

Consent and Capacity Board

Annual Report 2023-2024

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Chair's Message

I am pleased to report on the Consent and Capacity Board (CCB) for the fiscal year 2023/2024.

This year the Board faced ongoing challenges impacting the nature of its work and membership. Once again, application and hearing numbers continued to increase province-wide, and there was notable pressure on membership. Staff and members responded to the challenges presented this year professionally, efficiently, and effectively. Regular and ongoing communication with stakeholders and the public was a critical element of the Board's success.

The Board continued to employ a digital first platform for hearings. In person hearings were conducted in very limited circumstances found to be appropriate. Knowledge and application of technology systems, including zoom, were required of all members in order to deliver fair and effective hearings on digital platforms.

Hearing efficiency continued to be supported by a prehearing practice where complex matters were identified and carefully case managed by a team of experienced senior lawyer members. The Board also enhanced member knowledge by developing and delivering several virtual in-service education sessions including a series of four mandatory all-member sessions which took place on a weekly basis in the fall.

The necessity of the appointment of adjudicators to meet the Board's needs due to increased hearing demand paired with the loss of experienced members was apparent this year. In response, the Board instituted province-wide membership recruitment in lawyer and psychiatrist categories. New members were appointed pursuant to the postings of the prior year.

Throughout it all, the CCB continues to fully comply with legislated requirements regarding scheduling hearings to convene within seven calendar days of receipt of an application, releasing decisions by the end of the day following the hearing and issuing written reasons within four business days on request of the parties. Both staff and members are to be commended for their contributions to the achievement of this unique and demanding mandate.

I acknowledge and thank CCB staff for the delivery of efficient, timely and fair customer service to the public, and support for the membership despite the challenges faced. Staff have continued to work tirelessly to ensure that the Board's statutory requirements were met as they adapted to continually changing circumstances.

Finally, I acknowledge and thank CCB members for the dedication, professionalism, compassion, flexibility, and fairness they demonstrate in the fulfillment of their duties. The decisions they reach have real, serious, and lasting effects on the most vulnerable in our society. Members have been nimble in response to rapidly changing circumstances, including significant challenges posed by a rapid transformation in hearing processes, and continue to deliver fair, thoughtful and effective adjudication without disruption.

A handwritten signature in black ink, appearing to read 'M. Creal', enclosed within a thin black rectangular border.

Marg Creal
Chair

Mission, Mandate and Jurisdiction

Mission

To provide fair, timely, effective and respectful hearings that balance legal and medical considerations while protecting individual rights and ensuring the safety of the community.

Mandate

The CCB is an independent administrative tribunal with a mandate to adjudicate on matters of capacity, consent, civil committal, substitute decision making, disclosure of personal health information and mandatory blood testing.

Jurisdiction

The CCB is responsible for holding hearings and for making decisions on matters in which the least restrictive, least onerous and least intrusive decisions are made to:

- 1) maintain the safety of the individual
- 2) protect the safety of the community
- 3) maintain the dignity and autonomy of the individual
- 4) preserve 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 a finding of incapacity 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
- Giving directions on issues of treatment, admission to care facilities and personal assistance services

- Consideration of a request for authority to depart from prior capable wishes of an incapable person
- Review of a decision to consent to an admission to a hospital, psychiatric facility or other health facility for the purposes of receiving treatment
- Review of a substitute decision-maker's compliance with the rules for substitute decision-making
- Consideration of a request to amend or terminate the appointment of a representative

Mental Health Act

- Review of involuntary status for a patient subject to a certificate of involuntary status, renewal of involuntary status or continuation of involuntary status
- Consideration of a request to order, vary or cancel specific conditions for an involuntary patient
- Review of a finding of incapacity to manage property
- Review of whether a young person (aged 12 - 15) requires observation, care and treatment in a psychiatric facility
- Review of a Community Treatment Order

Substitute Decisions Act

- Review of a finding of incapacity to manage property

Personal Health Information Protection Act

- Review of a determination of incapacity 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
- Consideration of the appointment of a representative to consent to the collection, use or disclosure of personal health information on behalf of an incapable person
- Consideration of a request to amend or terminate the appointment of a representative

Child, Youth and Family Services Act

- Review of a determination of incapacity to consent to the collection, use or disclosure of personal information

- Review of a substitute decision maker's compliance with the rules for substitute decision-making
- Consideration of the appointment of a representative to consent to the collection, use or disclosure of personal health information on behalf of an incapable person
- Consideration of a request to amend or terminate the appointment of a representative

Mandatory Blood Testing Act

- Review of a request, by an eligible individual who has allegedly come into contact with another person's bodily fluid, for an order that a blood sample of the other person be provided and analyzed for specific blood borne pathogens

Organization

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

The CCB had 126 members, as of March 31, 2024, up from 119 members a year prior. In addition to the full-time Chair and two full time Vice Chairs, part-time CCB members include six Vice Chairs, 37 Lawyers, 29 Psychiatrists, ten Physicians, ten Nurses in the Extended Class and 31 Public members. Members of the CCB are appointed by Order-in-Council, for a term of one to five years.

As of March 31 2024, 18 employees of the Ontario Public Service support the work of the CCB and its members including 14 permanent positions allocated to the Board, three temporary unallocated positions and one lawyer reporting to the Ministry of the Attorney General and permanently assigned to the Board. Along with a Registrar, Deputy Registrar and Counsel, ten employees in the hearings unit and five in the administrative unit are responsible for functions such as: scheduling and supporting hearings, creating and serving appeal records, records management, financial processing, providing executive support to the Chair, coordinating the member appointment process, organizing staff and member training, liaising with stakeholders, answering public inquiries, strategic planning, providing legal advice to the Chair and the Board, and monitoring and ensuring compliance with legislation and government directives and policies.

As a quasi-judicial body, the CCB maintains an arm's length relationship with the Ministry of Health. The Chair is accountable to the Minister while staff report through the Corporate Management Branch in the Corporate Services Division of the Ministry. The CCB functions under statutory requirements and a Memorandum of Understanding between the Chair and the Minister of Health.

Performance Measures

Statutory Performance

Performance measures for the CCB regarding the scheduling of hearings and the issuance of decisions and written reasons are established by the *Health Care Consent Act* and are as follows:

1. The Board shall promptly set a time and place for the hearing.
2. The hearing shall begin within seven days after the day the Board receives the application unless all parties agree to a postponement (except for matters under the *Mandatory Blood Testing Act* which shall begin and end within five business days after the Board receives the application).
3. The Board shall render its decision and provide a copy of the decision to each party, or the person who represented the party, within one day after the day the hearing ends (except for matters under the *Mandatory Blood Testing Act* for which the decision shall be delivered to the parties on the day the decision is made).
4. If within 30 days after the day the hearing ends, the Board receives a request from any of the parties for reasons for its decision, the Board shall, within four business days after the day the request is received, issue written reasons for its decision; and provide a copy of the reasons to each person who received a copy of the decision.
5. Where a decision of the Board is appealed, the Board shall promptly serve the parties and the Court with the record of proceedings before the Board, including a transcript.

The Board consistently meets its statutory timelines with respect to notice, convening hearings and issuing decisions, reasons and records of proceeding.

Operational Performance

The CCB moves exceptionally quickly to adjudicate matters at the intersection of the medical and legal systems and makes decisions on issues with serious consequences for individuals and for the community, such as civil detention, decisions regarding health care or loss of control of

personal financial resources. Decisions of the Board have implications for both the wellbeing and rights of individuals. Hearings are convened with parties at up to 250 venues throughout the province, including hospitals, long-term care facilities and community locations, with most hearings taking place within schedule 1 psychiatric facilities (virtually or in person). Adjudicators are part time appointees, most of whom have other professional obligations, and Board staffing resources are very lean relative to caseload. Given the environmental considerations and operational constraints within which the Board operates, the CCB must strive to ensure that its adjudicative and operational processes are clearly focussed on achievement of its statutory performance measures.

