



CONSENT AND CAPACITY
BOARD

*Office of the Chair and CEO
Theodore Nemetz*

June 30, 2004

The Honourable George Smitherman
Minister of Health and Long-Term Care
80 Grosvenor Street
10th Floor, Hepburn Block
Toronto, ON M7A 2C4

Dear Minister:

Re: Consent and Capacity Board

On behalf of the Consent and Capacity Board, it is my pleasure to submit our 2003/2004 Annual Report pursuant to the MBS Agency Establishment and Accountability Directive.

Yours sincerely,

Theodore Nemetz
Chair and CEO
Consent and Capacity Board

Consent and Capacity Board

2003/2004 Annual Report



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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. The Board is divided into six districts and while members are appointed province wide, for the most part, members adjudicate within their own district and travel to other districts as required.

The district structure has just been completed. There had previously been nine geographical regions corresponding to the locations of the former Provincial Psychiatric Hospitals. The Board has completed transition incorporating the creation of six districts that can be rationalized having regard to a number of criteria, including costs, resources and community if interest. The Board has now divided the province into the same regions/districts used by the Ministry of Health and Long-Term Care.

The reconfigured regional structure will provide for a district director to be responsible for each of the districts in accordance with authority that may be delegated by the chair of the Board from time to time. Primarily, the district directors will be responsible for liaison with the stakeholders within the district and to act as a resource for the Board members within their district.

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 the fiscal year 2003-2004 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 is essentially complete. All case co-ordination is now centralized in Toronto with the stakeholders being able to contact the Board office through a local telephone and fax number.

The Board is continuing to assess its needs 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. The Board also tries to have each member sit regularly to ensure they remain up-to-date with the adjudicative process.

In 2003-2004, Board membership continues to change as new members are appointed to replace those members whose terms have expired. To more efficiently deal with the volume of training required, the Board created and implemented an intense central, formalized training program.

The centralization of the case coordination has resulted in the ability to begin to develop much needed technology systems that allow for case management, tracking and control of the ever increasing numbers of matters that are coming before the Board. It also allows for the ability to collect and analyse data in order to identify and meet the needs of the Board and its stakeholders.

The Board engaged in-house Counsel who is responsible for publishing the Board's decisions on-line at www.Canlii.org. The availability of the Board's decisions on-line at no charge allows all of our stakeholders to view the case law as it is evolving and allows them to be better prepared for

hearings. The Counsel also acts as a resource to the members finding precedents. This will bring about a more consistent approach by all members in their decision making.

In the upcoming year the Board intends to embark on strategic review of its service delivery to achieve optimum performance.

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. In the result more panels are required to deal with the ongoing hearings.

The number of CTO applications has increased (62 in this fiscal year) and are very time consuming. In addition the required mandatory review of CTO's has added additional hearings. As the use of CTOs grows there will be more mandatory reviews which come with each second renewal. 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. There have been 5 appeals taken from decisions of the Board concerning Community Treatment Orders but only 3 have been dealt with by the Court up to this time. There is still much needed judicial direction needed.

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. For the first time, the Supreme Court of Canada heard and ruled on a case on appeal from the Consent and Capacity Board. As more appeals are heard by the Superior Court of Justice and Court of Appeal conflicting jurisprudence will be resolved.

