



LICENCE APPEAL TRIBUNAL

ANNUAL REPORT

2005-2006

**Office of
the Chair**

**Bureau du
président**

**Licence
Appeal
Tribunal**

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June 30, 2006

The Honourable Gerry Phillips
Minister
Ministry of Government Services
4th Floor, Suite 4320
Whitney Block
99 Wellesley Street West
Toronto ON M7A 1W3

Dear Minister:

RE: Licence Appeal Tribunal Annual Report

I am pleased to present to you the Licence Appeal Tribunal's Annual Report for the fiscal year 2005-2006.

Yours truly,

Carl F. Dombek, B.A., LL.B.
Chair

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CHAIR'S MESSAGE

“Change is the law of life. And those who look only to the past or present are certain to miss the future.” John F. Kennedy

The fiscal year 2005-06 held a number of big changes for the Licence Appeal Tribunal (LAT). I am proud to report that our big picture planning, as well as our astute attention to detail, allowed us to excel in an evolving environment. As I marked the first year of my second term as Chair, we took on an expanded mandate, saw an increase in our caseload, managed several complex cases and welcomed a revitalized government with new reporting relationships, all while achieving operational improvements.

However, one thing remained the same: LAT's commitment to public accountability, access and transparency while delivering high-quality services in a cost-effective manner. We play an important role in protecting the public and have earned a solid reputation in the adjudicative community for our best practices, short turnaround time and cost-efficiency.

This is why more and more ministries choose LAT as the appeal body pursuant to new legislation. Our reputation for fair, objective and effective practices led to an expansion of the tribunal's mandate in 2005-06. A number of new types of appeals include:

- Effective July 1, 2005, LAT hears appeals pursuant to the *Building Code Act, 1992* as they relate to the refusal to register a designer, the refusal to register a person engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems and the refusal to register a Registered Code Agency.
- On August 31, 2005, LAT became the appeal body for the licensing program of video stores/theatres pursuant to the *Film Classification Act, 2005*.
- When it is proclaimed, LAT will hear appeals under the licensing program established in the *Private Security and Investigative Services Act, 2005*, which received Royal Assent on December 15, 2005.

Though the Tribunal has not yet received appeals under these Acts, as we make plans to add them to our caseload, we are examining how we'll continue to operate within budget and modernize our processes to better serve the public and our stakeholders.

As we plan for the coming year, we are also looking back on a successful 2005-06 in which we achieved a number of improvements to our processes. We truly laid the groundwork for future success. For example, while experiencing an increase in caseload and lengthy hearings, we implemented practices aimed at maintaining cost-efficiency, such as batching two to three pre-hearings or hearings per day (when feasible) using the same panel chair, conducting pre-hearings or hearings by telephone to help reduce travel, accommodation and court reporting costs and conducting mandatory pre-hearings when issues could be narrowed down or settlements could be reached to help reduce the

number of hearing days. In addition, the timely cancellation of hearing arrangements for adjourned or settled matters has enabled LAT to save on cancellation fees.

After identifying what worked in 2005-06, we developed a results-based plan for 2006-07 that will allow us to recover a small portion of our hearing-related costs from ministries and delegated administrative authorities appearing before LAT so that we may reinvest the funding to improve our services. This pragmatic plan was prepared in the fall of 2005 and approved by Cabinet in early 2006.

With the approval of our plan, we are now in a position to implement a better case management system that will further streamline our processes and achieve greater cost-efficiency. The new system will also enhance the reliability of our data, as well as the consistency, timeliness and quality of information we collect in support of effective issues management. A new system will also ensure greater security in dealing with privacy matters.