Compliant statutory performance is dependant upon excellent operational performance including the following requirements:

- Engage in high quality, merit-based recruitment of new members and reappointment recommendations of existing members
- Provide excellent initial training and onboarding to new members
- Provide efficient and effective ongoing educational opportunities for members to develop and maintain specialized expertise
- Provide effective mentorship and peer review for members
- Provide high quality initial training, onboarding and ongoing training and development opportunities for staff to ensure they are skilled, knowledgeable and engaged
- Make use of technology to support hearing operations
- Provide clear, informative and accessible information to stakeholders and the public
- Engage with stakeholders and government with respect to the delivery of the Board's services
- Maintain administrative processes which are designed to support the achievement of the Board's mandate
- Use public funds in a responsible fashion
- Conduct hearings which are both fair and efficient
- Create an environment of respect for the adjudicative process, the parties and the public
- Engage in ongoing review of the Board's operations, through a lens of continuous improvement

2023/2024 Accomplishments

Digital Hearing Operations

1. *Embracing Digital-First* – While cognizant of the challenges and limitations associated with digital hearings in some circumstances, the Board recognizes the considerable benefits digital formats provide. Such benefits include, but are not limited to, the opportunity to: convene diverse panels from across the province; provide an equitable hearing experience for individuals located in all communities; enhance accessibility; provide public access to an open hearings process; and to ensure the responsible use of public resources. In 2023/2024 the Board continued to expand and enhance its digital hearing operations by expanding the number of video conference hearings it could conduct at one time, revising its hearing schedule to mitigate the impacts of technical issues and improving its distribution of hearing documents to adjudicators.

Stakeholder Consultation, Outreach, Education and Communication

1. *General Stakeholder Relations:* In 2023/2024 the CCB met with various organizations and bodies, including the Ministry of Health, Psychiatric Patient Advocate Office, Legal Aid Ontario and various individuals and healthcare facilities, to engage in discussions of mutual interest with respect to the work of the Board.
2. *Stakeholder Committees:* The CCB continued to engage with two key stakeholder committees in 2023/2024. One committee is composed of counsel that represent patients / residents, physicians and other parties before the CCB while the other is composed of psychiatrists that generally represent themselves at CCB hearings. Stakeholder committee meetings provide an opportunity to communicate on issues related to the work of the Board and are an effective tool for sharing information and gathering feedback.
3. *Stakeholder Information Program:* The CCB continued its information sharing program in response to requests to educate stakeholders about the roles and responsibilities of the Board, its processes, and associated implications for healthcare professionals and individuals. These presentations are designed to promote good relations with stakeholders and facilitate high quality hearings. In 2023/2024 eight programs were delivered to health, legal and educational organizations. The Chair also participated in meetings of the Canadian Network

of Mental Health Review Board Chairs Working Group to discuss matters of mutual interest and share information regarding tribunal work in mental health across the country. Additionally in 2023/2024 the Chair participated in the Tribunal Leaders Network, an informal national organization with a shared goal of modernizing tribunal operations and ensuring access to justice through knowledge sharing and a focus on practical solutions.

4. *Communications:* In 2023/2024 the Board continued its ongoing work of reviewing communication tools such as its website, information sheets, notices, fax cover sheets and letters. The goal of these ongoing efforts, initiated in 2021/2022, is to make legal and technical processes more inclusive and accessible through the use of plainer language, easy-to-use information, and simplified and accessible formatting. Work on this initiative will continue in 2024/2025.

Effective Hearing Management

1. *Case Conferences:* The Board conducts case conferences in matters where there may be issues which warrant some degree of case management to ensure that hearings on the merits of the case can proceed smoothly. This helps to conserve resources, improve accessibility, and provide a better hearing experience for participants. Case conferences are most common in matters which are more complex, involve more parties, or where the parties may be unfamiliar with the Board, such as requests to be appointed as a substitute decision maker, requests for a review of substitute decision maker compliance, and matters related to incapacity with respect to management of property. In 2023/2024 the Board scheduled case conferences for 153 cases.
2. *Management of Hearing Documents:* Building on the progress made with the introduction of Policy Guideline 4 in 2020/2021, the implementation of hearing reminders in 2021/2022, and party and facility education undertaken in 2022/2023, the Board has further enhanced the efficiency of hearing operations through better document management in 2023/2024. The Board implemented a new document sharing platform to securely deliver to adjudicators the documents provided by parties upon which they intend to rely at hearing. This new system streamlines the delivery process and provides a means to better organize the materials received by adjudicators, making the hearing preparation process easier and supporting more effective hearing management.
3. *Safe Hearings* – The Board is committed to providing a hearing experience in which all participants feel safe and employs a Safe Hearing Strategy providing direction and guidance

to panels, parties and other participants to ensure safe hearings for all. The Board believes that no person coming before it should be presumed to present a safety concern to other participants and that all parties are entitled to procedural fairness which includes the right to fully participate in the hearing. From time to time the Board understands that safety precautions may be required in a hearing. When precautions are required the Board ensures they will be imposed in a manner that is the least restrictive and onerous in the circumstances and that a decision to impose safety precautions will not be relied upon when considering the legal criteria of the application which is before it.

Member Recruitment, Training, Continuing Education, Engagement and Development

1. *Recruitment:* Recruitment, merit-based interviews and recommendation of new members are conducted in accordance with the requirements of the *Adjudicative Tribunal Accountability Governance and Appointments Act*. In 2023/2024 the CCB initiated a total of three recruitment competitions for part time Lawyer, Psychiatrist and Vice Chair Lawyer members. Interviews, recommendations, appointments, on-boarding and training for these postings will take place in 2024/2025. In 2023/2024 interviews and onboarding took place for appointments made pursuant to the previous year's postings.
2. *In-Service Training:* In response to the increasing complexity of matters before the CCB, and turnover among more experienced members, the Board continued its in-service training program in 2023/2024, hosting 17 sessions. The program had a total attendance of 535 with many members attending training on more than one topic. Further details on member training programs can be found in the Board Members Training and Professional Development section of this Report.
3. *Hearing Schedule Changes:* In 2023/2024 changes to the hearing schedule were implemented which enhanced engagement by promoting more balanced individual daily workloads for members, bringing hearing start and end times in line with traditional business hours, and providing breaks between hearings which allow for the completion of pre-and-post-hearing work such as document review and paperwork to be completed within the hearing day.

Scheduling and Administration

1. *French Language Services Act, Active Offer Regulation:* The FLSA active offer regulation came into effect on April 1, 2023. The Board worked to ensure compliance by implementing updates to signage, documents and email signatures, updating the mainline phone greetings, reviewing scheduling and hearing operations to ensure procedural compliance, and ensuring staff and members participated in the required training.
2. *Mandatory Blood Testing Act Amendments:* Amendments to the MBTA came into force on July 1, 2023. In response to new requirements such as an adjudicative process that runs concurrent to the public health voluntary process, improved inter-agency tracking and tightened statutory timelines, the Board implemented revised processes to ensure ongoing compliance. The Board also worked with partners at the Ministry, Public Health Ontario and local public health units to share information and develop best practices in operationalizing the amendments.
3. *Modernization of the Workplace:* The Board's physical workplace underwent modernization in 2023/2024 with a move to a consolidated space shared with other health tribunals, the implementation of hotelling workstations, and a renewed commitment to a paperless environment. The Board also implemented a virtual voicemail system which has improved the Board's ability to receive and triage phone calls and ensure messages are quickly routed for the best possible service to callers.
4. *New Hearing Schedule:* Following a consultation period conducted in July 2023 the Board implemented a new hearing schedule on October 2, 2023. The new schedule reduced the Board's hearing times to three, from four. With start times of 9:00 am, 12 noon, and 3:00 pm, and with hearings still scheduled presumptively for two hours, the new schedule improves the hearing experience for adjudicators, parties and other participants by framing hearings within traditional workday hours, and by providing one hour breaks between hearings to provide some cushion for slight extensions of individual hearing durations due to unforeseen circumstances such as technical issues, and to allow panels and other participants to be better prepared for each hearing during the day.
5. *Practice Direction Regarding Deemed CTO Applications:* In September 2023 the Board implemented a new Practice Direction laying out its protocols with respect to scheduling deemed CTO hearings (also referred to as mandatory CTO hearings, or uncontested CTO hearings). The Practice Direction can be found on the Board's website.

