

# **Consent and Capacity Board**

**Business Plan 2024-2027**

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## Executive Summary

The Consent and Capacity Board (CCB) is an independent adjudicative Board created under the *Health Care Consent Act* with jurisdiction under six Acts including the *Health Care Consent Act*, the *Mental Health Act*, the *Substitute Decisions Act*, the *Personal Health Information Protection Act*, the *Child, Youth and Family Services Act*, and the *Mandatory Blood Testing Act*.

The CCB makes decisions with potentially serious consequences for individuals and for the community, such as with respect to civil detention in a psychiatric facility. The CCB adjudicates matters where both the medical and legal systems are engaged to provide treatment and protect individual rights. The Board is recognized as an expert tribunal.

The CCB operates under statutory requirements to hold a hearing within seven days of the receipt of an application, issue a decision within one day of the conclusion of the hearing and issue written reasons within four business days when requested within 30 days after the conclusion of the hearing.

As a quasi-judicial body, the CCB maintains an arm's length relationship with the Ministry of Health (the Ministry) while receiving administrative services and support through the Corporate Services Division. The CCB functions under statutory requirements and a Memorandum of Understanding between the Chair and the Minister of Health.

Members of the Board, who are appointed by Order-in-Council, for a term of one to five years, adjudicate the matters before the Board. The CCB has 122 members as of December 31, 2023. In addition to the full-time Chair and two full time Vice Chairs, part-time CCB members include two Vice Chair Lawyers, one Vice Chair Psychiatrist, three Vice Chair Public Member, 36 Lawyers, 26 Psychiatrists, 10 Physicians, 10 Nurses in the Extended Class and 31 Public members. 15 full time permanent public servant positions support the work of the CCB and its members. Staff, including administrative, scheduling and legal staff, are responsible for functions such as: scheduling hearings, creating appeal records, managing hardcopy files, financial payment and processing, executive support to the Chair, coordinating member recommendations and appointments, organizing staff and member training, liaising with stakeholders, answering public inquiries, providing hearing support to panels, strategic planning, providing legal advice to the Chair and the Board, monitoring and ensuring compliance with legislation and government directives and policies.

The CCB receives its annual funding allocation through the Administration Vote item (1401) of the Corporate Services Division of the Ministry. The 2023-2024 allocation was \$8,573,900.

In 2022-2023, the last full fiscal, the CCB received 11357 applications and convened 6708 hearings. The Board's average caseload increase is approximately 7%.

The CCB strives to ensure that its administrative and operational processes are consistent with achieving its mandate and meeting its statutory timelines, and that its member receive ongoing educational and training opportunities to maintain their expertise in this highly specialized adjudicative environment.

The priorities set out in the CCB business plan were developed after careful and thorough consideration of the Board's mandate and obligations as an agency serving the citizens of the Province of Ontario.

# 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 Consent and Capacity Board is an independent 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.

The Board is created under the *Health Care Consent Act* and receives its jurisdiction from that Act. It adjudicates under the *Health Care Consent Act*, the *Mental Health Act*, the *Substitute Decisions Act*, the *Personal Health Information Protection Act*, the *Child, Youth and Family Services Act* and the *Mandatory Blood Testing Act*.

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:

- maintain the safety of the individual
- protect the safety of the community
- maintain the dignity and autonomy of the individual
- preserve the right of a person to have treatment when required.

## Jurisdiction

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 services
- 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

# 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.

## 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 participants



at up to 250 venues throughout the province, including hospitals, long-term care facilities and community locations, with most hearings involving participants at schedule 1 psychiatric facilities. 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 focused on achievement of its statutory performance measures.

Compliant statutory performance is dependent 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

## Staffing Overview

Board staff are employees of the Ontario Public Service, in the Ministry of Health. The Board currently has 14 allocated staff positions, including two management positions and 12 positions represented by collective bargaining agents.

The Board also has a full time Chair and two full time Vice Chairs who are Order-In-Council appointees (paid via Salary and Wages allocation) and a full time Counsel who is represented by a collective bargaining agent and is an employee of the Ministry of the Attorney General (paid via the Services line).