The last fiscal year also marked a shift in government organization. The former Ministry of Consumer and Business Services joined the new Ministry of Government Services, changing many of our reporting relationships. Early on, LAT worked closely with the Minister's office to re-appoint existing vice-chairs and members and appoint new ones, as 46 out of 55 appointments expired March 31, 2006 or shortly after. I am pleased to report that this timely exercise prevented a backlog. However, given the expanded mandate and the complexity of matters that LAT now hears, we will need to appoint more vice-chairs and members in 2006-07. I will continue interviewing prospective candidates before making recommendations to the Minister.

While reviewing this report, you will note that the Tribunal's appeal process average turnaround time has increased from 3.5 months in 2004-05 to 4.4 months in 2005-06. This increase is primarily due to the number of days it took to hear three very involved matters in which the documentation submitted as evidence by the parties was voluminous and complex and several witnesses had to be examined. It is my view that the Tribunal is moving towards hearing matters that are more complex, thus requiring adjudicators who are highly qualified in administrative law and dealing with procedural matters. We will continue using mediation to encourage settlements or help parties narrow down the issues to reduce the number of hearing days.

Maintaining such an excellent turnaround time with an increase in caseload and a larger number of complex matters is quite an achievement. A great deal of credit, together with my sincere thanks, go to the vice-chairs and members of the Tribunal as well as to the administrative staff who worked hard to provide the highest level of service to our stakeholders.

A number of vice-chairs' and members' appointments expired in 2005-06. I wish to extend my sincere gratitude to those whose personal commitment and valuable contribution to making LAT such an efficient and transparent agency was appreciated. We'll certainly miss them.

I trust that the general and statistical information included in this report will help you understand how important a role LAT plays as an adjudicator. I am committed to continuing the work that I have begun at LAT and it is with great enthusiasm that I look forward to working on the modernization of the Tribunal's processes towards greater efficiency.

MANDATE, JURISDICTION AND ORGANIZATION OF THE LICENCE APPEAL TRIBUNAL

Role and Function

LAT is an independent, quasi-judicial administrative tribunal. Its mandate is to receive appeals, conduct hearings, resolve disputes and render decisions on compensation claims and licensing activities regulated by the Ministry of Children and Youth Services, the Ministry of Government Services, the Ministry of Municipal Affairs and Housing, the Ministry of Training, Colleges and Universities and the Ministry of Transportation.

The *Licence Appeal Tribunal Act, 1999* created a single tribunal beginning April 1, 2000 to assume the mandate of four predecessors: the Commercial Registration Appeal Tribunal, the Licence Suspension Appeal Board, the Private Vocational Schools Review Board and the Child and Family Services Review Board licensing jurisdiction. LAT is able to accept appeals of new forms of licensing decisions and/or existing licensing decisions that may be currently appealed to other adjudicative bodies.

As a quasi-judicial tribunal, LAT is subject to the rules of natural justice and the requirements of the *Statutory Powers and Procedures Act*. In an effort to protect the public, the specialists appointed to the tribunal work to conduct fair, efficient and impartial hearings during which they consider all evidence presented and make a decision with written reasons based on that evidence.

Appeals to the tribunal can be made pursuant to 20 different statutes:

- *Bailiffs Act* – BA
- *Building Code Act, 1992* – BCA (sections 2.17, 2.18 and 2.19)
- *Cemeteries Act (Revised)* – CA
- *Child and Family Services Act* – C&FSA
- *Collection Agencies Act* – CAA
- *Consumer Protection Act, 2002* – CPA
- *Consumer Reporting Act* – CRA
- *Day Nurseries Act* – DNA
- *Discriminatory Business Practices Act* – DBPA
- *Film Classification Act, 2005* – FCA
- *Funeral Directors and Establishments Act* – FDEA
- *Highway Traffic Act* – HTA
 - Section 32(12)(b)(i) – Medical (MED)
 - Section 47(1) – Medical and Commercial Vehicle Operation’s Registration-Carrier (MCVOR)
 - Section 17(2),(3) – Commercial Vehicle Operation’s Registration (CVOR)
 - Section 48.3(2) – Administrative Driver’s Licence Suspension
 - Section 55.1(3) – Motor Vehicle Impoundment (MVIA)
 - Section 82.1 – Commercial Vehicle Impoundment and Suspension (CVIS)
 - Section 95(1) – Motor Vehicle Inspection Licence – Garage (GAR)

