



CONSENT AND CAPACITY
BOARD

*Office of the Honourable
Edward Ormston.*

June 1, 2007

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 Annual Report for 2005-2006

On behalf of the former Chair, The Honourable Douglas Carruthers, I respectfully submit the 2005/2006 Annual Report of the Consent and Capacity Board pursuant to the Management Board of Cabinet Directive on Agency Establishment and Accountability.

Yours sincerely,

The Honourable Edward Ormston
Chair
Consent and Capacity Board

Consent and Capacity Board

Annual Report 2005/2006

(Fiscal Period – April 1, 2005 to March 31, 2006)



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OVERVIEW AND JURISDICTION OF THE CONSENT AND CAPACITY BOARD (THE "CCB")

The CCB is an independent tribunal with a mandate to adjudicate on matters of capacity, consent, civil committal, substitute decision-making and other issues affecting the health care community, the Ministry of Health and Long-Term Care, and other government agencies.

The CCB is responsible for adjudicating on questions of paramount importance to the community, including:

- Public safety - mentally ill people who may be at risk to cause harm to self or other persons as a result of mental disorder, and
- Abuse - mentally ill people who may be subject to financial, physical or psychological abuse.

The CCB meets its legislative obligations by:

- adjudicating consistently and in a timely fashion;
- issuing high-quality decisions for Reasons of Decision, and
- creating an environment of respect for the system and the tribunal and those who interact with it.

The work of the CCB is internationally recognized and respected, in part because of these factors.

Over 80 percent of applications to the CCB involve a review under the *Mental Health Act* of a person's involuntary status in a psychiatric facility, or a review under the *Health Care Consent Act* of a person's capacity to consent to or refuse treatment.

Jurisdiction of the CCB

The CCB is responsible for holding hearings and making decisions on matters in which four elements are paramount:

1. The safety of the individual - incapacitated or mentally ill people can be easily abused physically or psychologically, and can sometimes cause harm to themselves, intentionally or unintentionally;
2. The interests of the community - confinement and/or treatment are sometimes necessary for individuals who are likely at risk to cause harm to self or other persons as a result of mental disorder;
3. Dignity and autonomy of the individual - liberty and the right to choose where one will live, whether to take treatment and if so, the nature of such treatment, and how to manage one's property and finances, and

4. The right of a person to have treatment when required.

The CCB's authority to hold hearings arises under the following legislation:

Health Care Consent Act

- Review of capacity to consent to 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 authority to depart from prior capable wishes
- Review of a substitute decision-maker's compliance with the rules for substitute decision-makers
- Giving directions to parties and substitute decision-makers on issues of treatment, admission to care facilities and personal assistance services

Mental Health Act

- Review of involuntary status (civil committal)
- Review of a Community Treatment Order
- Review of whether a young person (aged 12 - 15) requires observation, care and treatment in a psychiatric facility
- Review of a finding of incapacity to manage property

Substitute Decisions Act

- Review of a finding of incapacity to manage property

Personal Health Information Protection Act

- Review of a finding of incapacity to consent to the collection, use or disclosure of personal health information
- Consideration of the appointment of a representative for a person incapable to consent to the collection, use or disclosure of personal health information
- Review of a substitute decision-maker's compliance with the rules for substitute decision-making.

ORGANIZATION OF THE CCB

The CCB is an independent adjudicative tribunal created under the *Health Care Consent Act* and with jurisdiction under that Act, the *Mental Health Act*, the *Substitute Decisions Act* and the *Personal Health Information Protection Act*.

The CCB has 149 members. In addition to the Chair, CCB members include 54 Lawyers, 45 Psychiatrists and 50 Public Members. Members of the CCB are appointed by an Order-in-Council, usually for a 3-year term. The CCB has a staff of 16 public servants who support the work of the members. CCB members and staff are supported by a full-time legal counsel.

