HEALTH SERVICES APPEAL AND REVIEW BOARD

Annual Report 2001
(Fiscal Period April 1, 2000 to March 31, 2001)

Ontario

Health Services Appeal and Review Board

151 Bloor Street West, 9th Floor
Toronto, Ontario M5S 2T5
Telephone – (416) 327-8512
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Commission d'appel et de révision des services de santé

151 rue Bloor ouest, 9e étage
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September 4, 2001

The Honourable Tony Clement
Minister of Health and Long-Term Care
80 Grosvenor Street
10th Floor, Hepburn Block
Toronto, ON M7A 2C4

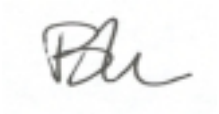
Dear Minister:

Re: Health Services Appeal and Review Board Annual Report

On behalf of the Health Services Appeal and Review Board, it is my pleasure to submit our second Annual Report for the fiscal year 2000/2001.

The Board is committed to the initiatives outlined in the report and to the excellence in service to the Ontario public. I look forward to meeting with you to discuss the work of this Board and to hear your comments.

Yours sincerely,



Beverly Harris
Chair
Health Services Appeal and Review Board

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August 28, 2001

Ms. Beverly Harris
Chair
Health Services Appeal and Review Board
151 Bloor St. West, 9th Floor
Toronto, Ontario
M5S 2T5

Dear Ms. Harris:

I am pleased to provide you with the following Financial Report on the activities of the Health Services Appeal and Review Board for the 2000/2001 fiscal year.

HEALTH BOARDS SECRETARIAT

The Health Boards Secretariat (HBS) provides common administrative and case management services to four province-wide, quasi-judicial appeal and review tribunals (Health Professions Appeal and Review Board; Health Services Appeal and Review Board; Consent and Capacity Board and the Ontario Hepatitis C Assistance Plan Review Committee). In addition, HBS provides financial support to the 23 self-regulated health professions colleges.

The tribunals operate under a variety of statutes, to adjudicate issues relating to:

- public environment and communicable disease hazards
- safety of medical and other health services and professional services
- the right of health professionals to practice generally and physicians' hospital privileges
- involuntary committal of individuals to psychiatric facilities or consent to medical and psychiatric treatment
- eligibility for and provision of insured health services to Ontario residents; and
- access to long-term care facilities and services

In summary, the Ministry through the Health Boards Secretariat provides case management, scheduling, facilities and corporate administration and financial services to the Health Services Appeal and Review Board.

CHANGE IN STATUS

HSARB is a quasi-judicial tribunal established under the Ministry of Health Appeal and Review Boards Act, 1998, to conduct hearings under 14 Acts. Appeals may involve the General Manager of OHIP respecting eligibility, payments for insured services and practitioner billings. Other areas of appeals include community placements services (CCACs) regarding eligibility for a placement in a long-term care facility; long term care service provision within the community; health facility licensing; municipal health boards' compliance with mandatory programs; and public health officials regarding community health hazards and communicable diseases.

In February 1999, the Red Tape Reduction Act (1998) was proclaimed and the impact of this new legislation changed the name and mandate of the Health Services Board to the current Health Services Appeal and Review Board.

Financial Data:

For the fiscal year 2000/01, there was the equivalent of 2 2/3 full-time staff dedicated to HSARB plus approximately 1/3 of the Registrar/Chief Operating Officer's time, 1/3 of the Finance staff, ½ of the System's Officer and File Clerk, and 1/3 of the Receptionist and Secretary's time respectively. The total staff salaries and wages amounted to approximately $223,100.00. This represents an increase of $59,000.00 from the previous fiscal year, and includes the relevant merit increases applied to staff salaries, as well as a full year's salary of Deputy Registrar, Records Clerk and the Systems Officer. The Deputy Registrar's time has also increased from .5 FTE to .6 FTE

ODOE: Table 1 (attached) presents the Board's specific expenditures from the Secretariat's "*Other Direct Operating Expenditures*" (ODOE) allocation.

Limitations:

As you are aware, the Board's budget is wholly contained within the overall Branch budget of the Health Boards Secretariat. In addition, the Ministry operates on a fiscal year (April 1 to March 31) rather than a calendar year basis. As a result, there are several limitations respecting the financial data provided. More specifically, the Board's annual allocation, which is included in the ministry's annual Business Plan and Estimates Report to the Legislature, is established through internal Branch and Ministry processes and is based on experience during the past fiscal year and the Secretariat's best estimate of cost pressures for the forthcoming fiscal year.