- *Intercountry Adoption Act, 1998* – IAA
- *Motor Vehicle Dealers Act* – MVDA
- *Ontario New Homes Warranties Plan Act* – ONHWPA
- *Paperback and Periodical Distributors Act* – PPDA
- *Post-Secondary Education Choice and Excellence Act, 2002* -PSECEA
- *Private Career Colleges Act* – PCCA
- *Real Estate and Business Brokers Act, 2002*– REBBA
- *Travel Industry Act, 2002* – TIA

LAT also had jurisdiction to hear appeals pursuant to the *Loan Brokers Act, 1994*, the *Truck Transportation Act* and the *Upholstered and Stuffed Articles Act*, but these Acts have now been repealed.

Organization

The Lieutenant Governor in Council appoints all Tribunal members. The chair is full-time, while the vice-chairs and members are part-time. These esteemed members come from all areas of Ontario and bring various backgrounds to their work. A Tribunal proceeding is heard by one person.

The chair is accountable to the Minister of Government Services, for the performance of the Tribunal in fulfilling its mandate and for carrying out the roles and responsibilities assigned to the chair by Management Board directives, the Acts, and a Memorandum of Understanding between the Minister and the Tribunal. The chair also provides direction to staff and guidance and leadership to the vice-chairs and members.

The Tribunal is supported by staff engaged under the *Public Service Act, 1999*. They include the chief administrative officer and registrar, who supports the chair in meeting his responsibilities and is responsible for managing the day-to-day operations of the Tribunal in accordance with Management Board directives and accepted business and financial practices. A deputy registrar, an administrative assistant and six hearings co-ordinators are also part of the team. The hearings co-ordinators answer inquiries from applicants and members of the public and provide support to the Tribunal appointees. They are responsible for the logistics in receiving appeals, scheduling hearings, preparing case-related materials, arranging hearing rooms, maintaining records and overseeing the release of decisions.

How to Contact Us

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CHAIR, VICE-CHAIRS AND MEMBERS OF THE LICENCE APPEAL TRIBUNAL (2005-06)

Chair

Carl F. Dombek, B.A., LL.B.

Vice-Chairs

Elizabeth Bennett-Martin
Andrew Diamond
Bruce F. Fitzpatrick
David Gregory Flude
E. Alan Garbe
Marjorie Hiley
Derek Israel
Kenneth S. Jepson
Daniel Laurin
John H. Macintosh
William McKay McIntosh
Raj Pannu, M.A. (Eng.), M.Ed., LL.B.
Maxwell L. Rotstein
M. Laurie Sanford
Irvin H. Sherman, Q.C.
Douglas R. Wallace
Terence A. Wardrop, Q.C.
Jane Weary

Members

Hakam T. Abu-Zahra, M.D.
Antoine Albert Aouad, M.D.
Donald Benninger
John T. Biehn, M.D.
Barbara Bjarneson
Dino P. Bottero
Victor H. Braney
Kerr W. Clark, M.D.
Patrick Graham Coffey, M.D., F.R.C.S.(C).D.
(Obs.) R.C.O.G.
John Corsi
Greg Crompton
Simon Dann
Malcolm Fealing
Kevin Flynn, M.D.
Wayne M. French

Gurdev S. Gill
Graeme Goebelle
William A. Gray, M.D.
Christopher D.J. Hacio
Donald J. Harterre, M.D.
David Hurst, M.D.
Maxim Jean-Louis
Jim Kennelly
Raymond Kolynchuk
Kenneth W. Koprowski
Terrence V. Lorette
Roy Melvin, M.D.
Nives Montano
Malcolm Montgomery
Keith Penner
Al Pilutti
André Pinard
Esrick Quintyn
Kenneth S. Raven
Philippe Robert
Harjinder Sahdra
William E. Settatee
Elizabeth L. Sproule
Normal William Struthers, M.D.
Philip Warren Sweetnam
Cecilia J. Taylor
David Ian Turnbull, M.D.
Bruce L. Wright

GOALS AND PERFORMANCE

The critical success goals of the Licence Appeal Tribunal are timeliness, optimum cost efficiency, quality and consistency. At the Tribunal, the key business activities that affect these goals are monitored, the results measured and improvements are made as identified.