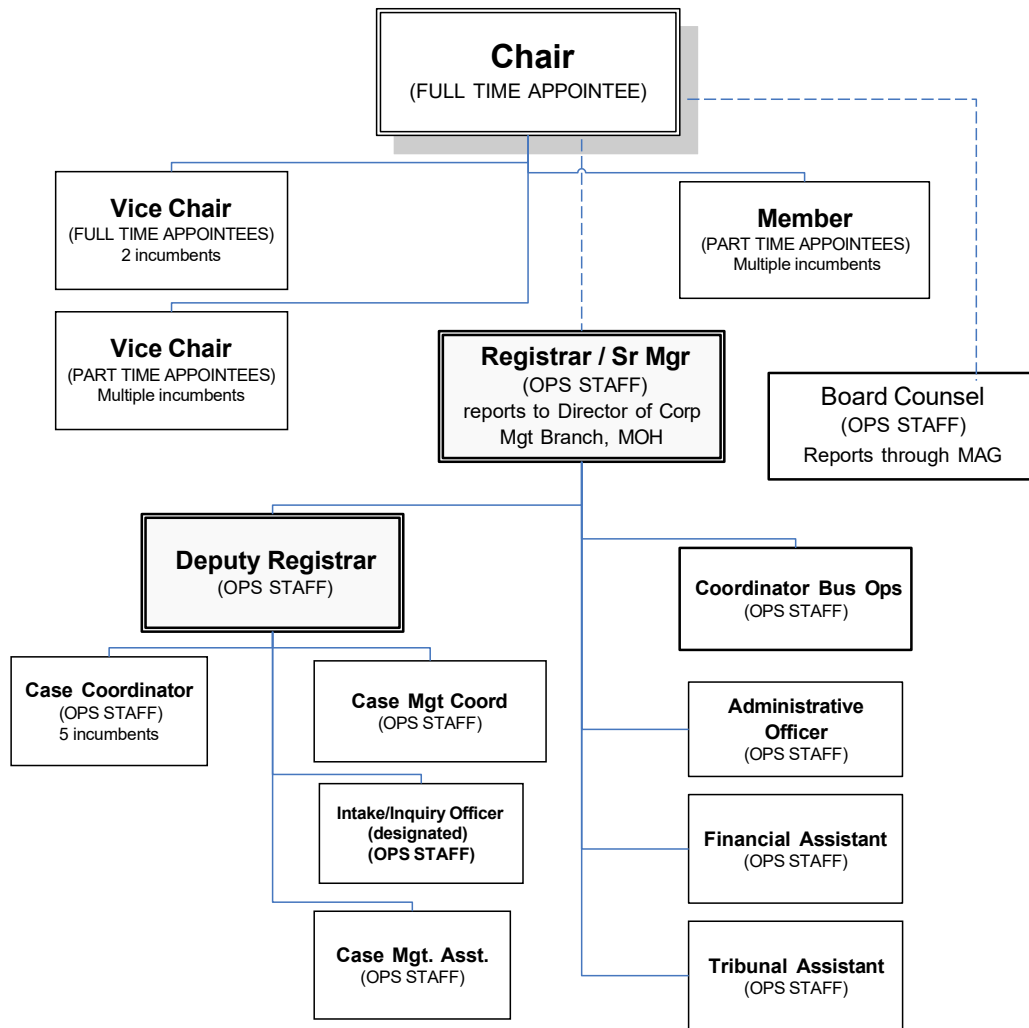
The Board's management consists of two Management FTEs: A Registrar/Senior Manager and a Deputy Registrar.

The Administrative Unit consists of four represented FTEs: a Coordinator of Business Operations, an Administrative Officer, a Financial Assistant, and a Tribunal Assistant.

The Scheduling Unit consists of eight represented FTEs: a Case Management Coordinator, five Case Coordinators, a Case Management Assistant, and a designated bilingual Intake & Inquiry Officer.

The Board also currently has three temporary represented positions, not reflected in its allocation, filled by fixed term employees including a Case Coordinator, a Case Management Assistant, and an Administrative & Financial Assistant. The Board's approval for these positions is set to expire March 31, 2024.

# Organizational Chart of Allocated Positions



# Caseload Overview

## Caseload

Applications to the Board, and by extension hearings convened by the Board, are driven entirely by external factors outside the control of the Board. The mandate of the Board, coupled with legislated requirements, require the Board to accept all applications received and convene hearings within seven calendar days pursuant to statutory requirements regardless of volume of caseload.

	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23
<b>Applications</b>	5962	6615	6834	7209	7770	8076	8289	8661	9917	10,417	11,357
<b>Increase</b>	3%	11%	3%	5%	8%	4%	3%	4%	15%	5%	9%
<b>Hearings</b>	3090	3418	3586	3964	4474	4922	4973	5213	6366	6387	6708
<b>Increase</b>	11%	11%	5%	11%	13%	10%	1%	5%	22%	1%	5%

With average annual caseload increases of approximately 7% applications have tripled and hearings have increased by three and a half times in the two decades since the consolidation of the Board from a regional operation to a centralized provincial operation. As of the end of Q3 for 2023-2024, the Board is projecting approximately a 5% increase in applications and hearings over 2022-2023.