In addition, the Board's share of common Secretariat operating costs, such as, human resources, general printing/photocopying and financial services, is not easily identified within the overall Secretariat budget. Thus, for example, data on staff salaries are estimates based on the annual salaries of staff directly assigned to Board functions and an approximate proportion of the time of other key administrative staff, namely the Registrar/Chief Operating Officer and the Deputy Registrar. Facility costs such as office and internal hearing room space and utilities and significant printing costs are not identifiable. However, these costs are incorporated into the Ministry's overall budget, which is reported annually to the legislature.

I trust that the above information is of assistance to you.

Yours truly,

Abby Katz Starr
Chief Operating Officer
Health Boards Secretariat
Registrar, Health Services Appeal and Review Board

Enclosure

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CHAIR'S MESSAGE

At the beginning of the last annual report of the Health Services Appeal and Review Board (the Appeal Board), I wrote of a year filled with challenges and great change. The Appeal Board had recently been given new jurisdiction under almost a dozen new statutes and it had a significant backlog of decisions to write. Our work during that year was devoted to meeting those challenges and planning a strategy for moving forward.

I am pleased to report that during the year that is the subject of this annual report, the Board has settled into its new jurisdiction and also devoted time to strategic planning. At the same time, there were more appeals to the Board, the Appeal Board considered more matters than in previous years and there was a corresponding increase in the number of hearing days. The Appeal Board is clearly busier with hearings and strategic planning than at any other time in its history. However, it has continued to hear appeals and issue decisions in a timely manner. In the future, the Appeal Board will turn its attention to the two performance measures of timeliness and accessibility.

This year the Board identified some immediate pressures and key activities for dealing with them. In this report, you will read more about the Appeal Board's plan to increase its staff, its Board members, and the number of hearing days. It is the Appeal Board's hope that these activities will help it to better serve the members of the public who appear before it.

The Appeal Board has moved forward considerably in the past year—from a Board working to understand its new jurisdiction and dealing with a considerable backlog of decisions to be written—to a Board well in control of its current workload and with a plan for improving its performance in the future. None of this would have been possible without the dedication and hard work of staff and Board members. My deepest thanks to each of you.

Beverly A. Harris
Chair, Health Services Appeal and Review Board

HISTORY AND JURISDICTION OF THE BOARD

The *Ministry of Health Appeal and Review Boards Act, 1998* created the Health Services Appeal and Review Board. The Act amalgamated five tribunals—the Health Services Appeal Board, the Health Facilities Appeal Board, the Health Protection Board, the Nursing Homes Review Board and the Laboratory Review Board—to form the Health Services Appeal and Review Board (the Appeal Board).

The Appeal Board is an independent quasi-judicial tribunal. It has a review and appeal mandate under fourteen different statutes. These are:

- *The Ambulance Act*
- *The Charitable Institutions Act*
- *The Healing Arts Radiation Protection Act*
- *The Health Care Accessibility Act*
- *The Health Facilities Special Orders Act*
- *The Health Insurance Act*
- *The Health Protection and Promotion Act*
- *The Homes for the Aged and Rest Homes Act*
- *The Immunization of School Pupils Act*
- *The Independent Health Facilities Act*
- *The Laboratory and Specimen Collection Centre Licensing Act*
- *The Long Term Care Act*
- *The Nursing Homes Act*
- *The Private Hospitals Act*

The majority of the Appeal Board's work involves hearing appeals under the *Health Insurance Act*, the *Health Protection and Promotion Act*, the *Long-Term Care Act*, and the *Independent Health Facilities Act.*

Health Insurance Act

Under this *Act*, the Appeal Board hears appeals from decisions of the General Manager of the Ontario Health Insurance Plan (OHIP) respecting eligibility for OHIP. The Appeal Board also hears appeals from directions of the Medical Review Committee or Practitioner Review Committee respecting payments by OHIP in respect of insured services. Finally, the Appeal Board hears appeals from determinations by the Medical Eligibility Committee. In recent years the majority of appeals under the *Health Insurance Act* concerned insured services and, specifically, out of country medical treatment. This trend continued in the year 2000 – 2001.

The Appeal Board has the authority to order the General Manager to take such action as the Appeal Board considers the General Manager should take in accordance with the *Act* or the regulations. A final decision of the Appeal Board may be subject to appeal to the Divisional Court, pursuant to section 24 of the *Act*. The Appeal Board has the power to reconsider any of its decisions. It exercises this jurisdiction carefully in the interests of finality and fairness.