The CCB is an expert tribunal. A lawyer, a psychiatrist, and a public member sit on panels considering cases involving the deprivation of an individual's liberty.

As a quasi-judicial body, the CCB maintains an arm's length relationship with the Ministry of Health and Long-Term Care, and receives administrative services and support through the Corporate Services and Organizational Development Division. The CCB functions under statutory requirements and a Memorandum of Understanding between the Chair of the Consent and Capacity Board, and the Minister and Deputy Minister of Health.

PERFORMANCE MEASURES AND PROGRESS

The *Health Care Consent Act, 1996*, sets out three legislated performance measures for the CCB:

1. A hearing is to begin within seven (7) days from the receipt of an application by the CCB;
2. The CCB must issue its Decision within one day of the end of the hearing, and
3. Upon the request of a party, the CCB must issue written Reasons for its Decision, within two business days of receiving such a request.

The CCB holds hearings across the province (most reviews are held in psychiatric facilities, but capacity hearings may be held in long-term care facilities and private homes). The seven – day deadline to schedule a hearing, which involves the assignment of a hearing panel, synchronizing the schedules of the applicant’s counsel, health care practitioner and other parties required at the hearing, presents a significant logistical challenge that is unique to the CCB.

The CCB has worked very hard to consistently meet the legislative requirements set out above. Particularly challenging is the short time requirement for delivering Reasons for Decision. To ensure that Reasons are delivered in a timely manner, the CCB has implemented an electronic system for monitoring requests and for the production of Reasons. The CCB also endeavours to ensure that Board members with a high number of requests for Reasons are relieved of their hearing work until the outstanding Reasons have been drafted and released.

The CCB submits a Business Plan to the Minister as required under the *Management Board of Cabinet Directive on Agency Establishment and Accountability*.

BOARD MEMBERS’ TRAINING AND PROFESSIONAL DEVELOPMENT

CCB members must operate at the highest level of skill and training to ensure that errors do not occur. As such, member training is a priority for the CCB.

The CCB has an intensive in-house training program and training protocol whereby new members participate in a two - day classroom training program, taught by more experienced senior members. New members also observe a series of hearings, and participate in training panels before being allowed to sit on hearing panels. This is intended to ensure a high level of professional skill on the part of each member.

Ongoing professional development is also required to enhance the calibre of CCB members. In October 2005, the CCB held an Annual General Meeting for all members which was dedicated to continued education and training. Members came away from the meeting with a better level of training and understanding of the issues they face.

The CCB's work also requires that Lawyer members, who chair the hearing panels and are charged with the task of Reason writing, produce high-quality Reasons. In March 2006, the CCB hosted a professional development day for Lawyer members which included a workshop on reason writing and a discussion of significant legal issues. Similar meetings for Public and Psychiatrist members are planned for May 2006 and June 2006, respectively.

LEGAL DEVELOPMENTS AND BOARD'S DECISIONS AND HEARINGS

In 2005, the Government of Ontario introduced Bill 28 (the *Mandatory Blood Testing Act, 2005*). Under the *Mandatory Blood Testing Act*, a person who comes into contact with another's bodily substance may apply to a Medical Officer of Health to have the blood of the other person analysed for viruses causing certain communicable diseases.

The Bill transfers the power to make an order from a Medical Officer of Health to the Consent and Capacity Board. If the person is requested to provide a sample or other evidence and does not provide it voluntarily, the medical officer must refer the application to the CCB.

The CCB has requested funding for 2006-07 to train Board members in preparation for hearings under Bill 28. As well, funding has been requested to establish a Case Coordinator position to schedule Blood Sampling hearings and to undertake case management under Bill 28.

APPOINTMENTS/REAPPOINTMENTS

The CCB has implemented a new process for recruiting/interviewing, tracking, and recommending the appointment and/or reappointment of Board members. The new process ensures that the Board provides accurate and timely information to the Minister's Office and to the Public Appointments Secretariat.