There are four phases to the operations of the Tribunal – the processing of appeals, the scheduling of hearings, the holding of hearings and the rendering of decisions. Each phase has specific timelines, which vary according to the type of appeal.

The Tribunal tracks its performance monthly. Statistical charts and graphs are distributed to the minister and deputy minister of those ministries that administer the statutes relevant to the Tribunal's jurisdiction. They are also posted on the Tribunal's website for public information.

Intake of Appeals

Employees have from one to three weeks to:

- Review the appeal to ensure the applicant has grounds to appeal;
- Verify that the required fee and supporting documents have been filed with the Tribunal within the prescribed period;
- Send copies of the appeal to the related program area or ministry;
- Consult the program area on the number of hearing days and any witnesses required;
- Forward the completed appeal file to the hearings scheduler.

Scheduling of Hearings

The hearings scheduler has a maximum of five days to schedule matters. There are specific statutory or administrative timelines to guide the timing of hearings as follows:

- | | |
|--|-----------------|
| • Administrative Driver's License Suspension | 15-20 days |
| • Orders under the <i>Child and Family Services Act</i> | 60 days |
| • Commercial Vehicle Operator's Registration | 60-90 days |
| • Commercial Vehicle Inspection Suspension | 30 days |
| • Order under the <i>Day Nurseries Act</i> | 60 days |
| • Order under the <i>International Adoption Act</i> | 60 days |
| • Medical suspension | 30 days |
| • Motor Vehicle Impoundment Orders | 18-20 days |
| • Motor Vehicle Inspection Licence (Garage) | 30-60 days |
| • Proposals / Decisions under various statutes administered by the Ministry of Government Services, Delegated Administrative Authorities and Tarion Warranty Corporation | within 120 days |

Holding of the Hearing

The length of each hearing depends on how much time the parties require to present evidence and make their arguments. Hearings usually range from half a day to 15 days.

However, the chair has established guidelines setting out specific time frames for the completion of hearings under a number of statutes, as authorized by section 16.2 of the *Statutory Powers Procedure Act*. These time frames have been set to ensure there are no delays in the process and also as a performance measure to ensure that the appeal process average turnaround time does not exceed six months.

Rendering of Decisions

The Tribunal's goal is to release its decisions to the parties to a proceeding within a maximum of 30 days after the hearing. The vice-chairs and members are required to submit their draft decisions for review within 23 days following the completion of a hearing. There are shorter deadlines for some of the Tribunal programs, including:

- | | |
|---|------------|
| • Administrative Driver's Licence Suspension | 1 day |
| • Commercial Vehicle Impoundment and Suspension | 14-28 days |
| • Medical Suspension | 7 days |
| • Motor Vehicle Impoundments | 1-3 days |
| • Motor Vehicle Inspection Licence (Garage) | 14-28 days |

Professional Development

A high priority is placed on professional development and training for Tribunal vice-chairs, members and staff. The Tribunal conducts its own orientation sessions for newly appointed vice-chairs and members on the hearing and administrative process and on writing decisions. New appointees sit as side panel members on a number of pre-hearings and hearings before they start conducting pre-hearings and hearings on their own. Working under the panel chair they learn how to conduct hearings and to write decisions for the Licence Appeal Tribunal. New vice-chairs are offered an opportunity to attend the Adjudicator Training Course sponsored by the Society of Ontario Adjudicators and Regulators (SOAR). The SOAR decision-writing workshop is also made available to those interested.