Health Protection and Promotion Act

Pursuant to section 44(5) of the *Health Protection and Promotion Act,* the Appeal Board is required to hold a hearing within 15 days after the Appeal Board receives notice in writing requiring the hearing. Orders by medical officers of health or public health inspectors respecting action to be taken in respect of a health hazard (section 13) or in respect of a communicable disease (sections 22 and 37) can be appealed to the Appeal Board. The Appeal Board's authority, pursuant to section 44(4), is to confirm, alter or rescind the Order of the medical officer of health or the public health inspector. The Appeal Board may also substitute its finding for that of the medical officer of health or public health inspector who made the Order.

As with the *Health Insurance Act,* final decisions of the Appeal Board may be appealed to the Divisional Court. The Appeal Board has the same power to reconsider its final decision under this *Act*.

Long Term Care Act

Decisions of approved agencies under the *Long Term Care Act* respecting:

- eligibility for community service (s.39 (1) paragraph 1),
- excluding a particular community service from a plan of service (s.39 (1) paragraph 2),

- the amount of any particular community service (s. 39(1) paragraph 3), and,
- terminating the provision of service (s. 39 (1) paragraph 4)

can be appealed to the Appeal Board under section 40 of the *Long Term Care Act.* The Appeal Board is required to "promptly" appoint a time and place for a hearing and, in any event, the hearing shall begin within 30 days.

The Appeal Board's authority under the *Long-Term Care Act* is to affirm the decision, rescind the decision and refer it back to the approved agency, or rescind the decision and substitute its opinion for that of the approved agency. The decision of the Appeal Board is final and cannot be appealed to Divisional Court. However, the Appeal Board does have the power to review its decisions. Again, this is a jurisdiction that the Appeal Board exercises carefully in the interests of finality and fairness.

Independent Health Facilities Act

Decisions by the Director of Independent Health Facilities (the Director) refusing to issue a license or amend the limitations of a license issued under this *Act* may be appealed to the Appeal Board. The Appeal Board may confirm the Director's refusal to issue a license or direct the Director to issue the license. In the case of refusals to amend limitations on a license, the Appeal Board may confirm the refusal, direct the Director to make all or part of the amendments, or direct the Director to make all or part of the amendments provided certain conditions are satisfied by the Applicant.

Pursuant to section 18, the Director may revoke, suspend or refuse to renew a license under certain circumstances. This decision of the Director is also subject to appeal to the Appeal Board.

Decisions of the Appeal Board may be appealed to the Divisional Court on a question of law alone. The Appeal Board has jurisdiction to reconsider final decisions under the *Independent Health Facilities Act*.

Rules of Practice and Procedure

The Appeal Board has an extensive set of rules governing practice and procedure. The rules were first passed as Interim Rules in March of 1999. Following consultation, the Appeal Board finalized the rules in September of 1999. As a result of subsequent amendments to the *Statutory Powers Procedure Act*, the Appeal Board amended the Rules in September of 2000. The Board reviews the Rules on an ongoing basis to ensure that they accurately reflect legislative requirements, the Appeal

Board's process and the changing needs of the public that the Appeal Board serves.

The Rules cover all aspects of procedure before the Appeal Board including, motions, adjournments, notices of constitutional question, requests for restricted access to a file, and reviews of Appeal Board decisions. The Rules are not distributed to every party to proceedings before the Appeal Board. However, their existence is brought to the attention of every party. Copies are available without charge on request.

As part of the Appeal Board's continuing commitment to public service, with adequate funding the Appeal Board plans to create a website for the Board. The Rules will be available to the public on the Appeal Board's website.

ACCOMPLISHMENTS DURING THE PAST YEAR

Initiatives begun in 1999 – 2000

The Appeal Board's Annual Report for 1999 – 2000 described the Appeal Board's commitment to several initiatives over the year 2000 – 2001. During the past year, the Appeal Board made significant progress on many of these initiatives.

Review of Business Practice

The Appeal Board completed a review of its business practices under the *Health Insurance Act*. This was an enormous project in which the Chair, counsel, and staff members thoughtfully considered the Appeal Board's business processes and how to make them more accessible to the often unrepresented parties who appear before it. The review included all the forms and letters that the Board issues to parties to proceedings under the *Health Insurance Act* and minor amendments to the Rules of Practice and Procedure of the Appeal Board. The Appeal Board now has clearer and simpler letters and forms for these proceedings.