HEARINGS AND SCHEDULING

A number of CCB Procedural Guidelines were introduced in 2005-06 including:

- Guideline for issuing Reasons and Decisions;
- Guideline for issuing orders for the PGT (i.e. ordering Counsel);
- Policy on writing and submitting dissents, and
- Returning hearing exhibits and other documents

As well, a working group comprised of Board members and staff was struck to examine the use of video conferencing for CCB hearings.

CCB ADMINISTRATION AND OPERATIONS

The CCB as an organization has made significant progress over the past 12 months in a number of key areas.

Budget

In 2005/2006, the CCB received an increase in its budget allocation of \$1.2 million (ODOE).

A new guideline for payment of *Board Members Per Diem and Expenses* was released in December 2005 which replaced a variety of ad hoc policies that had evolved over the past. The new guideline ensures transparency of information, consistency in processing, as well as enhanced accountability from an audit perspective.

Accommodation

The CCB acquired an additional 1,400 sq. ft. of usable office space. A budget proposal was submitted to the Ministry of Health and Long-Term Care for renovation of the additional space.

Case Management Database/System

A new Access database was developed using a data model based on the Board's business requirements. The new data base has been tested, staff have received training, and the system is expected to go "live" on April 1, 2006.

APPEALS

APPEALS - CCB

DISPOSITION OF APPEALS				
	2003	2004	2005	Total
Abandoned/ Discontinued	11	2	9	22
Dismissed	4	3	3	10
Withdrawn	7	4	0	11
Allowed	2	1	0	3
N/A (no info or open)	32	27	35	94
Total No. of Appeals	56	37	47	140

CCB MEMBERS AS OF MARCH 31, 2006

<u>Prefix</u>	<u>First Name</u>	<u>Last Name</u>	<u>Date First Appointed</u>	<u>Date Current Term Expires</u>
<u>Chair</u>				
Mr.	Douglas	Carruthers	June 1, 2005	May 31, 2006
<u>Legal Members</u>				
Mr.	Harold	Arkin	February 10, 2006	February 9, 2009
Mr.	Kenneth	Atkinson	April 25, 2001	April 24, 2007
Mr.	Joseph	Baker	December 15, 2005	December 14, 2008
Ms.	Florence	Boody-Hunter	July 31, 2001	November 16, 2007
Ms.	Marianne	Campbell	July 10, 2003	July 9, 2006
Mr.	Philippe	Capelle	May 17, 1999	May 16, 2008
Mr.	Rickland	Carleton	November 21, 2001	November 20, 2007
Mr.	Theodore	Charuk	November 22, 2000	March 31, 2007
Mr.	Philip	Clay	October 16, 2002	October 25, 2008
Mr.	Bernard	Comiskey	November 2, 2005	November 1, 2008
Mr.	Roy	Conacher	August 25, 2004	August 24, 2007
Mr.	Paul	DeVillers	March 29, 2006	March 28, 2009
Mr.	Leonard	Feigman	November 3, 2004	November 2, 2007
Mr.	Douglas	Ferguson	May 12, 2004	May 11, 2007
Ms.	Marilyn	Field-Marsham	October 2, 2002	October 1, 2005
Mr.	Normand	Forest	December 12, 2001	December 11, 2007
Mr.	Stephen	Fuerth	December 1, 2004	November 30, 2007
Mr.	Joseph	Goldenberg	November 10, 2005	November 9, 2008
Mr.	Guy	Goulard	June 30, 2000	June 29, 2006
Mr.	Brock	Grant	March 23, 2005	March 22, 2008
Mr.	Mark	Handelman	May 13, 1998	May 12, 2007
Mr.	Michael	Hennessy	August 21, 2003	August 20, 2009
Mr.	Albert	Hubbard	July 4, 2001	July 3, 2007
Ms.	Judith	Jacob	April 3, 1995	April 2, 2007
Ms.	Carolyn	Jones	August 25, 2004	August 24, 2007
Ms.	Shayne	Kert	March 24, 2004	March 23, 2007
Mr.	Doug	Lewis	October 9, 2002	October 8, 2005
Ms.	Karen	Lindsay-Skynner	April 3, 2002	July 20, 2008
Mr.	Frank	McArdle	April 15, 2003	April 14, 2006
Mr.	Ian	McTavish	June 1, 1986	April 2, 2007
Ms.	Sandra	Meyrick	March 26, 2003	March 25, 2009
Mr.	Gordon	Michener	October 2, 2002	October 1, 2005
Mr.	Patrick	Murphy	October 26, 2005	October 25, 2008
Mr.	Theodore	Nemetz	December 4, 1996	April 30, 2008
Mr.	Michael	Newman	October 21, 1998	October 20, 2006
Mr.	Alexander	Nicol	October 27, 1999	October 26, 2005
Ms.	Cinnie	Noble	February 21, 2003	February 20, 2006
Mr.	John	O'Flynn	August 25, 2004	August 24, 2007
Ms.	Susan	Opler	November 21, 2001	November 20, 2007
Mr.	Edward	Ormston	July 15, 2005	July 14, 2008