6. *Mental Health First Aid:* As a tribunal adjudicating primarily in the field of mental health, the Board is committed to the wellbeing of its staff and members. In April 2023 the Board was pleased to offer access to the Canadian Mental Health Commission's Mental Health First Aid program. The MHFA program is designed to provide participants with the skills needed to extend crucial support to individuals navigating mental health crises or challenges. Similar to traditional first aid, MHFA fosters the ability to identify common signs of distress and deliver immediate aid until professional assistance is accessible. 13 Board staff and three members participated in this nine-hour intensive virtual program.
7. *Resourcing:* In 2021 the Board was granted three temporary resources in response to exceptional caseload increases which occurred during the Covid pandemic. These resources remain in place, on a temporary basis, as of the end of 2023/2024. These additional resources have allowed a better alignment of scheduling and hearing support activities, have improved the wellbeing of staff, and have resulted in better service to adjudicators, parties and stakeholders.
8. *Application Form Updates:* In 2023/2024 the Board revised the Form 18 application form under the *Substitute Decisions Act*. Improvements to the form included more accessible formatting, improved clarity in wording, ensuring gender neutrality, and soliciting information regarding participants' needs for translation or accommodation services. The SDA Form 18 also became the first CCB application form that can be automatically submitted to the Board digitally with a single click of an embedded button on the form itself.

Respect, Equity, Accessibility, Diversity and Inclusion (READI)

1. *Member Education:* The Cultural Competency and Diversity Working Group, a diverse group of members from all disciplines, continued to lead efforts to deliver adjudicator-focused READI programming to members in 2023/2024. Learning this year focused on power and privilege, intersectionality and equity in the hearing context. Small group and all-member discussion supplemented a guest speaker session featuring the Senior Manager of Equity Diversity and Inclusion from the Ministry of Health. 2023/2024 also marked the conclusion of the Indigenous Cultural Competency Training program offered by the Ontario Public Service in response to the Truth and Reconciliation Commission's Report. In total, since 2022, 49 members have completed this voluntary program designed to help Ontario public servants increase their capacity and awareness to build resilient relationships with Indigenous communities; develop culturally respectful policies and programs that are accessible and address the needs of Indigenous peoples; and act as cultural allies.

2. *Staff Education:* Board staff continued their READI journeys, developing and enhancing their knowledge, skills and understanding of the issues of bias, systemic racism and equity, through events, readings, courses and activities within and outside the OPS. Staff will continue to participate in these formal and informal learning opportunities on an individual and team basis in 2024/2025 in alignment with OPS and Ministry of Health commitments.
3. *Inclusive Communication:* In 2023/2024 The Board continued to review and revise standards of communication through an inclusivity lens. During updates to documents such as information sheets and application forms inclusive language and accessible formatting is being incorporated. Board staff and members are regularly encouraged to apply inclusive standards in their formal and informal written and oral communications and many are following the best practice of proactively providing their own preferred pronouns to demonstrate their commitment to inclusivity for others.

Members' Training and Professional Development

The CCB has a comprehensive training program for new and existing members, designed to ensure the Board is populated with well-trained and highly qualified adjudicators. The Board's training program includes new member education, mentoring, performance evaluation, reference resources and in-service training. In 2023/2024 member training and development was provided to more than 530 learners in total, with many members attending multiple sessions.

New Member Education

New Member Training, which is a mandatory member-led program for all new members, provides an essential overview of the legislation, rules and policies that govern the work of the Board and provides new members with a foundational understanding of their role in the delivery of the Board's mandate. As part of their training, new members are also paired with an experienced mentor who sits on panels with their mentee and who provide new members with advice and guidance during the training period and beyond. In 2023/2024 New Member Training was held once, with a total of four new members attending.

Member Sector Supplemental Training

Presiding Member supplemental training was developed in recent years in recognition of increasing hearing complexity, heightened demands on Lawyer members and the significant number of newer Lawyer members. This training was provided once in 2023/2024 for four Lawyer members.

Supplemental training was also provided once for newer public members and once for newer medical members in 2023/2024 with seven and nine attendees respectively.

Issue Specific training

Ongoing training is provided on key issues throughout the year. The nature of this training is dependant on emerging interests and needs with respect to legislative changes as well as general or Board specific issues or changes of a legal, administrative or operational nature. As with most member training, these sessions are typically peer developed and led. Learning in 2024 included

mentorship training for members who act as mentors to new appointees which was attended by seven members. To support the Board's shift to video-first hearings, and to address the lack of in-hearing staff support, a series of sessions with respect to zoom functionality were offered and were attended by 61 members. The Board's Deputy Registrar also hosted a series of drop-in sessions to support members transitioning to the new document management platform.

All Member Education

Adjudicators attended a four-week series of weekly professional development sessions developed, organized, and delivered by a team of members. Participation in this peer-led education was mandatory for all members. Staff also attended select sessions on an optional basis. Topics for 2024 included cultural competency, legal issues, addiction and the principles of good decision making.

Legal Developments

S.H. v. Prakash

On June 27, 2023 the Court of Appeal issued a decision [[S.H. v. Prakash, 2023 ONCA 459](#)] considering the appellant's argument (in part) that the Consent and Capacity Board's (CCB) decision was inconsistent with *Charter* values (specifically, freedom of religion).

Significantly, the Court of Appeal upheld the *Charter* values analysis that the Consent and Capacity Board has applied in a number of its past Decisions. The Court of Appeal also confirmed the Superior Court's decision, which upheld the CCB's decision in this particular appeal as well.

Background

The appellant, S.H., had been found not criminally responsible on account of mental disorder (NCRMD) on two occasions and had been detained under the authority of the Ontario Review Board (ORB) since 2021. He was first found incapable of consenting to treatment with anti-psychotic medication in January 2021, and again in August 2021. Both findings of incapacity were confirmed by the Consent and Capacity Board.

Consent and Capacity Board Decision

At the CCB hearing, SH testified that the proposed antipsychotic medications would cut his grounding to the universe and interfere with his religious beliefs. He testified that he would not benefit from medication, and that they would take away from his "connection to the universal entity."

The CCB found that:

- SH suffered from a mental delusional disorder;
- SH's beliefs and thought process were a manifestation of their mental condition, but that he failed to recognize this; and
- Because SH could not see this possibility, he could not engage in the cost/benefit considerations necessary to an appreciation of the reasonably foreseeable consequences of either taking or refusing the medication.

An appeal from the September 2021 CCB decision to the Superior Court was dismissed in March 2022.

Court of Appeal Decision

The appellant argued that the CCB and the Superior Court failed to take into account *Charter* values, i.e. his right to freedom of religion.

The Court of Appeal found:

- Patient was sincere in their beliefs;
- Appeal argument re: Charter was not raised or dealt with by the CCB or appeal judge;
- There was a nexus between the patient's belief system and their resistance to treatment;
- Confirmation of the finding of incapacity by CCB and Court was not because of patient's religious beliefs, but because patient did not recognize that the beliefs were a consequence of mental disorder.

Ultimately, the Court of Appeal dismissed the appeal, upholding the Superior Court's Decision. The Court of Appeal found that the appellant was unable to appreciate the reasonably foreseeable consequences of a decision to take, or refuse to take, the medication. The court also found that the appellant's beliefs and thought process were a manifestation of his mental condition, and he was unable to recognize that his thought process and beliefs were potentially a manifestation of his mental condition.