Most applications to the Board are one of three types. In 2022-2023 45% of applications to the CCB were to review of involuntary status, 26% were to review of a finding of incapacity with respect to treatment, admission, or personal assistance and 25% were to review of a Community Treatment Order (CTO). Over time CTO applications have increased as a percentage of total applications and the Board predicts that by 2024-2025 CTO applications will be the second most common application received. Note that involuntary status and CTO hearings require three or five member panels including a lawyer, a medical member, and a public member, while capacity hearings require only a single senior lawyer member. As a result, the shift to a higher volume of CTO matters may have membership and financial implications for the Board in comparison to capacity matters.

## Strategic Direction

The CCB has established the following strategic goals and performance targets for the three-year period of this Plan to ensure that it meets its legislated mandate and mission.

The CCB will strive to ensure that it will:

1. Support its hearings through modern and efficient administrative and operational processes.
2. Conduct fair, efficient, and transparent hearings in an atmosphere of respect, impartiality, safety and dignity for all parties.
3. Integrate diversity, equity, inclusion and accessibility into all operations, practices, policies, and training.
4. Provide clear internal and external communication including: providing accurate and useful information via our public facing website; engaging in productive and collaborative discussion with our stakeholders; and providing relevant, timely and effective communication; and when appropriate, education for stakeholders to promote effective efficient hearings; and education and training for members and staff.
5. Have skilled CCB members, in all parts of Ontario, available to conduct hearings as a result of effective recruitment, initial training, mentoring, on-going education, evaluation, and the provision of appropriate resources and supports.
6. Further develop an adjudicative leadership team to support the Chair's initiatives relating to excellence in adjudication practices and member education.

## Priority Initiatives

The Board has developed the following initiatives and strategies to assist in meeting its strategic goals.

### Operational Planning

1. Continuously review member resources and operational processes to maximize efficiencies, ensuring a fair process in a climate of fiscal restraint and identify and implement modern solutions which meet the needs of the Board, members, stakeholders, parties, and government.
2. Work with the Ministry to assess options and implement solutions to staff resourcing issues.

### Member Recruitment, Training and Quality Assurance

1. Ensure excellence and continuity in the membership of the Board by:
  - a) continuing to follow a rigorous merit-based process for recruiting and recommending appointments of new members.
  - b) engaging in continuous recruitment to establish an ongoing cycle of new appointments to support new member development and succession planning.
  - c) recommending reappointment of skilled and experienced members to ensure the Board maintains the ability to both adjudicate in a fair and timely manner and ensure effective training, mentoring and transfer of knowledge to new members.
2. Continue to develop, deliver, and support high-quality new member training and mentoring programs for new appointees.
3. Develop, deliver, and support specific new in-service training and professional education to support adjudicative excellence, promote fair, effective, and efficient hearings which demonstrate cultural competency and cultural safety and in response to legislative amendments, legal developments, environmental changes and evolving member needs.

4. Support member excellence through the peer-led member Performance Evaluation Program and where necessary providing learning recommendations for members.
5. Promote and support a digital-first mind-set among members including by providing training to build digital competencies.
6. Explore opportunities to enhance member engagement and enhance recruitment and retention including: reviewing issues of member workload and compensation (specifically with respect to reasons writing) , providing opportunities for professional development, and working with the Ministry to ensure its recognition of the unique demands on the Board’s membership and seek opportunities to address the issues the Board and its members face.
7. Continue to develop, maintain, and support a leadership team of senior members that includes full-time Vice Chairs to lead projects such as member recruitment and training, ongoing education, technical expertise enhancement, regional support, application and hearing case conferencing and stakeholder outreach and education.
8. Assess the feasibility of implementation of a hybrid membership model, similar to that found in other high-volume tribunals, utilizing a combination of full-time and part-time members to build capacity for ever increasing caseloads, development of expertise, and succession planning.

## Legislation

1. Continuously ensure the Board is compliant with current procedural, governance, accountability and appointments requirements under the *Statutory Powers Procedures Act, Adjudicative Tribunals Accountability, Governance and Appointments Act*, and any other Act to which the Board is subject.
2. Develop and implement operational policies and procedures in response to future legislative amendments as may occur within the three-year span of this plan.

