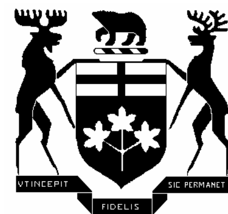
Consent and Capacity Board

2001/2002 Annual Report



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June 14, 2002

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 2001/2002.

The Consent and Capacity Board is not a typical tribunal. Daily we decide matters of life, death and liberty.

Our work became substantially more challenging during the course of the year. We continue to grapple with the legislative changes of December, 2000. Hearing volume has again increased. Hearings have continued to get longer and more complex as a result of legislative changes and the presence of an ever more sophisticated and informed group of stakeholders. Health practitioners and other stakeholders continue to increase their reliance on the services of the Board.

This has also been a time of change and renewal for the Board. Over half of our lawyer members and 37 per cent of our community members joined the Board in the last two years. In the last year alone the Board has grown from 123 members to 143 members. Administratively, the Board has also been engaged in a process of renewal. The diffuse structure without a central core that has served so well for the past thirty-five years can no longer sustain us. We are, therefore, engaged in a process of constructing an organizational infrastructure that will serve the current and future needs of the Board and its stakeholders.

I thank you for your continued support of our important work.

Sincerely,

Michael Bay
Chair and Chief Executive Office

TABLE OF CONTENTS

OVERVIEW OF THE BOARD---3

JURISDICTION OF THE BOARD---4

ORGANIZATIONAL CHALLENGES ---5

CONTINUING IMPACT OF LEGISLATIVE CHANGE ---5

BOARD MEMBERSHIP ---6

BOARD STAFF---8

FINANCIAL ANALYSIS---9

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. With the exception of the Toronto Region, the regional offices are all set up in a similar fashion. 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. Since April 2001, the Toronto regional office has been housed in government premises and staffed by government employees.

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 CHALLENGES

During fiscal 2001-2002, the Consent and Capacity Board focused on organizational challenges in two key areas: membership renewal and administrative restructuring. Membership renewal is an ongoing challenge for the Board, but particularly so over the past two years. The high rate of renewal and growth among members has had a significant impact on Board resources. The administrative restructuring began in 2000 and is ongoing.

The Minister's office has worked closely with the Chair to assess the regional needs of the Board and to ensure that the very best candidates are put forward for membership. Over the years, the Board has developed a rigorous screening program for candidates in an effort to ensure that the qualities and expectations of both the candidate and the Board are a good match.

In 2001-2002, Board membership grew dramatically, increasing by 17% (from 123 members to 143). Thirty-three per cent of the lawyer members and 27 % of the community members were appointed within that timeframe. The need to train so many new members dramatically impacted the Board's resources. To more efficiently deal with the volume of training required, the Board created and implemented a central, formalized training program.

In addition to managing membership renewal and training, the Board continued the administrative restructuring begun last fiscal year. The Toronto Region, which accounts for approximately 40% of the Board's cases, was moved in-house. This included appointing a new Regional Vice-Chair for the region, and addressing issues of staffing, space allocation and communication with the region's stakeholders. The Board's administrative reorganization included moving from within the administrative framework of the Health Boards Secretariat to internal administration. The Board's organizational restructuring is ongoing.

In addition to the ongoing organizational challenges, the Board completed and promulgated its *Code of Conduct*. The Board initiated and completed a consultation with its members and stakeholders on draft Rules of Practice. It anticipates finalizing and promulgating the Rules of Practice next fiscal year. The Board also undertook to develop a formal Complaints Procedure which it expects to complete and implement in fiscal 2002-2003.

CONTINUING IMPACT OF LEGISLATIVE CHANGE

Mental Health Legislative Reform, 2000 (Bill 68) made 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, which came into effect December 1, 2000, expanded 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 substantially longer than before because the changes to the legislation essentially tripled the number of potential factors to be considered. Furthermore, 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 for any purpose under the *Health Care Consent Act.* Overall, the Board is doing more hearings and those hearings are greater in length, more complex in nature, and significantly higher in sensitivity.