Prefix	First Name	Last Name	Date First Appointed	Date Current Term Expires
Ms.	Judith	Pascoe	May 4, 2005	May 3, 2008
Ms.	Monica	Philips	September 5, 2000	September 4, 2006
Ms.	Judith	Potter	October 26, 2005	October 25, 2008
Ms.	Jill	Presser	March 29, 2006	March 28, 2009
Mr.	Andal	Ramon	January 5, 2006	January 4, 2009
Mr.	David	Ramsbottom	May 17, 1999	May 16, 2008
Mr.	Roger	Rowe	November 10, 2005	November 9, 2008
Mr.	Rajneesh	Sharda	February 27, 2002	April 5, 2008
Mr.	Bernard	Starkman	February 27, 2002	May 3, 2008
Mr.	Larry	Steady	March 24, 2004	March 23, 2007
Ms.	Colleen	Sylvester	August 25, 2004	August 24, 2007
Ms.	Shirley	Wales	March 23, 2005	March 22, 2008
Mr.	Eugene	Williams	January 5, 2006	January 4, 2009
Mr.	John	Wilson	November 9, 2000	March 31, 2007

Psychiatrists

Dr.	Nural	Alam	January 13, 1999	January 12, 2008
Dr.	Federico	Allodi	February 21, 2001	April 19, 2008
Dr.	Rajiv	Bhatla	November 22, 2000	March 31, 2007
Dr.	Ronald	Billings	January 24, 1985	April 2, 2005
Dr.	Donald	Braden	October 6, 1999	October 17, 2008
Dr.	Gary	Chaimowitz	July 4, 2001	July 3, 2007
Dr.	Ranjith	Chandrasena	June 1, 1986	April 2, 2009
Dr.	Yoland	Charbonneau	April 3, 1998	April 2, 2007
Dr.	Peter	Cook	July 4, 2001	July 3, 2007
Dr.	Andre	Cote	October 23, 1986	April 2, 2007
Dr.	Isabelle	Cote	June 30, 2000	June 29, 2009
Dr.	Raymond	Denson	January 3, 2003	January 2, 2008
Dr.	Robert	Fairbairn	March 1, 2006	February 28, 2009
Dr.	Russel	Fleming	June 5, 1996	June 4, 2009
Dr.	Wayne	Furlong	February 16, 2000	February 15, 2009
Dr.	Donald	Galbraith	January 13, 1994	April 2, 2009
Dr.	Joseph	Glaister	May 17, 1999	June 21, 2008
Dr.	Alexandra	Heber	December 22, 2005	December 21, 2008
Dr.	Paul	Hoaken	January 22, 1987	April 2, 2007
Dr.	Francis	Jarrett	March 25, 1998	April 2, 2007
Dr.	John	Johnson	July 23, 1993	April 2, 2007
Dr.	Ann	Jones	June 30, 2000	June 29, 2009
Dr.	Peter	Kelly	February 16, 2000	February 15, 2009
Dr.	William	Komer	December 18, 2001	December 17, 2007
Dr.	Eric	MacLeod	June 6, 1968	April 2, 2007
Dr.	William	Maley	February 6, 2002	February 5, 2008
Dr.	Rahul	Manchanda	June 17, 1993	April 2, 2009
Dr.	Paul	Max	June 30, 2000	June 29, 2006
Dr.	Helen	Meier	June 1, 1986	April 2, 2009
Dr.	Abraham	Miller	January 1, 1979	April 2, 2007