## **Operations, Administration and Scheduling**

1. Continue to design and implement continuous improvements to the Board's processes and procedures to ensure the effective scheduling of hearings, incorporating feedback from members and stakeholders, to ensure effective delivery of the Board's mandate in the face of continually increasing caseloads.
2. Continue to promote and pursue modernization through a digital-first approach to all aspects of the work of the Board including administrative work, hearings, and document management.
3. In cooperation with the Ministry, implement a new Case Management System.
4. Upgrade forms and documents which are within the control of the Board to better support digital processes and enhance service delivery.
5. Identify and pursue specific opportunities for improvement within the operations for scheduling, supporting and convening hearings in response to Form 48 applications under the *Mental Health Act*, which make up an increasingly large proportion of the Board's caseload.

## **Diversity, Equity, Inclusion and Anti-racism**

1. Establish, promote and support an environment that reflects a commitment to the principles of READI (respectful, equitable, accessible, diverse and inclusive).
2. Ensure that recruitment, hiring / appointment, training, retention and promotion of staff and members is conducted in a fair, transparent and accountable manner that is consistent with the principles of READI.
3. Engage with internal and external stakeholders to identify and address systemic barriers and procedural biases.
4. Review internal and public facing documents and tools through an inclusion lens.



5. Provide and support education, knowledge sharing and training opportunities for members and staff with respect to the principles of READI.

## **Stakeholders**

1. Continue to meet with individuals and groups in the stakeholder community to discuss areas for improvement to maintain a productive and positive relationship.
2. Identify opportunities to deepen understanding of stakeholder issues with a view to promoting and refining best practices in adjudication.
3. Provide information programs to professional stakeholder groups, upon request, to enhance and promote fair, effective, and efficient hearings.

# Finances

## Past Allocation and Expenditure

The CCB receives its annual funding allocation through the Administration Vote item (1401) of the Corporate Services Division of the Ministry.

<b>Fiscal Year</b>	<b>Allocation*</b>	<b>Actual Expenditures*</b>
2012-2013	\$4,800,700	\$5,791,301
2013-2014	\$4,800,700	\$6,415,552
2014-2015	\$4,800,700	\$6,134,121
2015-2016	\$6,710,700	\$6,535,918
2016-2017	\$6,710,700	\$7,820,746
2017-2018	\$6,421,600***	\$9,047,127
2018-2019	\$9,082,300	\$8,540,718
2019-2020	\$8,576,900	\$8,478,113
2020-2021	\$8,411,400**	\$8,764,327**
2021-2022	\$8,454,400	\$9,939,701
2022-2023	\$8,454,400	\$9,204,422

\*Total Allocation and Expenditure including accommodation

\*\*As of 2020-2021 accommodation is no longer included in the allocation provided to the Board by the Ministry and is no longer paid for from the Board's allocation

\*\*\*Includes 5% constraint target of 2017-2018

The ongoing increase in caseload, along with an overall increase in costs beyond the control of the Board, such as per diem rates and practices set by the Agencies and Appointments Directive and reimbursement rates in the Travel Meal and Hospitality Directive have, historically, driven annual budgetary pressures for the CCB.

Although actual expenditures continue to increase, they are outpaced over time by the increase in caseload. Since 2012-2013 actual expenditures increased 59% however the number of hearings increased 117%.

The CCB engages in continuous review of all aspects of its operations to enhance administrative efficiencies and to implement cost-savings or cost-avoidance strategies, as

appropriate while ensuring ongoing achievement of its mandate and excellent service to its stakeholders and the citizens of Ontario. The CCB is committed to working with the Ministry to ensure accountability, transparency, and compliance in all financial matters.

## Proposed Operating Expenditures

The following chart proposes an increase in operating expenditures over the next three fiscal years due to expanded jurisdictions, an anticipated increase in caseload and its management and anticipated wage increases, based on FY 2023-24 Q3 in-quarter estimates. Note these are broad estimates which are subject to change depending on final annual caseload numbers, wage trends and implementation of strategic initiatives. All numbers are rounded to the nearest \$1000.

<b>Fiscal Year</b>	<b>2023-2024 (estimates)</b>	<b>2024-2025 (*)</b>	<b>2025-2026 (*)</b>	<b>2026-2027 (*)</b>
<b>Salary and Wages</b>	1,540,000	1,617,000	1,666,000	1,716,000
<b>Employee Benefits</b>	236,000	242,000	250,000	257,000
<b>Transportation and Communications</b>	115,000	120,000	126,000	132,000
<b>Services</b>	7,838,000	8,230,000	8,477,000	8,731,000
<b>Supplies and Equipment</b>	22,000	23,000	24,000	25,000
<b>Total forecasted Board expenditures</b>	<b>9,751,000</b>	<b>10,232,000</b>	<b>10,543,000</b>	<b>10,861,000</b>

\*Includes consideration for standard increase to expenses and caseload and strategic initiatives

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