BOARD MEMBERSHIP

Member	Date First Appointed	Date Current Term Expires
<u>Chair</u>		
Mr. R. John Harper	September 3, 1997	March 31, 2004
<u>Lawyer Members</u>		
Mr. K. Atkinson	April 25, 2001	April 24, 2004
Mr. C. Bondy	February 21, 2001	February 20, 2004
Ms. F. Boody-Hunter	July 31, 2001	July 30, 2004
Ms. M. Campbell	July 10, 2003	July 9, 2006
Mr. P. Capelle	May 17, 1999	May 16, 2005
Mr. R. A. R. Carleton	November 21, 2001	November 20, 2004
Mr. T. Charuk	November 22, 2000	March 31, 2007
Mr. P. Clay	October 16, 2002	October 15, 2005
Ms. M. Field-Marsham	October 2, 2002	October 1, 2005
Mr. A. Fish	October 22, 1997	October 21, 2003
Mr. N. Forest	December 12, 2001	December 11, 2004
Mr. W. Gay	January 13, 1999	January 12, 2005
Mr. J. Goldenberg	November 1, 2000	October 31, 2003
Mr. G. Goulard	June 30, 2000	June 29, 2006
Mr. M. Handelman	May 13, 1998	May 12, 2004
Mr. D. A. Harris	November 21, 2001	November 20, 2004
Mr. M. Hennessy	August 21, 2003	August 20, 2006
Mr. H. A. Hubbard	July 4, 2001	July 3, 2004
Mr. G. A. Hurtubise	June 1, 1986	April 2, 2003
Ms. J. Jacob	April 3, 1995	April 2, 2007
Ms. C. Jones	June 1, 1986	April 2, 2003
Ms. S. Kert	March 24, 2004	March 23, 2007
Ms. C. Lafrenière	December 12, 2001	December 11, 2004
Mr. D. Lewis	October 9, 2002	October 8, 2005
Ms. K. Lindsay-Skynner	April 3, 2002	April 2, 2005
Mr. F. McArdle	April 15, 2003	April 14, 2006
Mr. M. McCue	July 8, 1998	July 7, 2004
Mr. J. McNair	August 24, 1998	August 23, 2004
Mr. I. McTavish	June 1, 1986	April 2, 2007
Ms. S. Meyrick	March 26, 2003	March 25, 2006
Mr. G. Michener	October 2, 2002	October 1, 2005
Mr. T. Nemetz	December 4, 1996	December 3, 2004
Mr. M. Newman	October 21, 1998	October 20, 2004
Mr. A. Nicol	October 27, 1999	October 26, 2005
Ms. C. Noble	February 21, 2003	February 20, 2006
Mr. P. O'Neil	May 16, 2001	May 15, 2004
Ms. S. Opler	November 21, 2001	November 20, 2004
Ms. M. Phillips	September 5, 2000	September 4, 2006
Mr. D. Ramsbottom	May 17, 1999	May 16, 2005
Mr. J. D. Shanks	March 20, 2002	March 19, 2005
Mr. R. Sharda	February 27, 2002	February 26, 2005
Mr. S. Srivastava	June 1, 1989	April 2, 2003
Mr. B. Starkman	February 27, 2002	February 26, 2005
Mr. L. Steacy	March 24, 2004	March 23, 2007
Mr. K. Walker	November 7, 2001	November 6, 2004
Mr. J. Wilson	November 9, 2000	March 31, 2004
Ms. J. Zamproga-Ballès	January 13, 1999	January 12, 2005