The Tribunal chair holds one continuing education meeting a year during which all LAT vice-chairs and members from across the province are invited to participate in workshops aimed at providing them with useful tips in mediation, as well as effective conduct of hearings and decision writing. The meeting is also an excellent platform for vice-chairs and members to share their knowledge and expertise, as well as challenges they had to deal with at hearings.

In addition, Tribunal employees each have an individual performance development and learning plan that enables them to further hone their knowledge and skills.

ACCOMPLISHMENTS

2005-06

Best Practices and Cost-Efficiency

Reduced Pre-Hearings and Hearing-Related Costs

To achieve cost efficiency and manage within budget, we continued the practice of scheduling two to three short pre-hearings/hearings per day with the same panel. This practice freed up 159 hearing days that were then used to hear more appeals. We also scheduled 151 pre-hearings/hearings by telephone, for matters that were straightforward, to help reduce travel, accommodation and court reporting costs.

Pre-hearings were also made mandatory when parties needed more than five days to present their arguments before the Tribunal. This has helped reduce the number of hearing days required. We also discontinued the practice of adjourning pre-hearings as this approach did not prove to be more conducive to settlements. In addition, to help reduce our costs related to last minute accommodation, travel and court reporting cancellation fees, we have asked our stakeholders to notify the Tribunal of any settlements at least five days in advance of the scheduled hearing dates.

LAT Pre-hearings Leading to Settlements

A total of 212 pre-hearings were scheduled in 2005-06. Thanks to early settlements, 28 did not proceed at all. Of the 184 pre-hearings that did proceed, 81 led to settlements/withdrawals before the scheduled hearings – a success rate of 44 per cent. This also freed up 112 hearing days that were used to hear other matters.

LAT Training Initiatives

In keeping with our commitment to encourage and provide professional development for all our members and vice-chairs, the Tribunal held an orientation session for new appointees on June 7, 2005 and another on August 31, 2005. In addition, three vice-chairs attended the June 2005 annual conference of Canadian Council of Adjudicative Tribunals in Ottawa. Two recently appointed vice-chairs and one member took the Effective Decisions Writing Workshop offered by the Society of Ontario Adjudicators and Regulators in the fall of 2005 and one new vice-chair was registered for the one-week adjudicator training to take place in May 2006.

The chair also held his annual continuing education meeting on November 16, 2005 in Toronto with an impressive turnout of 31 vice-chairs and members. The goal of this learning initiative was to engage participants in a series of interactive sessions on conducting hearings. A number of vice-chairs took part in role-playing some 10 scenarios based on difficult situations/questions arising at hearings. Another highlight of the event was a co-presentation on the conduct of effective pre-hearings by an expert in mediation from a private law firm and one of our most talented members in mediation.

The Assistant Deputy Minister of Policy and Consumer Protection Services Division, Ministry of Government Services, talked to the participants about the new *Film Classification Act, 2005* and provided some updates on government initiatives. Representatives from the Ministry of Municipal Affairs and Housing and the Travel Industry Council of Ontario explained the changes to the *Building Code Act, 1992* and the new *Travel Industry Act, 2002* and their impact on the Tribunal. According to the feedback we received, all attendees enjoyed the complete learning experience and acquired some useful tips.

In addition to the training provided to all employees as part of their individual learning plans, a communications workshop tailored to employees' needs was offered in March 2006. In the same month, the Information and Privacy Co-ordinator, Ministry of Government Services, visited the Tribunal to deliver a presentation on the requirements of the *Freedom of Information and Protection of Privacy Act*. These initiatives were interesting and will be useful to everyone in the performance of our daily tasks.

