

Closing Plenary
Open Doors – Open Justice: Keys to Openness

Speaker: Honourable Justice Edward Ormston, Chair, Consent and Capacity Board

Justice Ormston described his role in developing Toronto's Mental Health Court. He had realized that the Criminal Justice System had become the Welfare system of last resort for poor people. He saw many people only receive treatment for anger management after they had been arrested for a violent crime. Many serious mental illnesses were only being treated after the person had a run-in with the criminal justice system. That was the way poor marginalized people were accessing services. The cases he saw before him were sad.

He worked in the plea court where his approach was to be fast and friendly. Many accused persons before him were homeless and suffered from mental illness. He would try to calm them down and figure out if they were competent. These people would end up doing time via being sent to a doctor for an assessment and shuffled back and forth. Justice Ormston became frustrated with the process. He decided to create court 102 as a mental health court. He convinced social workers and psychiatrists and other players in the system to come to the court. The accused people who came before him received positive encouragement and attention. They were scheduled to come back so the court could follow up on their progress. Many of these people were lonely and would come back again for the company and friendly treatment they received.

Justice Ormston explained that courts can *heal*. What he practiced was a kind of therapeutic jurisprudence. He suggested the motto, close the book and open the heart. He suggests using empathy and looking beyond the book to the person and asking what is the real problem.

After his work in the mental health court, Justice Ormston became the Chair of the Consent and Capacity Board. The people who use the Consent and Capacity Board are those who oppose a doctor's orders. Often they are people such as involuntary mental health patients or people who are dealing with a decision to take a patient off of a respirator.

The process of the Board was to meet with its critics and to get feedback. They learned that doctors hated them and saw them as an obstruction. Hearings were too long and they got criticized a lot. Doctors, nurses and social workers had no training to deal with the Board and knew little about it. Hearings had become too complicated and were too focused on legal arguments rather than the substance of the issue. Approximately 5000 hearings were scheduled and half were dismissed on the day of the hearing. This was costing the Board \$4000 per cancelled hearing. They started keeping statistics and found that the same doctors were withdrawing all of their cases. Hearings were not controlled and varied from region to region.

Justice Ormston describes how they attempted to solve these problems. The Board reached out to doctors and other stakeholders. They spoke to legal aid about assigning less adversarial lawyers to these files. They began educational initiatives to inform the public about powers of attorney and of personal care. They prepared information to give to doctors so they knew how to prepare for a hearing. They have an education committee and a legislation committee. Members participate in selecting new members. The Chair does things like writing to OHIP to arrange for doctors to get paid. This lets the doctors know that he cares.

They identified a serious problem was the lack of public knowledge. The Board made a video. They give lectures to doctors and let doctors know what kind of evidence they need. The Board will pay members or former members to speak to groups or to the public.

Justice Ormston believes that people should know what they have to do to be successful in their case. He wanted to take the mystery out of the process. This was all a part of his three-year plan for improvement.