Consideration of Charter Values

As noted above, the Court of Appeal upheld the *Charter* values analysis that the Consent and Capacity Board has applied in a number of its past Decisions. The Court of Appeal's reasoning is significant, and comments positively on the CCB's analysis of Charter Values in its past Decisions. The Court held:

*"Counsel for the appellant correctly points out that Charter values can play a role in determinations. The high value Canadian society places on the fundamental right to freedom of religion dictates that the CCB and the courts must proceed cautiously before characterizing a professed religious belief as a manifestation of a mental condition. **The evidence must offer clear and cogent support for both the conclusion that the beliefs are a manifestation of a mental condition and the conclusion that the condition has rendered***

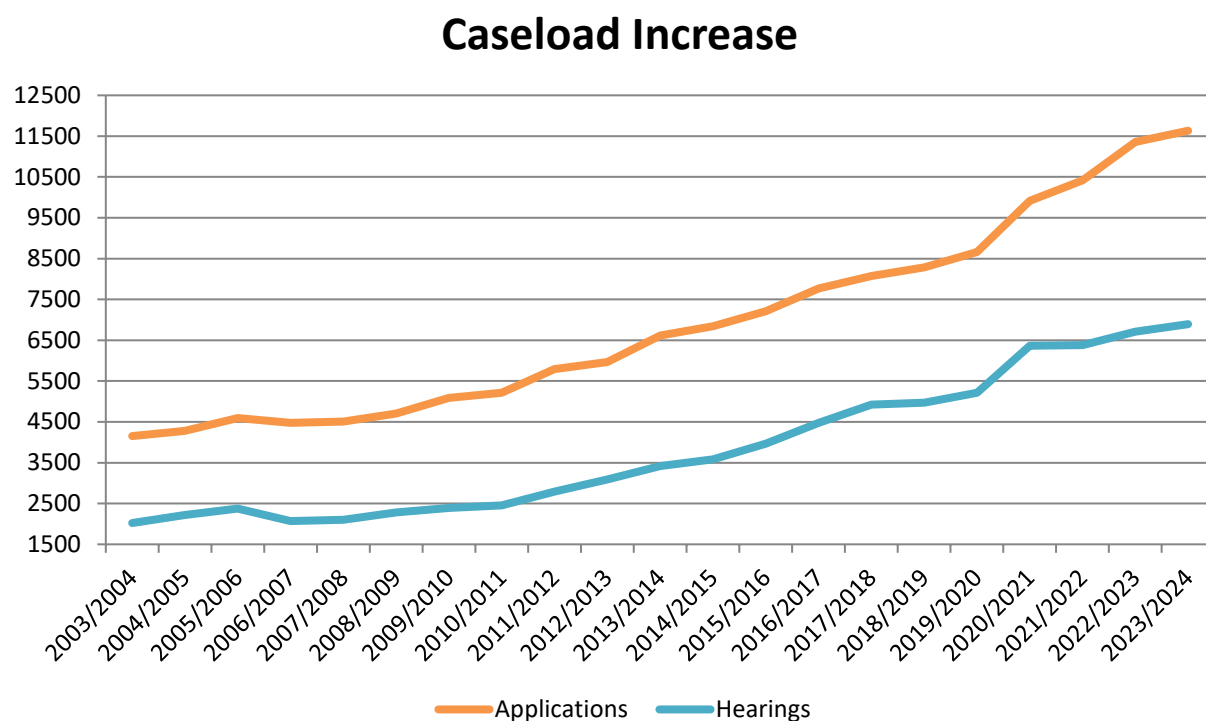
the individual incapable of recognizing that his beliefs may be the product of a mental condition. Decisions of the CCB demonstrate that it has regularly undertaken this analysis in the past: [C.R. \(Re\), 2023 CanLII 24871 \(Ont. CCB\)](#); [G.S. \(Re\), 2021 CanLII 152914 \(Ont. CCB\)](#); and [E.P. \(Re\), 2013 CanLII 49102 \(Ont. CCB\)](#). We are satisfied that that onus was met on this record.” (para 18, emphasis added)

The Court’s analysis confirms that the Consent and Capacity Board’s past Decisions have appropriately and carefully considered the critical importance of Charter Values in reviewing incapacity findings for vulnerable persons.

Caseload

Caseload Increase

The CCB has an obligation to accept and process all applications submitted and convene hearings within statutory timelines regardless of increased volumes or other factors. For the 2023/2024 fiscal year application receipts climbed to 11,633 and 6894 hearings were convened province wide. This is approximately a 190% increase in applications and a 240% increase in hearings in the past two decades.

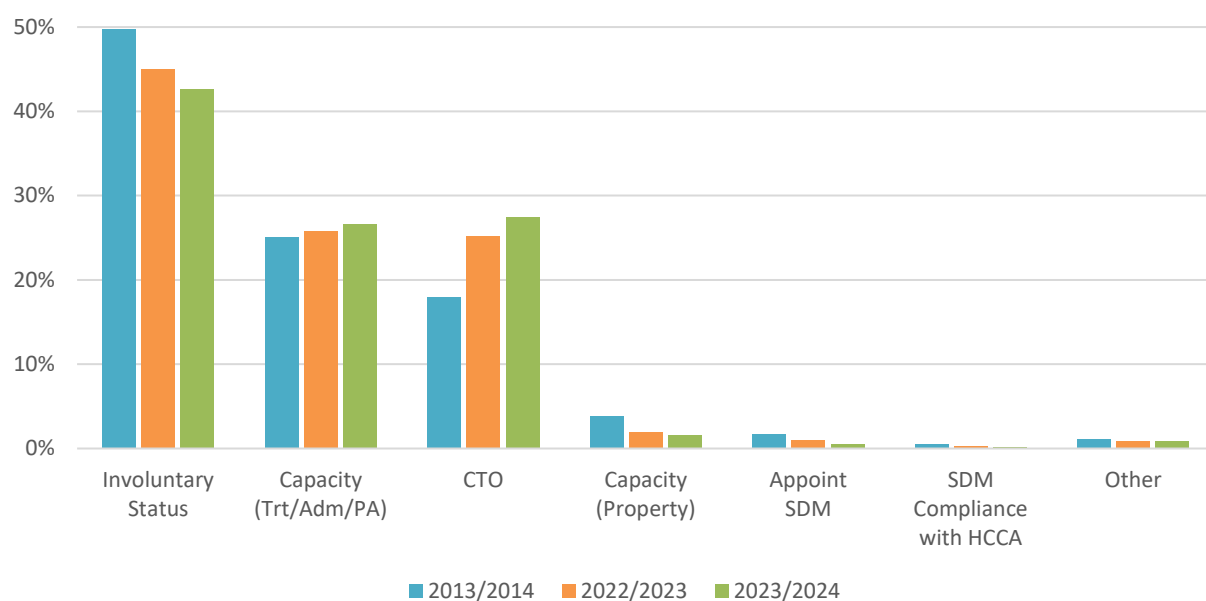


Applications to the Board

In 2023/2024 a total of 11,633 applications were received by the CCB. This is up from 11,357 the prior year and 6615 in 2013/2014. The chart below shows application types received as a percentage of the total received in 2023/2024 in comparison to 2022/2023 and 2013/2014.

While the majority of the applications to the Board continue to be those related to a review of involuntary status, these applications as a percentage of total applications to the Board has fallen over time. For example, in 2006/2007 involuntary status applications accounted for 60% of total applications while they made up only 43% in 2023/2024. The actual number of involuntary status applications also fell by 3% in 2023/2024 compared to the previous year. Growth in applications to review Community Treatment Orders mirrors the decline in involuntary status applications. Note that although CTO applications, as a percentage of all applications, increased by only 2% year-over-year they increased in number by 12% - approximately four times the rate of increase for the Board's caseload overall. Applications for a review of a finding of incapacity (regarding treatment, admission to long term care, or receiving personal assistance services in a long-term care or retirement home) continue to make up approximately a quarter of all applications to the Board. Applications to appoint a substitute decision makers accounted for about 1% of all applications in 2023/2024 while applications to review the compliance of an SDM with the principles of decision making as prescribed in the *Health Care Consent Act* made up about 0.1% of all applications.