LAT and Other Tribunals

The Licence Appeal Tribunal is part of a larger community of adjudicative organizations. Our chair is currently the chair of the Council of Canadian Adjudicative Tribunals and a member of the Circle of Chairs established by the Society of Ontario Adjudicators and Regulators, an organization that brings together chairs, members and executive staff of administrative justice system agencies.

STATISTICAL SUMMARY

In 2005-06, the LAT caseload increased slightly from 635 appeals in 2004-05 to 650. The table and charts found in this section speak for themselves. There are a few important notes of interest, including:

- As identified last year, the trend toward an increase in the number of complex matters requiring several days of hearings continues.
- There was a decrease in the number of appeals related to the suspension of a driver's licence for medical reasons, a motor vehicle impoundment order and the administrative suspension of a driver's licence.
- The number of appeals related to the denial of claims pursuant to the *Ontario New Home Warranties Plan Act* jumped from 109 in 2004-05 to 173 in 2005-06 due to a record high number of home enrolments since 2002. As a result, it is expected that LAT will continue seeing an increase in the number of appeals made by home owners in the years to come.

	2003-04	2004-05	2005-06
Number of hearing requests received	740	635	650
Number of hearing days scheduled	916 days	886 days	1,041 days
Number of hearing days heard	373 days	380 days	436 days
Number of decisions/orders released	610	599	543
Number of pre-hearings held	97	129	184
Average length of hearing	.79 days	.83 days	.89 days
Average length of time to release decisions	14 days	15.4 days	14.2 days

The percentage of appeals by statute is as follows:

	2003-04	2004-05	2005-06
<i>Bailiffs Act</i>	0%	0%	0%
<i>Collection Agencies Act</i>	1%	0%	0%
<i>Child and Family Services Act</i>	0%	2%	1%
<i>Day Nurseries Act*</i>	0%	0%	0%
<i>Funeral Directors and Establishment Act</i>			
– <i>Claim*</i>	0%	0%	0%
– <i>Registration</i>	0%	1%	0%
<i>Highway Traffic Act</i>	53%	44%	37%
<i>Motor Vehicle Dealers Act</i>			
– <i>Claim*</i>	0%	0%	0%
– <i>Registration</i>	19%	20%	18%
<i>Ontario New Home Warranties Plan Act</i>			
– <i>Claim</i>	15%	17%	27%
– <i>Registration</i>	7%	6%	5%
<i>Private Career Colleges Act*</i>	0%	0%	0%
<i>Real Estate & Business Brokers Act</i>	0%	3%	3%
<i>Travel Industry Act</i>			
– <i>Claim</i>	0%	1%	1%
– <i>Registration</i>	5%	4%	5%