Next year, the Appeal Board will continue this analysis for proceedings under the remaining statutes for which it has jurisdiction with particular emphasis on the *Health Protection and Promotion Act*, the *Long-Term Care Act* and the *Independent Health Facilities Act.*
Since there are many parallels with proceedings under the *Health Insurance Act*, the Board anticipates completing the project within the year.

Pamphlet Describing the Appeal Board

The Appeal Board developed two pamphlets describing its mandate, processes and, in general terms, appeals under the *Health Insurance Act.* The Appeal Board will soon begin including copies of these pamphlets with letters to parties who have requested a hearing under the *Health Insurance Act*.

As appropriate, these pamphlets will be modified in the forthcoming year to reflect the practice before the Appeal Board under the other key enabling statutes.

Guidelines and Practice Directions

In the last annual report, the Appeal Board identified this as a future project. Guidelines and practice directions for the Appeal Board have not yet been produced. This remains a priority for the future.

Website for the Health Services Appeal and Review Board

Creating a website remains an important initiative for the Appeal Board as part of its commitment to improving accessibility to the Appeal Board and improving customer service. With a commitment for appropriate funding for this proposal, the Appeal Board will proceed to create a website that includes important information about the Appeal Board for parties who are appearing or considering appearing before the Appeal Board. The Website may also include general information about practice before the Appeal Board, the Rules of Practice and Procedure, and past decisions.

Initiatives begun in 2000 – 2001

In addition to the projects that the Appeal Board began in the last fiscal year, it also undertook several new initiatives. These reflect the Appeal Board's commitment to timeliness and accessibility for parties appealing to the Board. They are:

Business Plan for 2001 - 2002

During 2001 – 2002 the Appeal Board undertook a significant strategic planning exercise. The Business Plan for the Appeal Board, April 17, 2001, describes the strategic planning exercise in more detail.

The Business plan identified three key challenges to the continued work of the Appeal Board:

- The increased number of appeals to the Appeal Board
- The increased complexity of many of the appeals to the Appeal Board
- The lack of communication materials.

At the same time, the Appeal Board identified performance measures that take into account the direction emphasized in the report of the Guzzo Commission, "Blueprint for the Performance Measurement Plan". Of the seven goals suggested by the report, the Appeal Board identified timeliness and accessibility as its two priorities for next year.

To ensure timeliness and accessibility in all parts of the hearing process, with appropriate funding, the Appeal Board is committed to the following future initiatives:

- Increased Appeal Board membership
- Increased staff resources
- Continued commitment to decision writing tools, including education
- Electronic access to the Appeal Board
- Fact sheets, guidelines and practice directions for the Appeal Board.

Timely decisions

For several years, the Health Services Appeal and Review Board and its predecessor, the Health Services Appeal Board, has been committed to reducing a backlog of decisions to be issued by the Board. Last year's report indicated that through the hard work and dedication of both staff and Appeal Board members, the Appeal Board issued almost every decision within three months of completing the hearing.

This year, with very few exceptions, the Appeal Board has continued to issue its decisions—with comprehensive written reasons—within three months of completing the hearing.

In-house learning programs

The Appeal Board continues to be deeply committed to in-house training for members of the Board. The Appeal Board devotes a significant portion of every monthly meeting to legal training. In the past year, counsel to the Appeal Board conducted in-house training for Board members on the following topics:

- Conflict of interest
- Rules of practice and procedure
- "Other practitioners" under the *Health Insurance Act*
- Divisional court record and exhibit lists
- Eligibility appeals
- Code of conduct
- The Appeal Board's authority to issue summonses
- Constitutional issues
- Ontario human rights code
- Judicial notice
- Enforcement of Appeal Board orders
- Court of appeal decision in *re Irshad.*

In addition, every member of the Appeal Board is a member of the Society of Ontario Adjudicators and Regulators (SOAR). Members and staff attend the annual Conference of Ontario Boards and Agencies (COBA) in November each year. This year members attended small group sessions on the following topics:

- Leading edge research in administrative law
- So they used the C word: constitutional challenges
- Fact finding – avoiding the pit falls
- Administrative law update
- Vulnerable witnesses

Members of the Appeal Board also participate in off-site training sponsored by SOAR, the Canadian Bar Association (CBAO) and the Agency Sector Co-ordination Unit. In the past year, members have attended the following courses offered by SOAR and the CBAO:

- More on evidence for adjudicators
- How to write timely, clear, and well-reasoned decisions
- Taking the tribunal to court – A practical guide for administrative law practitioners
- Strategies for decision-makers in regulatory and adjudicative agencies.

