integrating planning and budgeting processes
- A new organizational structure for the central office
- A shared services approach for a number of administrative functions
- Formalization of accountability relationships

Specific recommendations from the Randolph Group organizational review relating to financial requirements included:
- Case Management
- Office Relocation
- Education and Training of Board Members
- Additional Staffing

As a result of the organizational review, the Board, in partnership with the Ministry, initiated a Transition Project. The Ministry seconded a senior manager to direct the project. Achievements of the Transition Project include:

ORGANIZATIONAL REVIEW (CONT'D)

- The Minister, Deputy Minister and Chair have entered into a Memorandum of Understanding which clarifies roles and responsibilities and establishes the practices necessary for a respectful, productive and efficient working relationship.
- The Board has relocated to more permanent office facilities in downtown Toronto.
- Improved reporting systems allow closer performance monitoring, especially of costs and workload.
- Four permanent staff positions have been filled.
- An Internet site has been established providing a wealth of information for stakeholders at *www.ccboard.on.ca.*
- Increased emphasis has been placed on member education.
- Teleconferencing is being used more extensively for Board administration.

In the coming year we look forward to continuing to implement changes noted above, as well as the:

- completion of a *Code of Conduct* for members;
- promulgation of new *Rules of Practice*;
- development of performance measures; and
- implementation of a formalized complaints procedure.

MENTAL HEALTH LEGISLATIVE REFORM 2000

Mental Health Legislative Reform, 2000 (Bill 68) makes several changes to the *Mental Health Act* and the *Health Care Consent Act*, including the following:

- The addition of community treatment order (CTO) provisions.
- The addition of new grounds to the civil commitment criteria. These criteria authorize involuntary examination, assessment and detention of certain individuals who might not have come under the previous legislation.

The amendments expand the role and function of the Consent and Capacity Board to include optional review of Community Treatment Orders and a mandatory review of the second consecutive order and every second order thereafter. Reviews of involuntary committal are now more complex as the result of the expanded and more detailed criteria. As a result of the amendments, the Board is now required to conduct a hearing into the patient's relevant decision-making capacity virtually every time a hearing is convened under the *Health Care Consent Act.* Overall, the length of hearings has increased, as has the sensitivity and complexity of the Board's work.

The Board needed to move quickly to prepare itself and stakeholders for the procedural and adjudicative changes flowing from the legislation. The Board engaged in an energetic

program of member education and administrative preparation to support the expected additional hearings.

An internal implementation team was instituted. Educational and planning meetings were conducted for Board members. Resource materials were developed. A web site was created to provide up to the minute information on the Board, its process and the legislation.

While the Board is still gaining experience with adjudicating under the revised framework, results to date would suggest that efforts to prepare were successful.

BOARD MEMBERSHIP

Membership Changes (April 1, 2000 to March 31, 2001)

Please refer to "Overview of the Board" (page 4) for more information on the Board's membership and regional structure.

Board Total	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	30	7	-5	2	32
Psychiatrist Members	51	8	-3	12	56
Community Members	36	4	-5	1	35
	117	19	-13	15	123

Hamilton	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	3	1	-	1	4
Psychiatrist Members	7	1	-	1	8
Community Members	5	-	-2	-	3
	15	2	-2	2	15

Kingston	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	4	-	-1	-	3
Psychiatrist Members	5	-	-	2	5
Community Members	7	-	-1	-	6
	16	0	-2	2	14

London	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	4	1	-1	-	4
Psychiatrist Members	7	2	-1	2	8
Community Members	5	1	-	-	6
	16	4	-2	2	18

BOARD MEMBERSHIP (CONT'D)

North Bay	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	1				1
Psychiatrist Members					
Community Members	2				2
	3	0	0	0	3

Ottawa	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	4	2	-	-	6
Psychiatrist Members	6	2	-	-	8
Community Members	3	1	-1	-	3
	13	5	-1	0	17

Penetanguishene	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	1	-	-	-	1
Psychiatrist Members	1	-	-	1	1
Community Members	1	-	-	-	1
	3	0	0	1	3

Sudbury	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	1	-	-	-	1
Psychiatrist Members	2	1	-	-	3
Community Members	3	-	-	1	3
	6	1	0	1	7

Thunder Bay	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	3	-	-2	-	1
Psychiatrist Members	2	-	-	-	2
Community Members	2	-	-	-	2
	7	0	-2	0	5

Toronto	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	9	3	-1	1	11
Psychiatrist Members	21	2	-2	6	21
Community Members	8	2	-1	-	9
	38	7	-4	7	41

Notes:

1. *the Chair of the CCB is included as a Toronto region lawyer*
2. *2 members in the Toronto region are designated as both lawyer and psychiatrist but are included only as psychiatrist members on the charts because they do not sit as lawyer members for the CCB*

BOARD STAFF

Staffing as of March 31, 2001

Abby Katz Starr	Chief Operating Officer, Health Boards Secretariat and Consent and Capacity Board
Monique Wilson	Deputy Registrar (Acting)
Catherine McNamara	Professional Development & Outreach Coordinator
Margaret James	Administrative Officer
Neda Rastinehad	Secretary
Emily Winter	Law student (summer contract position)
David Hoff	Director, Transition Project*

Note: Effective April 1, 2001 the Board's administrative operations were transferred out of the Health Boards Secretariat. The Consent and Capacity Board now shares a COO with the Ontario Review Board.

* This was a short-term, fixed position to implement the consultant's recommendations.

FINANCIAL ANALYSIS

Financial Expenditure Report (April 1, 2000 to March 31, 2001)

		Internal Allocation*		Actual Expenditures		Surplus (Deficit)
DIRECT OPERATING EXPENSE						
Salaries and Wages		151,500		183,722		(32,222)
Benefits		24,900		25,095		(195)
Total DOE	$	176,400	$	208,817	$	(32,417)
OTHER DIRECT OPERATING EXPENSES						
Transportation and Communications				381,284		
Services				2,580,143		
Supplies and Equipment				53,868		
Total ODOE	$	2,128,500	$	3,015,295	$	(886,795)
TOTAL OPERATING EXPENSES	**$**	**2,304,900**	**$**	**3,224,112**	**$**	**(919,212)**

* NOTE: The Health Boards Secretariat provides administrative services to the Consent and Capacity Board and three other tribunals. It also provides financial support to the 23 self-regulated health professions' colleges and to the Ontario Hepatitis Assistance Plan Review Committee. The Consent and Capacity Board's budget is wholly contained within the overall Branch budget of the Health Boards Secretariat. The "Internal Allocation" shown in the table is established through internal Branch and Ministry processes and is based on experience during the previous fiscal year and estimates of cost pressures within the context of available funds.

FINANCIAL ANALYSIS (CONT'D)

The major cost driver for the Board is the conduct of hearings. The Board has no Discretion regarding the holding of hearings. Board decisions impact on the life and individual liberty of people in Ontario and are usually urgent in nature. The Board has a statutory obligation to commence a hearing on an application within seven days.

Additional costs for scheduling and Board members' travel are attributed to the growth in the number of hearings under the *Health Care Consent Act* and the *Substitute Decisions Act* which require the Board to hold hearings in residences, local hospitals, etc. A shortage of psychiatrists in some regions requires that some of the members incur considerable travel costs to attend hearings in other regions.

Board caseload has been increasing at an average annual rate of 8%. For example, applications have increased from 2,494 in 1995/1996 to 3,943 in 2000/2001. Board caseload has also been increasing in intensity. Hearings that are more complex have resulted in increased requests for written reasons, increased need for the services of court reporters and in appeals to the courts.