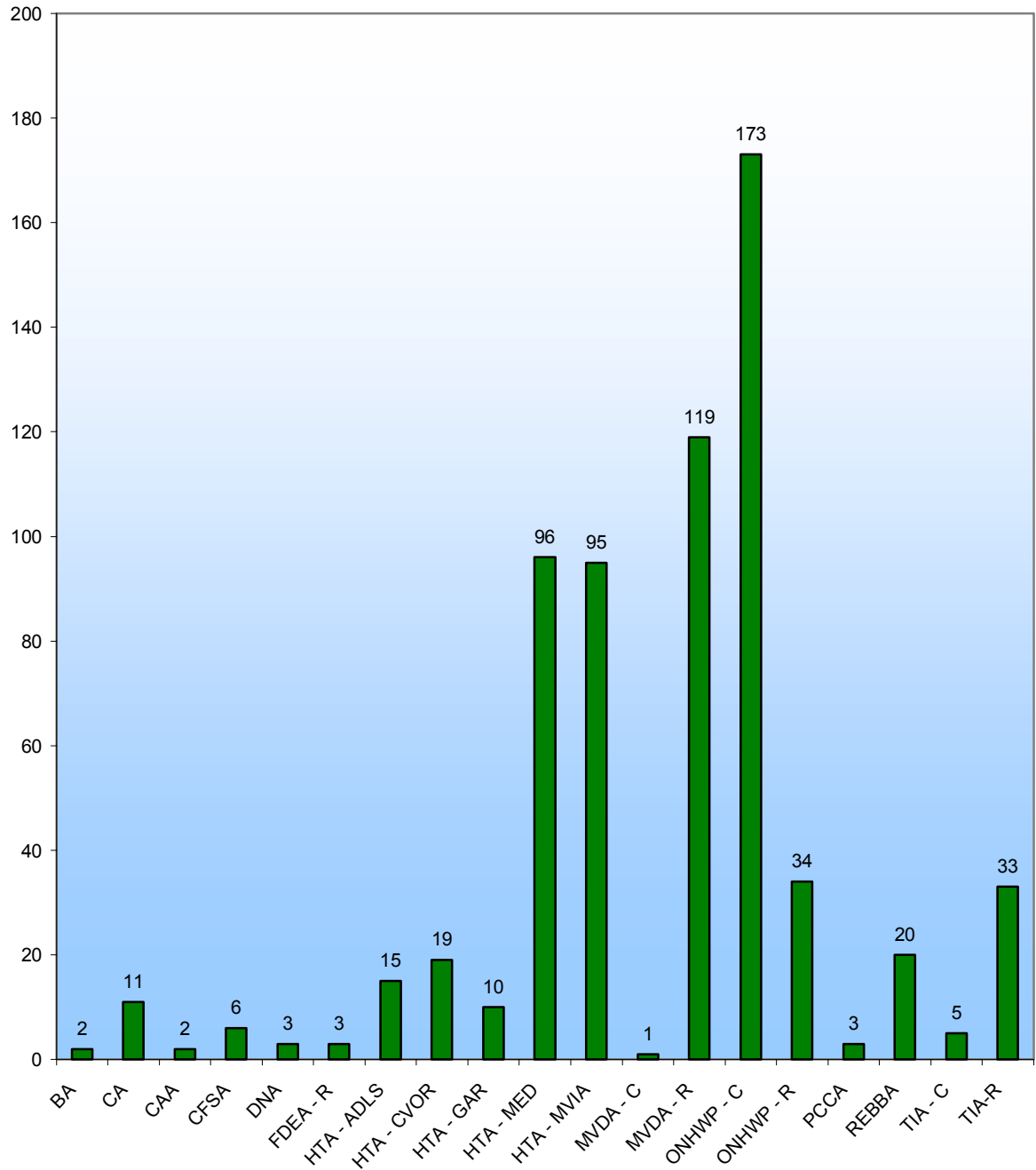
* While appeals were filed with the Tribunal, their number is so low that the percentage does not exist.

- Due to the rounding of percentages, the total percentage for each year may not total 100 per cent.