While the number of CTO applications has remained low (16 in this fiscal year), they are time consuming. The expanded involuntary committal criteria continues to have significant implications for the Board's resources because of the length of the hearings. Hearings also take longer because lawyers and physicians are still familiarizing themselves with the nuances of the amendments to the legislation. Moreover, because the courts have not yet heard these matters on appeal, many questions of legal interpretation remain unanswered in a conclusive way.

Ontario has always been seen as a leader in the area of mental health and consent law. Because of the aging population, and increased interest and changing views with respect to mental health law and services, the Ontario experience in this area is subject to an ever-increasing level of legal, academic and public interest. Not surprisingly, the amendments to the legislation in 2000 significantly increased the level of legal scrutiny, as well as, public and academic interest – both in Ontario and internationally. Consequently, the decisions and work of the Board are undergoing closer scrutiny than ever before. In fact, for the first time, the Supreme Court of Canada has granted leave to hear a case on appeal from the Consent and Capacity Board.

BOARD MEMBERSHIP

Membership Changes (April 1, 2001 to March 31, 2002)

Please refer to "Overview of the Board" (page 3) 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	32	13	- 6	11	39
Psychiatrist Members	56	12	- 5	23	63
Community Members	35	11	- 5	11	41
	123	36	-16	45	143

Hamilton	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	4	3	-1	0	6
Psychiatrist Members	8	2	-1	3	9
Community Members	3	1	-1	2	3
	15	6	-3	5	18

Kingston	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	3	0	0	3	3
Psychiatrist Members	5	2	0	2	7
Community Members	6	0	-1	1	5
	14	2	-1	6	15

London	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	4	1	0	1	4*
Psychiatrist Members	8	2	0	4	8**
Community Members	6	2	0	1	8
	18	5	0	6	20

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

Ottawa	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	6	2	-2	1	6
Psychiatrist Members	8	0	0	5	8
Community Members	3	1	-1	1	3
	17	3	-3	7	17

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

Sudbury	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	1	2	0	1	3
Psychiatrist Members	3	0	0	2	3
Community Members	3	1	0	0	4
	7	3	0	3	10

Thunder Bay	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	1	1	0	1	2
Psychiatrist Members	2	0	0	2	2
Community Members	2	0	0	1	2
	5	1	0	4	6

Toronto	Members April 1st	New Appointment	Not Renewed	Re-Appointed	Members March 31st
Lawyer Members	11	3	-3	2	12*
Psychiatrist Members	21	4	-4	5	23**
Community Members	9	5	-2	2	12
	41	12	-9	9	47

Notes:

** 1 lawyer member relocated from London Region to Toronto Region*

*** 2 psychiatrist members relocated from London Region to Toronto Region*

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, 2002

Jim Curren	Chief Operating Officer & Registrar
Janet Martell	Operations Manager
Catherine McNamara	Professional Development & Outreach Coordinator
Margaret James	Administrative Officer
Queenie Wan	Financial Assistant
Neda Rastinehad	Secretary
Rosa Cirillo	Scheduler – Toronto
Shelina Virjee	Scheduler – Toronto
Chris Dinica	Scheduler – Toronto

FINANCIAL ANALYSIS

Financial Expenditure Report (April 1, 2001 to March 31, 2002)

		Internal Allocation*		Actual Expenditures		Surplus (Deficit)
DIRECT OPERATING EXPENSE						
Salaries and Wages		151,500		542,623		(391,123)
Benefits		24,900		54,919		(30,019)
Subtotal	$	176,400	$	597,542	$	(421,142)
OTHER DIRECT OPERATING EXPENSES						
Transportation and Communications				396,462		
Services				2,525,128		
Supplies and Equipment				64,825		
Subtotal	$	2,128,500	$	2,986,415	$	(857,915)
TOTAL OPERATING EXPENSES	**$**	**2,304,900**	**$**	**3,583,957**	**$**	**(1,279,057)**

* NOTE: The Consent and Capacity Board's budget is 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.

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 annually. For example, applications have increased from 2,494 in 1995/1996 to 3,653 in 2001/2002. 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.