

Consent and Capacity Board

Business Plan 2025-2028

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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 right to make decisions with respect to one's own healthcare, and disputes regarding end-of-life decisions. The CCB adjudicates matters where both the medical and legal systems are engaged to provide healthcare and to 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, 2024. In addition to the full-time Chair and two full time Vice Chairs, part-time CCB members include four Vice Chair Lawyers, one Vice Chair Psychiatrist, three Vice Chair Public Member, 35 Lawyers, 29 Psychiatrists, 10 Physicians, 8 Nurses in the Extended Class and 30 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 2024-2025 allocation was \$8,509,500.

In 2023-2024, the last full fiscal, the CCB received 11633 applications and convened 6894 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 Board is committed to continuing to modernize its operations, including embracing the use of technology. The Board does not, however, use artificial intelligence in any fashion including in its operations or adjudicative decision making.

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).

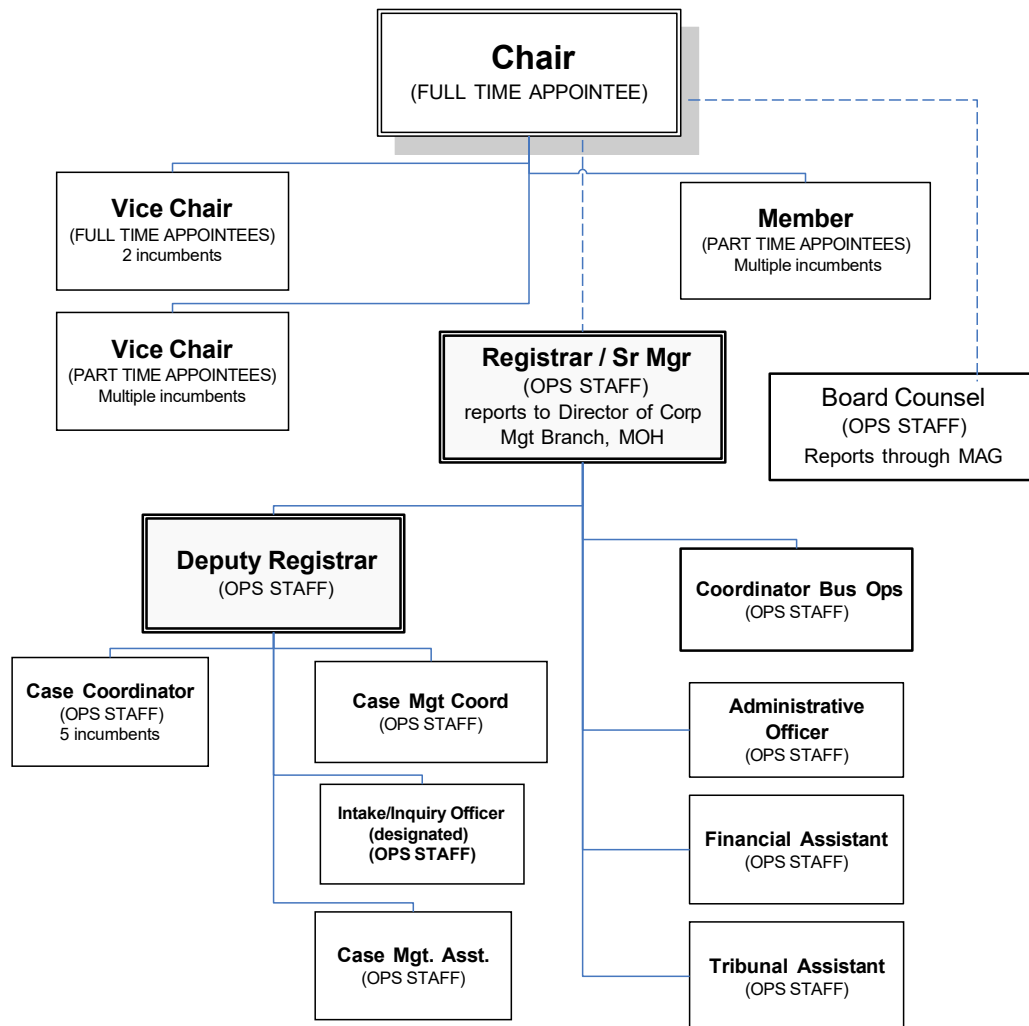
The Board's management consists of two Management FTEs: A Registrar/Senior Manager and a Deputy Registrar.

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, 2025.