Licence Appeal Tribunal

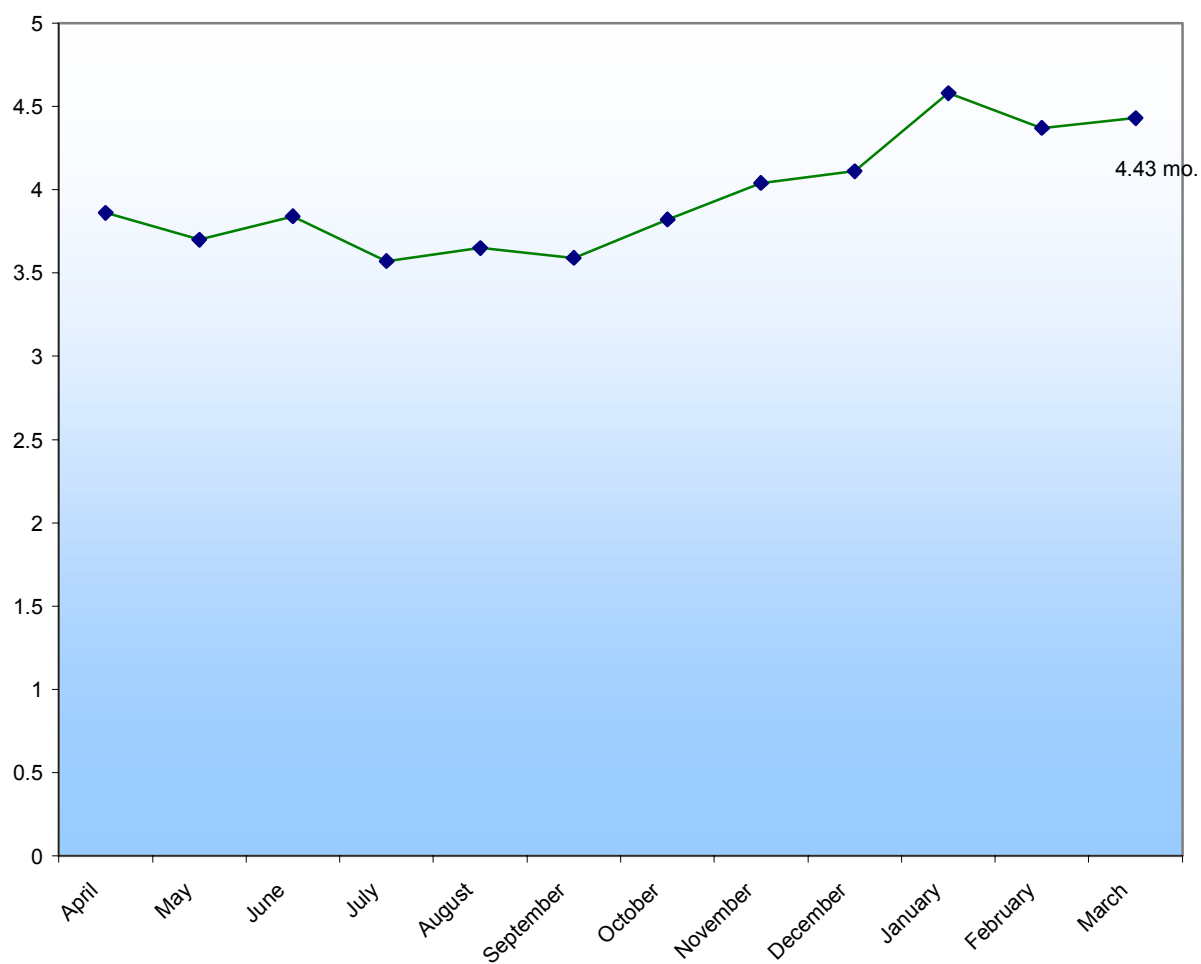
Total # of Appeals Received - Fiscal Year 2005-2006 = 650
Breakdown by Statutes & Types of Appeals as at March 31, 2006





Licence Appeal Tribunal

Turnaround time by Month
for Fiscal Year 2005-2006 as of March 31, 2006



FINANCIAL INFORMATION
2004-2005

Standard Account	2004-2005 Printed Estimates	Actual Expenditures
Salaries and Wages	\$ 635,400	\$ 626,940
Benefits	97,700	87,699
Transport and Communications	94,200	67,012
Services	536,800	573,546
Supplies and Equipment	35,900	19,697
TOTAL	<u>\$1,400,000</u>	<u>\$1,374,894</u>
Revenue		\$ 63,705

FINANCIAL INFORMATION
2005-2006

Standard Account	2005-2006 Printed Estimates	Actual Expenditures
Salaries and Wages	\$ 635,400	\$ 616,803
Benefits	97,700	84,030
Transport and Communications	94,200	74,858
Services	567,000	562,542
Supplies and Equipment	35,900	27,980
TOTAL	<u>\$1,430,200</u>	<u>\$1,366,213</u>
Less Recoveries	\$49,000	49,000
	\$1,381,200	\$1,317,213
Revenue		\$64,100