Member	Date First Appointed	Date Current Term Expires
<u>Psychiatrist Members</u>		
Dr. N. Alam	January 13, 1999	January 12, 2005
Dr. S. Allain	April 3, 1995	April 2, 2004
Dr. F. Allodi	February 21, 2001	February 20, 2005
Dr. J. Atcheson	June 5, 1987	April 2, 2003
Dr. L. Bassarath	July 4, 2001	July 3, 2004
Dr. R. Bhatla	November 22, 2000	March 31, 2004
Dr. R. Billings	January 24, 1985	April 2, 2005
Dr. D. Braden	October 6, 1999	October 5, 2005
Dr. M. Brennagh	June 5, 1996	June 4, 2003
Dr. D. Byers	June 1, 1983	April 2, 2003
Dr. S. Calleia	December 15, 1988	April 2, 2004
Dr. G. A. Chaimowitz	July 4, 2001	July 3, 2004
Dr. R. Chandrasena	June 1, 1986	April 2, 2006
Dr. P. Chang	January 13, 1999	January 12, 2005
Dr. Y. Charbonneau	August 23, 1993	April 2, 2004
Dr. P. E. Cook	July 4, 2001	July 3, 2004
Dr. A. Côté	October 23, 1986	April 2, 2004
Dr. I. Côté	June 30, 2000	June 29, 2006
Dr. G. daCosta	June 2, 1989	April 2, 2003
Dr. R. Denson	January 3, 2003	January 2, 2005
Dr. D. Deshauer	November 22, 2000	November 21, 2003
Dr. J. Dougan	October 23, 1986	April 2, 2003
Dr. L. Fernando	June 13, 2001	June 12, 2004
Dr. R. Fleming	June 5, 1996	June 4, 2006
Dr. F. W. Furlong	February 16, 2000	February 15, 2006
Dr. J.G. Gagnon	June 30, 2000	June 29, 2003
Dr. D. A. Galbraith	January 13, 1994	April 2, 2006
Dr. J. T. Glaister	May 17, 1999	May 16, 2005
Dr. J. Handforth	June 2, 1989	April 2, 2006
Dr. P. Hoaken	January 22, 1987	April 2, 2007
Dr. D. Hopkins	September 8, 1994	April 2, 2003
Dr. C. Hudson	June 5, 1996	June 4, 2006
Dr. G. M. Irvine	January 24, 1985	April 2, 2004
Dr. J. Jackson	February 6, 2002	February 5, 2005
Dr. F. Jarrett	August 24, 1994	April 2, 2007
Dr. J. Johnson	July 23, 1993	April 2, 2007
Dr. A. Jones	June 30, 2000	June 29, 2006
Dr. P. Kelly	February 16, 2000	February 15, 2006
Dr. W. Komer	December 18, 2001	December 17, 2004
Dr. D. Krstich	December 15, 1988	April 2, 2003
Dr. E. MacLeod	June 6, 1968	April 2, 2007
Dr. W. Maley	February 6, 2002	February 5, 2005
Dr. R. Manchanda	June 17, 1993	April 2, 2006
Dr. K. Martin	February 6, 2002	February 5, 2005
Dr. P. Max	June 30, 2000	June 29, 2006
Dr. H. M. Meier	June 1, 1986	April 2, 2006
Dr. A. Miller	January 1, 1979	April 2, 2004
Dr. J. Nkansah	October 23, 1986	April 2, 2005
Dr. J. Pellettier	October 2, 2002	October 1, 2005
Dr. E. Perez	January 24, 1985	April 2, 2004
Dr. E. Persad	March 24, 2004	March 23, 2007
Dr. E. R. Pohlman	June 30, 2000	June 29, 2006
Dr. Q. Rae-Grant	June 5, 1996	June 4, 2006
Dr. E. Ralyea	June 5, 1996	June 4, 2006
Dr. G. Shugar	April 7, 2001	July 3, 2004

Member	Date First Appointed	Date Current Term Expires
Dr. M. Silverman	July 11, 1990	April 2, 2004
Dr. C. Stevenson	June 5, 1996	June 4, 2006
Dr. W. Surphlis	July 4, 2001	July 3, 2004
Dr. R. Swinson	June 5, 1996	June 4, 2003
Dr. M. Tremblay	November 20, 1992	April 2, 2004
Dr. J. Wilkes	July 4, 2001	July 3, 2004
Dr. L. Wright	July 4, 2001	July 3, 2004