Organizational Chart of Allocated Positions



Risk

The Board has identified a number of sources of potential risk including:

- **Caseload** – caseload increases by approximately 7% annually impacting all aspects of the Board’s operations
- **Shifting application trends** – an increase in the percentage of applications involving reviews of community treatment orders means an increase in hearings requiring three or five member panels
- **Statutory timelines** – the Board must comply with tight statutory timelines including convening hearings within seven calendar days of receipt and issuing decisions within one calendar day of a hearing
- **Resourcing** – the Board requires sufficient membership, staff and financial resourcing to manage ever increasing and changing caseloads
- **Expertise** – the Board needs to ensure adequate expertise among the member and staff groups to support high quality adjudication and succession planning
- **Technology** – the Board requires stable and reliable access to technological tools including virtual hearing platforms, case management systems, communication tools and document distribution tools
- **Statutory changes** – from time to time statutory changes expand the Board’s mandate or jurisdiction, or tighten the Board’s timelines
- **External factors** – the Board must be prepared to adjust operations in response to external factors such as a pandemic, or operational changes in other organizations such as health care facilities or Legal Aid

As required by the Agencies and Appointments Directive and the Enterprise Risk Management Directive, the Board reviews and reports to the Ministry of Health on risks regularly. The Board works closely with the Ministry to mitigate these risks and ensure uninterrupted operations.

Strategic Direction & Priority Initiatives

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.
7. Continually monitor and mitigate areas of potential risk including: membership / staffing levels and expertise with respect to caseload needs, technology, expenditures, legislative change, compliance with legislation and government directives, and external risks such as related to pandemic interruptions.
8. Reflect the values of the Ontario Public Service, of Inclusion, Integrity and Excellence in the work of the Board.

The Board has established the following initiatives 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) taking a whole-member approach to recommendations ensuring that new and reappointed members have the ability to work effectively in the Board's challenging environment including with respect to managing tight timelines, completing onerous administrative tasks, problem solving, understanding and working within the Board's mandate, policies and procedures, recognizing and proactively managing real and perceived conflicts, creating and maintaining a respectful hearing environment, and embodying the values of the OPS (Inclusion, Integrity and Excellence) in their work for the Board.
 - c) engaging in continuous recruitment to establish an ongoing cycle of new appointments to support new member development and succession planning.
 - d) 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, overseeing assignment of panels to hearings, case management of complex matters, 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.

Legal

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.
3. Undertake a revision and, where required, modernization of the Board's Rules of Practice, Policy Guidelines and Practice Directions to reflect the needs of digital hearings, ensure fair access to the Board's services, align with best practices in administrative law and ensure operational effectiveness.

Operations, Administration and Scheduling

1. Continue to engage in continuous improvement with respect to the Board's processes and procedures to ensure the effective scheduling and support of hearings 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.
6. Review and revise the Board's website with a particular focus on the Information Sheets section, incorporating principles of plain language to better inform and support parties (particularly those who are self-represented) and other interested persons.

Diversity, Equity, Inclusion and Anti-racism

1. Establish, promote and support an environment that reflects a commitment to the principles of READI (respect, equity, accessibility, diversity and inclusion)

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. Undertake consultations with respect to projects such as revision of the Rules of Practice.
4. Take stakeholder feedback into consideration when designing or modifying operational procedures.
5. Provide information programs to professional stakeholder groups, upon request, to enhance and promote fair, effective, and efficient hearings.

Proposed Operating Expenditures

The Board's 2023-2024 actual expenditures were \$9,151,195 against an allocation of \$8,573,900.

The following chart, which includes in-year estimates for 2024-2025, proposes an increase in operating expenditures over the next three fiscal years. Factors which may impact proposed operating expenditure increases include anticipated increases in caseload and its management, expanded jurisdictions, increases in rates for ancillary services and wage increases. Estimates are based on FY 2024-25 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.

Fiscal Year	2024-2025 (estimates)	2025-2026 (*)	2026-2027 (*)	2027-2028 (*)
Salary and Wages	1,702,000	1,787,000	1,876,000	1,969,000
Employee Benefits	291,000	306,000	321,000	337,000
Transportation and Communications	102,000	104,000	106,000	108,000
Services	7,640,000	8,477,000	8,731,000	8,993,000
Supplies and Equipment	22,000	23,000	24,000	25,000
Total forecasted Board expenditures	9,757,000	10,697,000	10,543,000	11,432,000

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

Ce document est disponible en français. Veuillez contacter la Commission pour demander le document en français ou visiter notre site Web à www.ccboard.on.ca .