Prefix	First Name	Last Name	Date First Appointed	Date Current Term Expires
Dr.	John	Nkansah	October 23, 1986	April 2, 2005
Dr.	John	Pellettier	October 2, 2002	November 1, 2008
Dr.	Emmanuel	Persad	March 24, 2004	March 23, 2007
Dr.	Ralph	Pohlman	June 30, 2000	June 29, 2006
Dr.	Quentin	Rae-Grant	June 5, 1996	June 4, 2009
Dr.	Vivian	Rakoff	August 25, 2004	August 24, 2007
Dr.	Evan	Ralyea	June 5, 1996	June 4, 2006
Dr.	Robert	Sheppard	January 27, 2005	January 26, 2008
Dr.	Gerald	Shugar	July 4, 2001	July 3, 2007
Dr.	Marvin	Silverman	March 25, 1998	April 2, 2007
Dr.	Cameron	Stevenson	June 5, 1996	June 4, 2007
Dr.	William	Surphlis	July 4, 2001	July 3, 2007
Dr.	Michele	Tremblay	November 20, 1992	April 2, 2007
Dr.	James	Wilkes	July 4, 2001	July 3, 2007
Dr.	Leslie	Wright	July 4, 2001	July 3, 2007

Public Members

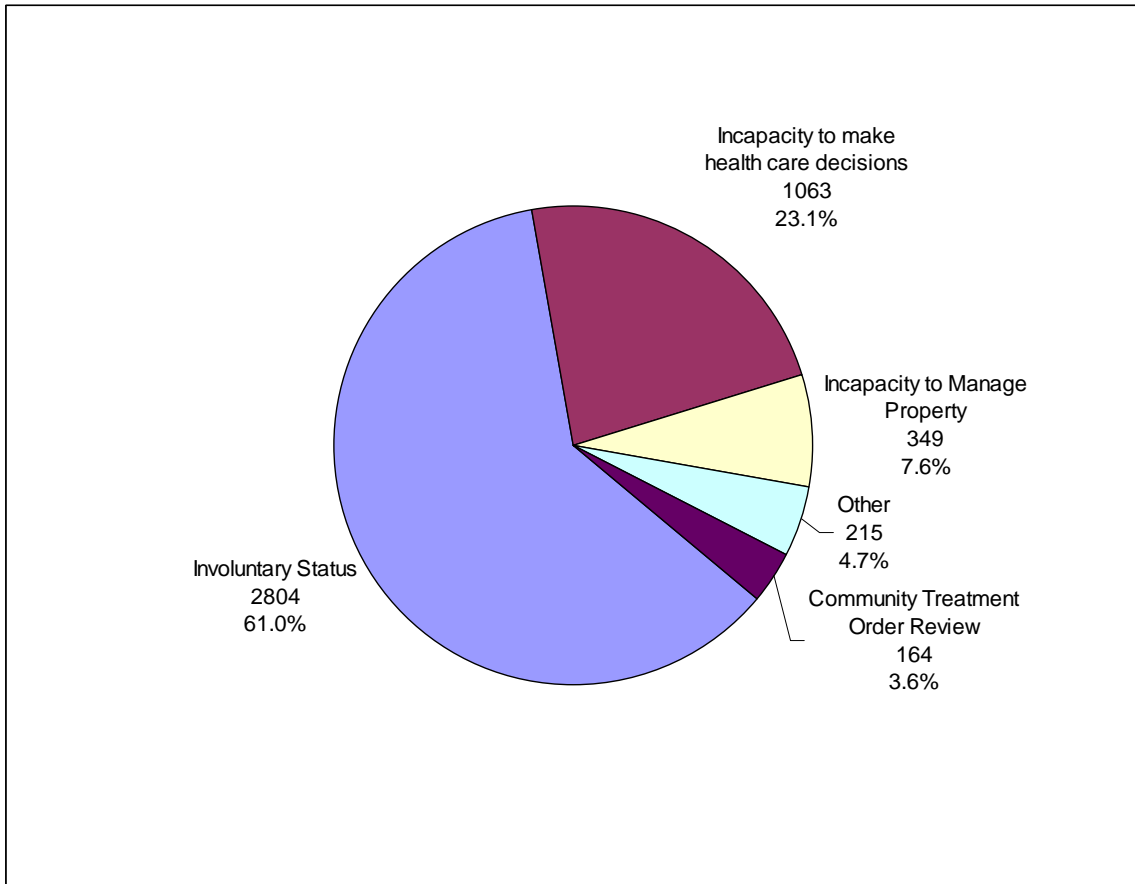
Mr.	Richard	Aaronson	August 1, 2003	July 31, 2009
Mr.	Kenneth	Abell	June 21, 2000	June 20, 2007
Mr.	Robert	Adams	June 30, 2000	June 29, 2006
Mr.	John	Anderson	July 8, 1998	July 7, 2005
Ms.	Dell	Atlin	February 16, 2000	February 15, 2009
Ms.	Debra	Bettel	October 26, 2005	October 25, 2008
Mr.	Milton	Berger	July 4, 2001	July 20, 2007