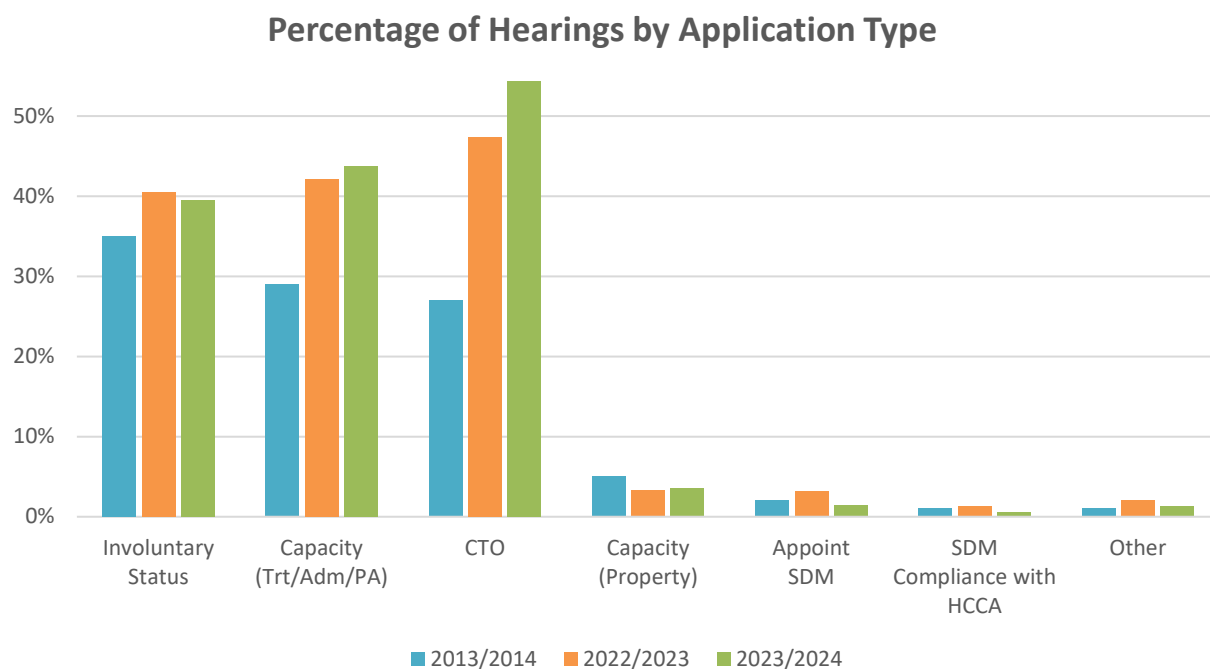
Application Types Received as a Percentage of the Total



Applications Reviewed at Hearings

In 2023/2024 a total of 6894 hearings were convened by the CCB. This is up from 6708 the prior year and 3418 in 2013/2014. The chart below shows the percentage of hearings at which various application types were heard in 2023/2024 in comparison to 2022/2023 and 2013/2014. Note that the total of all hearings by application type is greater than 100% because more than one application may be reviewed at a single hearing and hearings for a single application may convene more than once.

As with applications received, historically most hearings convened by the Board involve an application for a review of involuntary status, a finding of incapacity or a Community Treatment Order. Continuing a trend which began in 2020/2021, CTO reviews were the most common application reviewed at hearing, having been considered at 54% of all hearings, up from 27% in 2013/2014 when they were the third most common. In addition to the obvious connection between increasing CTO applications and increasing hearings it is worth noting that CTO applications are more likely to proceed to hearing than some other applications due to the status of the person subject to the CTO being less likely to change prior to the hearing (compared to, for example, individuals detained involuntarily) and the legislated requirement for the Board to review all CTOs on the second and every subsequent second renewal.

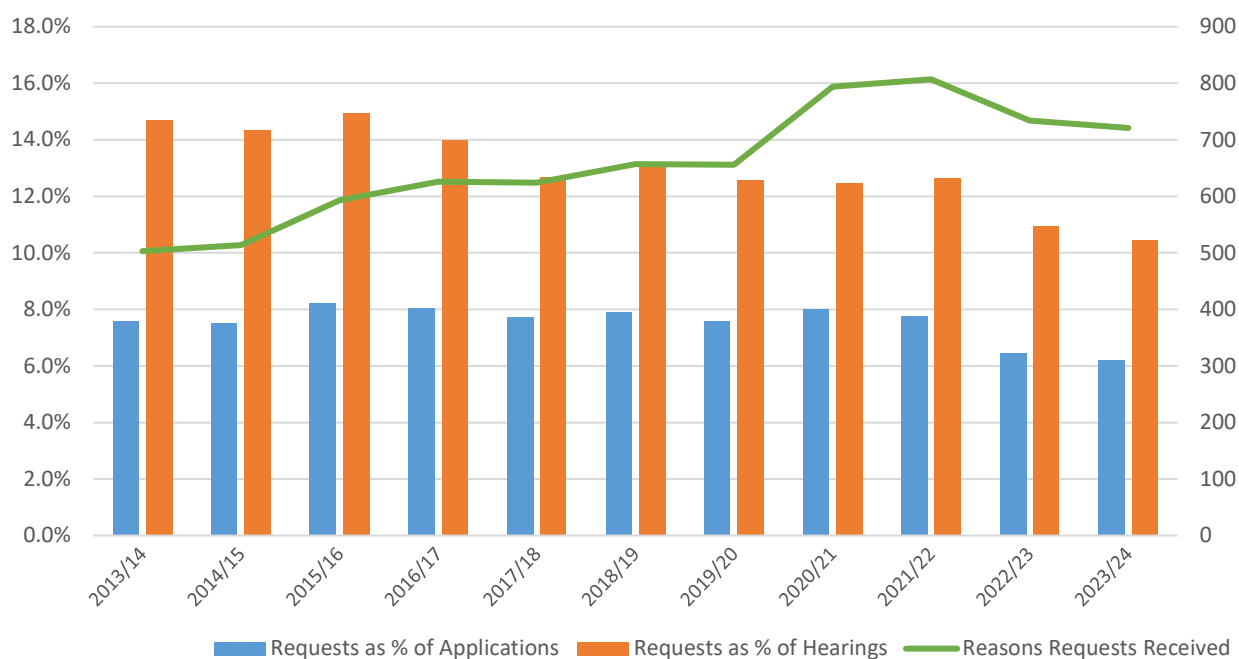


Written Reasons for Decision

Following a decision of the Board, any party may request written reasons for that decision. Reasons are prepared and released in accordance with statutory provisions. Written reasons, once prepared, are issued to all parties. If written reasons for decision have not already been prepared at the request of a party, they are subsequently prepared when a decision of the Board is appealed to the Ontario Superior Court of Justice and are included in the Record of Proceeding. Reasons are published for reference and education purposes and are available for free on the website of the Canadian Legal Information Institute (CanLii). Reasons are redacted to protect the privacy of vulnerable persons.

In 2023/2024 the Board received 721 requests for written reasons. This is the second year in a row that reasons requests have declined, following a long period of increases peaking at 807 in 2021/2022. Reasons requests as a percentage of both applications and hearings also fell to their lowest levels ever in 2023/2024 being equivalent to just over 6% of application numbers and 10.5% of hearing numbers. While there is not a direct correlation between application or hearing volumes and reasons requests, this comparison provides an interesting contrast of the trends and the general relationship between these factors and serves to illustrate the changes over time.

Reasons Requests Received and as a Percentage of Applications Received and Hearings Convened