Community Members

Mr. R. Aaronson	August 1, 2003	July 31, 2006
Mr. K. Abell	June 21, 2000	June 20, 2006
Mr. R. Adams	June 30, 2000	June 29, 2006
Mr. J. Anderson	July 8, 1998	July 7, 2004
Ms. V. Ariemma	November 21, 2001	November 20, 2004
Ms. B. D. Atlin	February 16, 2000	February 15, 2006
Mr. J. Balfe	December 12, 2001	December 11, 2004
Mr. M. Berger	July 4, 2001	July 3, 2004
Ms. L. Carpenter	March 24, 2004	March 23, 2007
Ms. S. Carson	February 16, 2000	February 15, 2006
Ms. H. Cutaia-Mahler	July 10, 2003	July 9, 2006
Ms. V. Donovan	May 17, 1999	May 16, 2005
Ms. L. D. Eccles	December 16, 1998	December 15, 2004
Ms. L. J. Ferguson	July 8, 1998	July 7, 2004
Ms. S. Green	February 27, 2002	February 26, 2005
Ms. C. Guilbault	July 10, 2003	July 9, 2006
Mr. D. Hoff	February 27, 2002	February 26, 2005
Ms. B. Hodgson	August 21, 2003	August 20, 2006
Ms. J. James	October 6, 1999	October 5, 2005
Ms. F. Kapasi	December 16, 1998	December 15, 2004
Ms. J. Laking	July 11, 2001	July 10, 2004
Mr. R. Lanthier	May 6, 1999	May 5, 2005
Ms. I. Larin	December 16, 1998	December 15, 2004
Ms. S. LeBlanc	June 1, 1986	April 2, 2003
Mr. P. Lessard	May 28, 2003	May 27, 2006
Mr. B. Levey	June 30, 2000	June 29, 2006
Ms. J. Limina	August 24, 1998	August 23, 2004
Ms. F. Lissaman	September 11, 1998	September 10, 2004
Ms. M. Lundstrom	February 8, 1996	February 7, 2005
Ms. S. Machel	May 28, 2003	May 27, 2006
Ms. J. Mackenzie	October 6, 1999	October 5, 2005
Ms. H. McCartney-Oostrom	June 30, 2000	June 29, 2006
Ms. S. Meagher	July 8, 1998	July 7, 2004
Mr. A. Mete	July 10, 2003	July 9, 2006
Ms. P. Muldowney-Brooks	May 17, 1999	May 16, 2005
Mr. M. Omilon	May 6, 1999	May 5, 2005
Mr. F. Ouellette	July 8, 1998	July 7, 2004
Mr. T. Pappas	October 2, 2002	October 1, 2005
Mr. P. Petrides	August 21, 2001	August 20, 2004
Mr. P. Phillion	December 18, 2001	December 17, 2004
Ms. D. Pitts	October 6, 1999	October 5, 2005
Mr. P. E. Ralph	February 6, 2002	February 5, 2005
Ms. E. Rankin Nash	October 21, 1998	October 20, 2004
Ms. D. Reiche	May 17, 1999	May 16, 2005
Ms. J. E. Robins-Holm	July 4, 2001	July 3, 2004
Mr. G. Strang	September 24, 2003	September 23, 2006
Ms. L. Watson	February 16, 2000	February 15, 2006
Mr. A. Wotherspoon	June 24, 1998	June 23, 2004

BOARD PERSONNEL

As of March 31, 2004

R. John Harper	Chair
Jim Curren	Chief Operating Officer and Registrar
Stephanie Miller	Executive Assistant
Joaquin Zuckerberg	Legal Counsel
Lori Coleman	Deputy Registrar
Janet Martell	Coordinator, Business Operations
Margaret James	Administrative Officer
Queenie Wan	Financial Assistant
Jitka Christof	Secretary
Angie Grande	Senior Case Coordinator
Paula Cabral	Case Coordinator
Rosa Cirillo	Case Coordinator
Kareen Afarian	Case Coordinator
Amy Viveiros	Case Coordinator
Michael Blakely	Case Coordinator
Lorissa Sciarra	Case Coordinator
Erin Sullivan	Case Coordinator
Florence Douglas	Intake Officer
Shaun Subica/Andrea Ramdeo	Inquiry Officer

FINANCIAL ANALYSIS

Financial Expenditure Report (April 1, 2003 to March 31, 2004)

	<u>Internal Allocation</u>	<u>Actual Expenditures</u>	<u>Surplus (Deficit)</u>
<u>DIRECT OPERATING EXPENSE</u>			
Salaries and Wages	553,300	618,638	(\$65,338)
Benefits	66,100	80,979	(\$14,879)
Subtotal	\$619,400	\$699,617	(\$80,217)
<u>OTHER DIRECT OPERATING EXPENSES</u>			
Transportation and Communications	334,300	482,754	(\$148,454)
Services	2,031,300	3,535,222	(\$1,503,922)
Supplies and Equipment	58,600	51,876	\$6,724
Subtotal	\$2,424,200	\$4,069,852	(\$1,645,652)
TOTAL OPERATING EXPENSES	\$3,043,600	\$4,769,469	(\$1,725,869)

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 calendar 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 3,678 in 2002/2003 to 4,152 in 2003/2004. 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.

In November 2003 the Board moved to using court reporters for all hearings in response to concerns raised by the Ombudsman about transcripts. A significant portion of our deficit was a result of this change.