Ms.	Earl	Campbell	December 7, 2005	December 6, 2008
Ms.	Lynda	Carpenter	March 24, 2004	March 23, 2007
Ms.	Sharon	Carson	February 16, 2000	February 15, 2006
Mr.	Ram	Chopra	August 25, 2004	August 24, 2007
Ms.	Joanna	Cutaia-Beales	February 10, 2006	February 9, 2009
Ms.	Vivian	Donovan	May 17, 1999	May 16, 2005
Ms.	Shirley	Dunn	February 3, 2006	February 2, 2009
Mr.	Scott	Gale	November 10, 2005	November 9, 2008
Ms.	Camille	Guilbault	July 10, 2003	July 9, 2006
Ms.	Beverley	Hodgson	August 21, 2003	August 20, 2006
Ms.	Sandra	Haluskay	March 23, 2006	March 22, 2009
Ms.	Mary	Heighington	March 23, 2006	March 22, 2009
Ms.	Judith	James	October 6, 1999	October 5, 2005
Ms.	Janice	Laking	July 11, 2001	October 4, 2007
Mr.	Ronald	Lanthier	May 6, 1999	May 5, 2005
Ms.	Irene	Larin	December 16, 1998	December 15, 2006
Ms.	Barbara	Laskin	February 10, 2006	February 9, 2009
Ms.	Sandra	LeBlanc	October 26, 2005	October 25, 2008
Ms.	Linda	Leong	November 17, 2005	November 16, 2008
Mr.	Pierre	Lessard	May 28, 2003	May 27, 2009
Ms.	Jane	Limina	August 24, 1998	August 23, 2005
Ms.	Stephanie	Machel	May 28, 2003	May 27, 2006
Ms.	Judith	Mackenzie	October 6, 1999	October 17, 2008