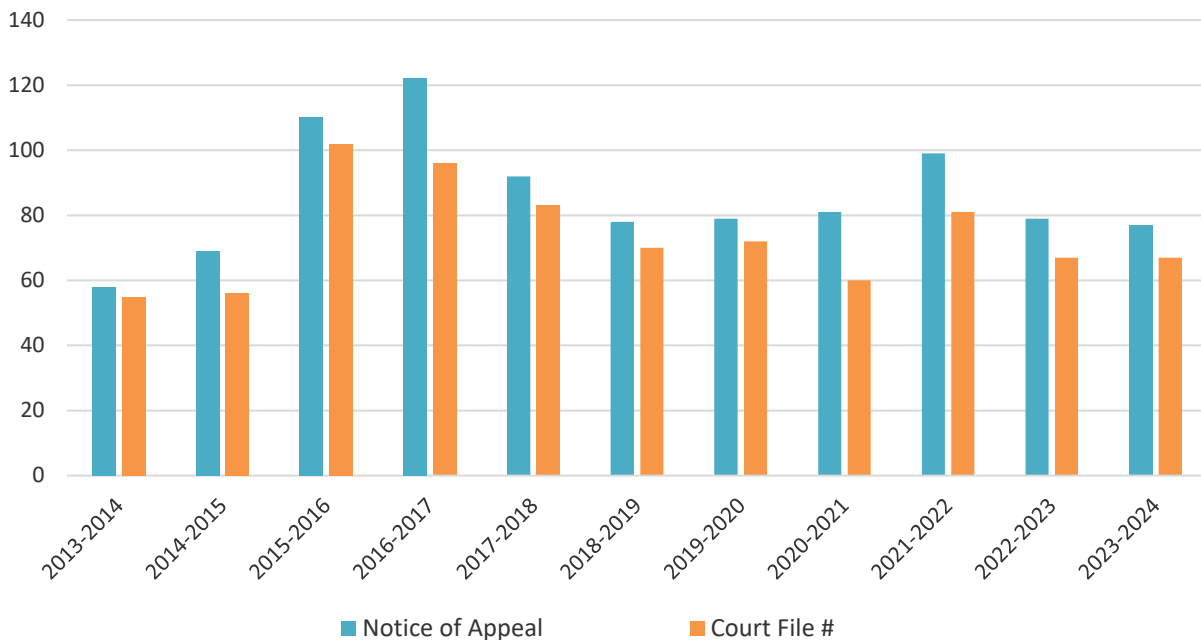


Appeals

Appeals Initiated

Parties may appeal a decision of the CCB to the Ontario Superior Court of Justice within seven days of the Board’s decision. From 2011/2012 until 2014/2015 the Board received an average of 55 Notices of Appeal per year and received Court File Numbers for an average of 51 per year. 2015/2016 and 2016/2017 saw steep increases in appeals due to changes in the funding of CCB appeals by Legal Aid Ontario with Notices of Appeal peaking at 122 in 2016/2017, after which appeals declined again somewhat. In 2023/2024 the Board received 77 Notices of Appeal and 67 Court File Numbers which was virtually unchanged from the previous year. Notices of Appeal received were equivalent to approximately a half percent of the number of applications received in 2023/2024, down from just under 1% in 2013/2014. While there is not a direct correlation between applications received and appeals, this comparison provides some context for the changes in appeal raw numbers over time.

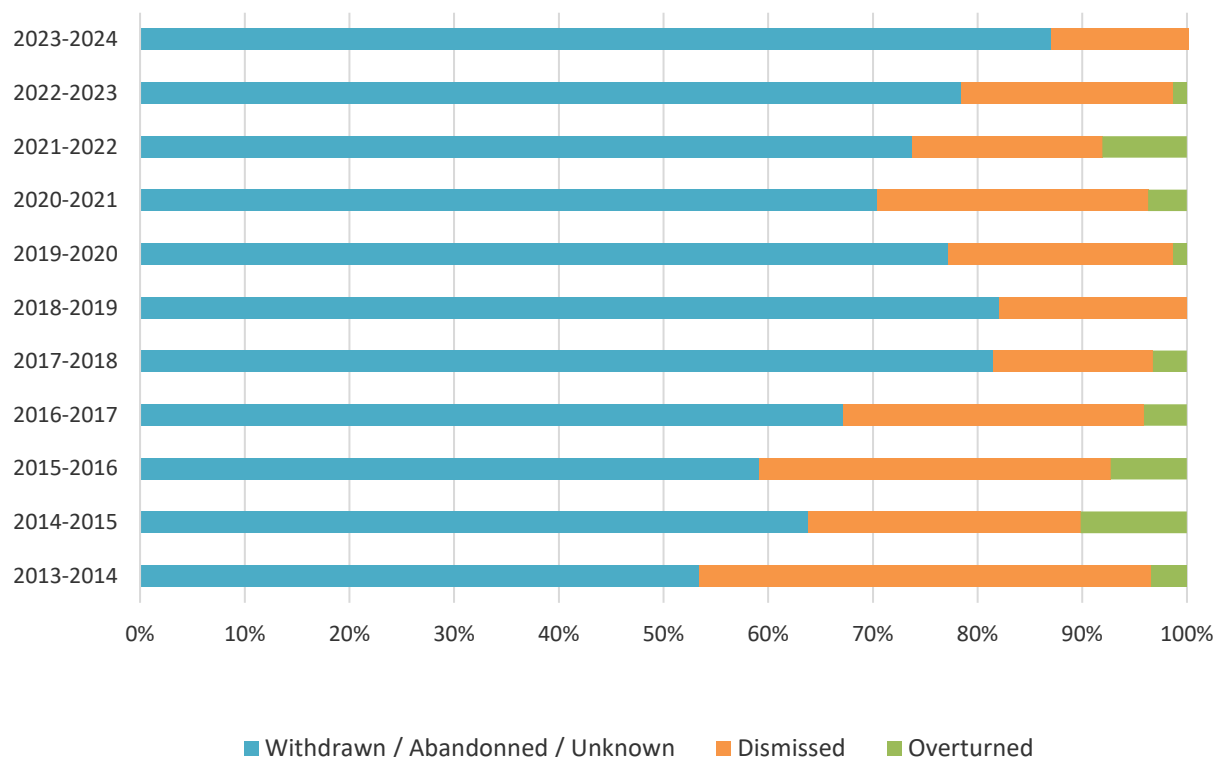
Appeals Received



Appeal Outcomes

Frequently the Board is not notified of the outcome of appeals. Most appeals are believed to be withdrawn or abandoned by the Appellant. The Board is typically notified by the parties of the outcome when there is an impact before the Board for the Appellant or the Respondent. Impacts before the Board may include a matter being returned to the CCB by the Court necessitating a new hearing, or a dismissal (or withdrawal) which may impact the final disposition date of a matter which the Board must consider in some cases with respect to subsequent applications. The following chart illustrates the percentage of appeals where the court overturns the CCB decision in some fashion, upholds the CCB decision by dismissing and those which were abandoned, withdrawn or for which the Board has no information about the outcome. The Board continues to work with the parties and the courts to pursue improved updating of appeal outcomes.

Appeal Outcomes



Finance

From 2000/2001 to 2017/2018 the CCB experienced annual pressures of \$1 - \$2M in most fiscal years due primarily to cumulative caseload increases representing shortfalls equivalent to as much as 25% of allocated funding. Allocation adjustments in 2018/2019 better aligned allocated resources with the operational needs of the Board in response to increased demand for services however since that time the Board's needs have once again started to exceed its allocation. The Board's allocation for fiscal 2023/2024 was \$8,573,900 – a modest 1.4% increase from the year prior. Total expenditure for the year was approximately 6.7% above allocation at \$9,151,195. Long term increases in CCB expenditures are historically outpaced by caseload increases. Since 2013/2014 actual expenditures increased approximately 43% while hearings convened by the Board increased 102% during the same period.

Member remuneration is the Board's largest single expenditure, accounting for almost 73% of the Board's actuals in 2023/2024. Member remuneration is driven primarily by hearing demand and caseload volume. The CCB makes significant efforts to create hearing schedules that are both logistically sound and cost effective with respect to the deployment of adjudicators, while ensuring all legal and procedural obligations are met. Total per diem expenditures for part time appointees in 2023/2024 were \$6,114,111 and full-time appointee salary and benefits were \$551,092. Reimbursements to members for necessary travel for Board business were \$4,149 in 2023/2024. All travel reimbursements are posted on the Accountability page of the Board's website on a quarterly basis.

The CCB exercises prudent fiscal management by ensuring all member remuneration and reimbursement and vendor invoices adhere to Board and government guidelines and directives and continues to carefully monitor all aspects of its operations to enhance administrative efficiencies and to implement cost-savings or cost-avoidance strategies, as appropriate.

Financial Expenditure Report
April 1, 2023 to March 31, 2024

	Allocation	Actual Expenditures	Variance
<u>DIRECT OPERATING EXPENSE</u>			
Salaries and Wages	1,493,600	1,545,981	(52,381)
Benefits	216,600	245,540	(28,940)
Subtotal	1,710,200	1,791,521	(81,321)
<u>OTHER DIRECT OPERATING EXPENSES</u>			
Program Specific Costs	6,863,700	7,359,674	(495,974)
TOTAL	8,573,900	9,151,195	(577,295)

Consent and Capacity Board Members and Remuneration

Members of the Board as of March 31, 2024

Surname	First Name	Member Type	Appointment Date	Appointment Expiry Date	Per Diem Rate	2023/2024 Remuneration
Full Time Chair						
Creal	Marg	Chair	March 11, 2015	March 10, 2025	N/A	\$223,581.28
Full Time Vice Chairs						
Patton	Lora	L	July 11, 2017	July 10, 2027	N/A	\$155,542.92
Bulmer	M. Krista	L	October 20, 2022	October 19, 2024	N/A	\$135,554.38
Part Time Vice Chairs						
Bhatla	Rajiv	Ps	April 4, 2007	April 23, 2028	\$788	\$10,896.14
Lester	Nina	L	April 11, 2018	April 10, 2028	\$788	\$109,882.53
Newman	Michael	L	September 01, 2022	August 31, 2025	\$788	\$64,485.58
Strang	Gary	Pu	January 15, 2016	January 14, 2029	\$583	\$58,253.76
Vaillancourt	Timothy	Pu	August 26, 2021	August 25, 2026	\$583	\$81,851.98
Warr	Anthony	Pu	August 26, 2021	August 25, 2026	\$583	\$86,967.52
Part Time Members						
Alatishe	Yuri	Ps	March 19, 2014	March 18, 2026	\$788	\$10,325.52
Alexander	Hilary	Pu	December 20, 2019	December 19, 2024	\$472	\$43,474.46
Ambrosini	Daniel	L	June 22, 2016	December 31, 2027	\$788	\$127,289.16
Andrade	Donna	N	August 29, 2019	August 28, 2024	\$788	\$96,812.59
Anweiler	Jane	L	October 31, 2019	October 30, 2024	\$788	\$54,779.60
Beasley	Geoffrey	L	May 18, 2016	May 17, 2026	\$788	\$27,696.86
Beaton	Marilyn	Pu	October 17, 2019	October 16, 2024	\$472	\$47,235.81
Bismil	Ramprasad	Ps	May 28, 2020	May 27, 2025	\$788	\$30,134.21
Brisson	Kim	Pu	February 08, 2018	February 26, 2028	\$472	\$50,915.79
Brook	Shelley	Ps	August 29, 2019	August 28, 2024	\$788	\$27,444.14
Buckingham	Robert	Ps	October 09, 2013	December 14, 2027	\$788	\$35,935.52
Bullbrook	Jane	L	November 28, 2019	November 27, 2024	\$788	\$88,658.16
Cameron	Lesley	L	September 22, 2023	September 21, 2025	\$788	\$30,411.36
Cato	Kimberly	Pu	August 17, 2017	September 12, 2027	\$472	\$31,111.30
Chandrasena	Ranjith	Ps	June 01, 1986	April 08, 2028	\$788	\$12,866.14
Charbonneau	Yoland	Ps	August 23, 1993	April 02, 2025	\$788	\$85,715.38
Chillman	Brian	L	January 15, 2016	January 14, 2026	\$788	\$42,136.28
Clapp	Suzanne	L	October 30, 2013	December 11, 2024	\$788	\$66,091.47
Cook	Peter	Ps	July 04, 2001	July 25, 2024	\$788	\$7,676.21
Corey	JoAnn	Ps	August 17, 2017	September 12, 2027	\$788	\$8,749.52

Surname	First Name	Member Type	Appointment Date	Appointment Expiry Date	Per Diem Rate	2023/2024 Remuneration
Curry	Joyce	Pu	October 07, 2021	October 06, 2026	\$472	\$15,519.04
Danbrook	Catherine	Pu	October 17, 2019	October 16, 2024	\$472	\$23,215.89
Darby	Padraig	Ps	December 14, 2023	December 13, 2025	\$788	\$3,152.00
Datta	Partha	Ph	April 24, 2020	April 23, 2025	\$788	\$26,194.21
Desloges	Chantal	L	October 07, 2021	October 06, 2026	\$788	\$44,356.26
Doyle	Patricia	Ph	October 17, 2019	October 16, 2024	\$788	\$58,570.14
Drouin	Danielle	N	October 17, 2019	October 16, 2024	\$788	\$88,715.21
Dubois	Daniel	Pu	December 14, 2023	December 13, 2025	\$472	\$97.66
Duggan	Stephen	Pu	October 17, 2019	October 16, 2024	\$472	\$43,489.10
Earle	Julie	N	October 17, 2019	October 16, 2024	\$788	\$34,030.73
Erstling	Rachel	Ps	July 08, 2021	July 07, 2026	\$788	\$25,120.90
Ferencz	Joseph	Ps	January 15, 2007	January 14, 2028	\$788	\$19,604.90
Flanagan	Curt	L	March 25, 2020	March 24, 2025	\$788	\$24,656.25
Forget	Martin	Pu	March 12, 2020	March 11, 2025	\$472	\$42,870.63
Galbraith	Donald	Ps	January 13, 1994	April 08, 2028	\$788	\$22,933.52
Giles	Donna	Pu	November 18, 2021	November 17, 2026	\$472	\$38,622.63
Giroux	Maurice	Pu	July 11, 2017	September 25, 2027	\$472	\$45,336.42
Goodman	R. Gail	L	November 21, 2019	November 20, 2024	\$788	\$99,695.62
Gopikrishna	Sabnavis	Pu	January 07, 2021	January 06, 2026	\$472	\$34,268.84
Gorewicz	Harvey	Pu	February 14, 2020	February 13, 2025	\$472	\$53,612.69
Graham	Natasha	Ph	December 14, 2023	December 13, 2025	\$788	\$1,739.03
Hanbidge	John	L	January 15, 2016	January 14, 2026	\$788	\$36,699.08
Hand	Karen	Ps	May 04, 2011	May 03, 2026	\$788	\$56,165.38
Handelman	Mark	L	August 29, 2019	August 28, 2024	\$788	\$164,216.46
Handsor	Julie	Pu	October 31, 2019	October 30, 2024	\$472	\$27,164.42
Harris	Janet	Pu	October 19, 2016	December 11, 2026	\$472	\$39,605.68
Harris	Yvonne	Pu	October 18, 2017	October 17, 2027	\$472	\$47,826.62
Harvie	Elizabeth	L	August 17, 2017	September 25, 2027	\$788	\$69,227.16
Heakes	Susan	L	November 21, 2019	November 20, 2024	\$788	\$94,622.50
Herne	Jill	Pu	September 28, 2016	November 23, 2026	\$472	\$39,566.62
Hodgson-Harris	Loree	L	May 18, 2016	December 31, 2027	\$788	\$43,171.52
Ismail	Plabon	Ps	January 11, 2024	January 10, 2026	\$788	\$394.00
Johnson	Slavo	Pu	April 14, 2010	May 12, 2026	\$472	\$32,388.97
Johnston	Susan	Ps	April 24, 2020	April 23, 2025	\$788	\$68,474.49
Kay	Gary	Ps	September 08, 2015	September 07, 2025	\$788	\$47,361.52
Khan	Rebecca	L	September 22, 2023	September 21, 2025	\$788	\$12,281.93
Kindiak	Darlene	Pu	October 17, 2019	October 16, 2024	\$472	\$39,029.51