Prefix	First Name	Last Name	Date First Appointed	Date Current Term Expires
Ms.	Joy	Martin	March 1, 2006	February 28, 2009
Ms.	Helen	McCartney-Oostrom	June 30, 2000	June 29, 2006
Ms.	Sandra	Meagher	July 8, 1998	July 7, 2005
Mr.	Agi	Mete	July 10, 2003	July 9, 2006
Ms.	Teresa	Michienzi	February 10, 2006	February 9, 2009
Ms.	Patricia	Muldowney-Brooks	February 3, 2006	February 2, 2009
Mr.	Michael	Omlon	May 6, 1999	May 5, 2005
Mr.	Takis	Pappas	October 2, 2002	October 1, 2008
Mr.	Panos	Petrides	August 21, 2001	August 20, 2005
Mr.	Paul	Phillion	December 18, 2001	December 17, 2007
Ms.	Diane	Pitts	October 6, 1999	October 5, 2005
Ms.	Delia	Reiche	May 17, 1999	May 16, 2005
Mr.	Asif Syed	Sherazi	December 7, 2005	December 6, 2008
Ms.	Jean	Smyth	February 10, 2006	February 9, 2009
Ms.	Lorraine	Steadman	February 3, 2006	February 2, 2009
Mr.	Gary	Strang	September 24, 2003	September 23, 2009
Ms.	Elda	Thomas	March 23, 2005	March 22, 2008
Ms.	Helen	Thomson	July 10, 2003	July 9, 2006
Ms.	Luella	Watson	February 16, 2000	February 15, 2006
Ms.	Bonnie	Wright	December 15, 2004	December 14, 2007

STAFF OF THE CCB AS OF MARCH 31, 2006

Prefix	First Name	Last Name	Position
Mr.	Douglas	Carruthers	Chair
Mr.	Joaquin	Zuckerberg	Board Counsel
Mr.	Peter	Hoy	Registrar
Ms.	Lori	Coleman	Deputy Registrar
Ms.	Angie	Grande	(A) Executive Assistant
Ms.	Janet	Martell	(A) Deputy Registrar
Ms.	Malini	Kamalendaran	(A) Coordinator, Business Operations
Ms.	Margaret	James	Administrative Officer
Ms.	Saskia	Mulders	Financial Assistant
Ms.	Angela	Moore	Secretary
Ms.	Lorissa	Sciarra	Case Management Coordinator
Ms.	Kareen	Afarian	Case Coordinator
Mr.	Michael	Blakely	Case Coordinator
Ms.	Rosa	Cirillo	Case Coordinator
Ms.	Paula	Cabral	Case Coordinator
Ms.	Andrea	Ramdeo	Case Coordinator
Mr.	Alan	Bedassee	Records Officer
Ms.	Tanjila	Rahman	Intake/Inquiry Officer