Surname	First Name	Member Type	Appointment Date	Appointment Expiry Date	Per Diem Rate	2023/2024 Remuneration
Kirkpatrick	Kimberley	N	October 17, 2019	October 16, 2024	\$788	\$69,075.00
Ladouceur Beauchamp	Renee	Pu	October 25, 2019	October 24, 2024	\$472	\$30,020.83
Lake	Rae	Ph	April 02, 2020	April 01, 2025	\$788	\$62,018.32
Lakra	Rekha	L	May 08, 2013	December 31, 2024	\$788	\$66,162.10
Legault	Suzanne	Ps	July 08, 2021	July 07, 2026	\$788	\$70,553.18
Liddle	John	L	January 15, 2016	January 14, 2026	\$788	\$108,561.95
Louvish	Dimitri	Ph	May 28, 2020	May 27, 2025	\$788	\$67,374.00
Martschenko	Linda	L	January 15, 2016	January 14, 2026	\$788	\$111,697.64
Matheson	Charles	Pu	October 31, 2019	October 30, 2024	\$472	\$38,256.42
Maunder	Leslie	L	September 16, 2021	September 15, 2026	\$788	\$53,084.05
McDonald	Christena	N	July 08, 2021	July 07, 2026	\$788	\$71,395.52
McFadden	David	Pu	February 24, 2016	April 28, 2026	\$472	\$53,572.00
Menezes	Natasja	Ps	August 29, 2019	August 28, 2024	\$788	\$35,421.96
Merrifield	Thomas	L	October 31, 2019	October 30, 2024	\$788	\$61,722.15
Morrish	Deborah	Pu	October 07, 2021	October 06, 2026	\$472	\$24,501.69
Murphy	Patrick	L	August 29, 2019	August 28, 2024	\$788	\$38,910.87
Naidu	Kumar	Ps	July 08, 2021	July 07, 2026	\$788	\$34,142.14
Nathanson	Jay	Ps	January 29, 2014	January 30, 2028	\$788	\$13,260.14
Nemet	Joseph	L	August 17, 2017	September 12, 2027	\$788	\$70,735.25
Neuburger	Sheila	Pu	October 31, 2019	October 30, 2024	\$472	\$40,762.90
Neumann	Amber	L	September 22, 2023	September 21, 2025	\$788	\$24,563.87
Nytko	Barbara	Pu	October 31, 2019	October 30, 2024	\$472	\$36,317.96
Oyebode	Omoniyi	Ps	January 11, 2024	January 10, 2026	\$788	\$0.00
Pantalone	Jack	L	September 22, 2023	September 21, 2025	\$788	\$17,526.21
Papatheodorou	George	Ps	November 04, 2015	December 09, 2025	\$788	\$58,733.18
Pellettier	John	Ps	October 02, 2002	December 11, 2027	\$788	\$47,361.52
Pilon	Brigitte	L	April 26, 2017	December 09, 2024	\$788	\$111,876.99
Porter-Lossing	Julie	N	October 25, 2019	October 24, 2024	\$788	\$52,331.35
Power	Martina	Ps	April 09, 2014	April 08, 2029	\$788	\$78,416.87
Raina	Shashi	L	December 09, 2015	December 08, 2025	\$788	\$80,693.92
Rainboth	Robert	Pu	August 17, 2017	September 12, 2027	\$472	\$43,061.05
Ranger	Nathalie	Ph	August 29, 2019	August 28, 2024	\$788	\$72,971.52
Rasminsky	Frances	Pu	September 13, 2017	September 12, 2027	\$472	\$43,809.73
Reynen	Emily	Ph	December 14, 2023	December 13, 2025	\$788	\$163.03
Ribeyre	Anne-Sophie	Pu	October 25, 2019	October 24, 2024	\$472	\$17,276.83
Roblin	Blair	L	November 28, 2019	November 27, 2024	\$788	\$49,804.33

Surname	First Name	Member Type	Appointment Date	Appointment Expiry Date	Per Diem Rate	2023/2024 Remuneration
Sarjeant	Jennifer	Ph	August 29, 2019	August 28, 2024	\$788	\$69,404.85
Shoucrist	Rami	Ph	August 29, 2019	August 28, 2024	\$788	\$21,276.00
Shugar	Gerald	Ps	July 04, 2001	July 03, 2025	\$788	\$44,429.61
Silver	Laura	L	May 18, 2016	December 31, 2027	\$788	\$145,733.80
Smith	Mary	N	May 07, 2020	May 06, 2025	\$788	\$80,854.24
Spence	Robert	L	November 20, 2021	November 19, 2026	\$788	\$41,628.15
Squire	Philip	L	October 07, 2021	October 06, 2026	\$788	\$103,206.27
Stewart	Ross	L	February 24, 2016	February 23, 2026	\$788	\$98,793.46
Tackaberry	Debra	Pu	March 25, 2020	March 24, 2025	\$472	\$32,983.04
Tomaszewski	Katherine	L	November 28, 2019	November 27, 2024	\$788	\$53,980.73
Trussell	Alison	N	December 14, 2023	December 13, 2025	\$788	\$163.03
Tulandi	Myrna	L	April 24, 2020	April 23, 2025	\$788	\$99,067.90
Tulotsang	Dolkar	Pu	October 17, 2019	October 16, 2024	\$472	\$41,536.00
Tye	Hugh	L	February 15, 2024	February 14, 2026	\$788	\$0.00
Uchendu	Kate	N	May 31, 2017	July 25, 2027	\$788	\$84,710.00
Velamoor	Varadaraj	Ps	May 31, 2017	July 25, 2027	\$788	\$30,528.21
Veltman	Albina	Ps	July 11, 2017	July 25, 2027	\$788	\$17,077.86
Vivona	Francesca	Pu	October 31, 2019	October 30, 2024	\$472	\$32,226.21
Wadhwa	Devina	Ps	January 11, 2024	January 10, 2026	\$788	\$0.00
Walker-Renshaw	Barbara	L	March 07, 2024	March 06, 2026	\$788	\$0.00
Whitehead	Katherine	Ph	April 12, 2017	April 11, 2028	\$788	\$36,329.52
Williams	Eugene	L	January 05, 2006	January 30, 2026	\$788	\$67,936.48
Woodman	Mary	N	August 29, 2019	August 28, 2024	\$788	\$60,670.57
Woogh	Carolyn	Ps	October 09, 2013	December 11, 2027	\$788	\$98,323.38

* Member Types:

L – Lawyer

Ps – Psychiatrist

Ph – Physician

N – Nurse in the Extended Class

Pu - Public

Members Whose Appointment to the Board Ended
between April 1, 2023 and March 30, 2024

Surname	First Name	Member Type	Appointment Date	Appointment End Date	Per Diem Rate	2023/2024 Remuneration
Part Time Members						
Bessner	Ronda	L	August 13, 2014	June 29, 2023	\$788	\$0.00
Langlois	David	Pu	October 17, 2019	June 19, 2023	\$472	\$6,608.00
Cavanaugh	David	L	May 31, 2017	November 30, 2023	\$788	\$36,622.97
Weinberg	Erica	Ph	July 08, 2021	July 07, 2023	\$788	\$13,110.69
Decaria	Jennifer	Pu	October 17, 2019	January 18, 2024	\$472	\$12,828.64
Lyn	Leonard	L	October 17, 2019	January 02, 2024	\$788	\$8,206.07
Donald	Lesley	Pu	October 07, 2021	October 06, 2023	\$472	\$12,874.21

* Member Types:

L – Lawyer

Ps – Psychiatrist

Ph – Physician

N – Nurse in the Extended Class

Pu - Public

Members Reappointed in 2023/2024 using ATAGAA Waivers

Surname	First Name	Member Type*	Initial Appointment Date	Waiver Appointment Date	Appointment Expiry Date
Part Time Members					
Bhatla	Rajiv	PT VC (Ps)	April 24, 2020	April 24, 2023	April 23, 2028
Chandrasena	Ranjith	Ps	April 09, 2020	April 09, 2023	April 08, 2028
Curry	Joyce	Pu	October 07, 2021	October 07, 2023	October 06, 2026
Desloges	Chantal	L	October 07, 2021	October 07, 2023	October 06, 2026
Erstling	Rachel	Ps	July 08, 2021	July 08, 2023	July 07, 2026
Galbraith	Donald	Ps	April 09, 2020	April 09, 2023	April 08, 2028
Giles	Donna	Pu	November 18, 2021	November 18, 2023	November 17, 2026
Johnson	Slavo	Pu	May 13, 2020	May 13, 2023	May 12, 2026
Legault	Suzanne	Ps	July 08, 2021	July 08, 2023	July 07, 2026
Lester	Nina	PT VC (L)	April 11, 2020	April 11, 2023	April 10, 2028
Maunder	Leslie	L	September 16, 2021	September 16, 2023	September 15, 2026
McDonald	Christena	N	July 08, 2021	July 08, 2023	July 07, 2026
Morrish	Deborah	Pu	October 07, 2021	October 07, 2023	October 06, 2026
Naidu	Kumar	Ps	July 08, 2021	July 08, 2023	July 07, 2026
Spence	Robert	L	November 20, 2021	November 20, 2023	November 19, 2026
Squire	Philip	L	October 07, 2021	October 07, 2023	October 06, 2026
Strang	Gary	PT VC (Pu)	January 15, 2021	January 15, 2024	January 14, 2029
Vaillancourt	Timothy	PT VC (Pu)	August 26, 2021	August 26, 2023	August 25, 2026
Warr	Anthony	PT VC (Pu)	August 26, 2021	August 26, 2023	August 25, 2026
Whitehead	Katherine	Ph	April 12, 2020	April 12, 2023	April 11, 2028

* Member Types:

L – Lawyer

Ps – Psychiatrist

Ph – Physician

N – Nurse in the Extended Class

Pu – Public

PT VC – Part time Vice Chair

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