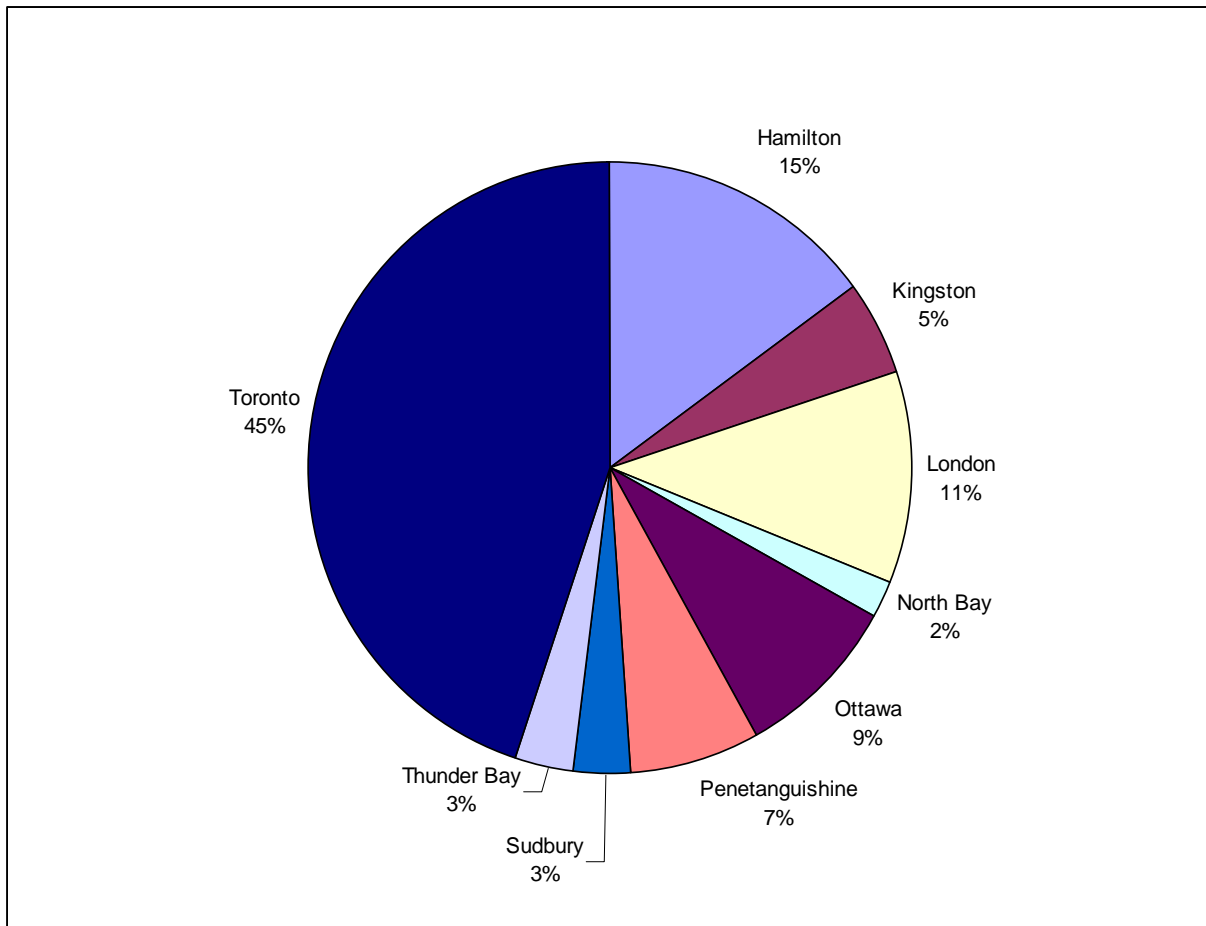
**Breakdown by Application Type
2005 / 2006 Fiscal Year**



APPLICATION AND HEARING TOTALS

2002/2003		2003/2004		2004/2005		2005/2006	
Applications	Hearings	Applications	Hearings	Applications	Hearings	Applications	Hearings
3715	1950	4149	2022	4282	2221	4595	2377
Increase per year		11.7%	3.7%	3.2%	9.8%	7.3%	7.0%

**Regional Breakdown of Hearings Convened (%)
2005 / 2006 Fiscal Year**



Financial Expenditure Report (April 1, 2005 to March 31, 2006)

	<u>Internal Allocation</u>	<u>Actual Expenditures</u>	<u>Surplus (Deficit)</u>
<u>DIRECT OPERATING EXPENSE</u>			
Salaries and Wages	553,300	731,261	(\$177,961)
Benefits	66,000	108,693	(\$42,693)
Subtotal	\$619,300	\$839,954	(\$220,654)
<u>OTHER DIRECT OPERATING EXPENSES</u>			
Transportation and Communications	258,700	519,998	(\$261,298)
Services	3,430,100	3,312,488	\$117,612
Supplies and Equipment	28,600	37,510	(\$8,910)
Subtotal	\$3,717,400	\$3,869,996	(\$152,596)
TOTAL OPERATING EXPENSES	\$4,336,700	\$4,709,950	(\$373,250)