The Chair is a member of the Canadian Council of Administrative Tribunals, the Canadian Institute of Administrative Justice and the Circle of Chairs.

MEMBERS OF THE APPEAL BOARD

Many of the members are well into their first terms on the Appeal Board. Many others have begun a second term with the Appeal Board. The Appeal Board members are motivated and highly experienced. All have had the benefit of extensive legal education and a mentor in the Board Chair. In addition, the decisions of the Appeal Board are of very high quality resulting in few requests for review and few appeals to Divisional Court.

A well-seasoned Appeal Board faces the challenge of succession. The Appeal Board must begin, now, to consider new appointments to the Board in order to share the skill and expertise of current members with future members of the Appeal Board.

All of the members of the Appeal Board, including the Chair, are part-time appointees. The following is a list of the members of the Board as of March 2000.

Dr. Barbara Birchwood – was re-appointed to the Board for a second three-year term ending on February 25, 2003. Dr. Birchwood is one of three physicians on the Appeal Board.

Barbara Collins – is designated Vice Chair of the Appeal Board by the Chair pursuant to Section 7(5) of the *Ministry of Health Appeal and Review Boards Act, 1998*. Ms Collins is also Vice President, Planning, at a public hospital. Her second term on the Board expires on October 7, 2003.

Beverly Harris – is Chair of the Appeal Board for a second term expiring on April 20, 2004. She is a lawyer residing in Kitchener.

Judith Hinchman – is a lawyer whose first term with the Appeal Board expires June 15, 2002.

Tom Kelsey – is a lawyer in Toronto. With the creation of the Health Services Appeal and Review Board, Mr. Kelsey was appointed Vice Chair by the Lieutenant Governor in Council, pursuant to section 7(4) of the *Ministry of Health Appeal and Review Boards Act, 1998*. He was re-appointed to the Board for a further term, which expires on December 31, 2002.

Michele Lawford – is a lawyer practicing in Toronto. She was first appointed to the Health Services Appeal and Review Board in February 2000 for a three-year term expiring on February 15, 2003.

Lillie Lum – is a nurse and professor at Ryerson University. She was appointed to the Appeal Board for a three-year term expiring on January 31, 2002. Ms Lum is also appointed, as a public member, on the Ontario Review Board

Dr. Kenneth Melvin – is a cardiologist practicing in Toronto. His appointment was recently renewed for a second three-year term expiring on March 4, 2003.

Sandra Meyrick – is a lawyer practicing in Toronto. She was recently re-appointed to the Appeal Board for a second three-year term expiring on February 25, 2003.

Christine Moss – is a management consultant residing in Toronto who was first appointed to the Appeal Board for a period of three years expiring on January 31, 2002.

Kathleen Osborne – is a lawyer and health care consultant. Her first term with the Appeal Board expires on April 28, 2002.

Bonnie Patrick – is a lawyer practicing in Windsor. Upon the creation of the Appeal Board, the Lieutenant Governor in Council appointed Ms Patrick as Vice Chair. Her current term on the Board expires on December 18, 2003.

Edward Takacs – is the President and Chief Executive Officer of a public hospital in Alliston. In September 1999, Mr. Takacs was re-appointed to the Appeal Board for a second term expiring on September 16, 2002.

Dr. Beverley Richardson – is an internist practicing at a Toronto hospital. Her first term on the Appeal Board expires on May 22, 2003.

FINANCIAL INFORMATION

Health Services Appeal and Review Board

Expenditures for Period April 1, 2000 to March 31, 2001
(All Figures in Dollars)

Categories	Internal Allocation 2000/01	Approved Pressures*	Total Allocation	2000/01	Surplus/ Deficit **
	180,000	84,300	264,300		-153,919
Bd. Member Travel				32,478	
Honoraria - Attendance				75,900	
Honoraria - Preparation				29,700	
Board Administration				5,874	
Honoraria - Board Admin.				24,675	
Decision Writing				50,188	
Court Reporters Fee				13,336	
Translation Services				1,810	
Legal Education and Legal Services ***				131,223	
Conferences/Seminars				8,137	
Consulting Services				44,898	
Total				**418,219**	

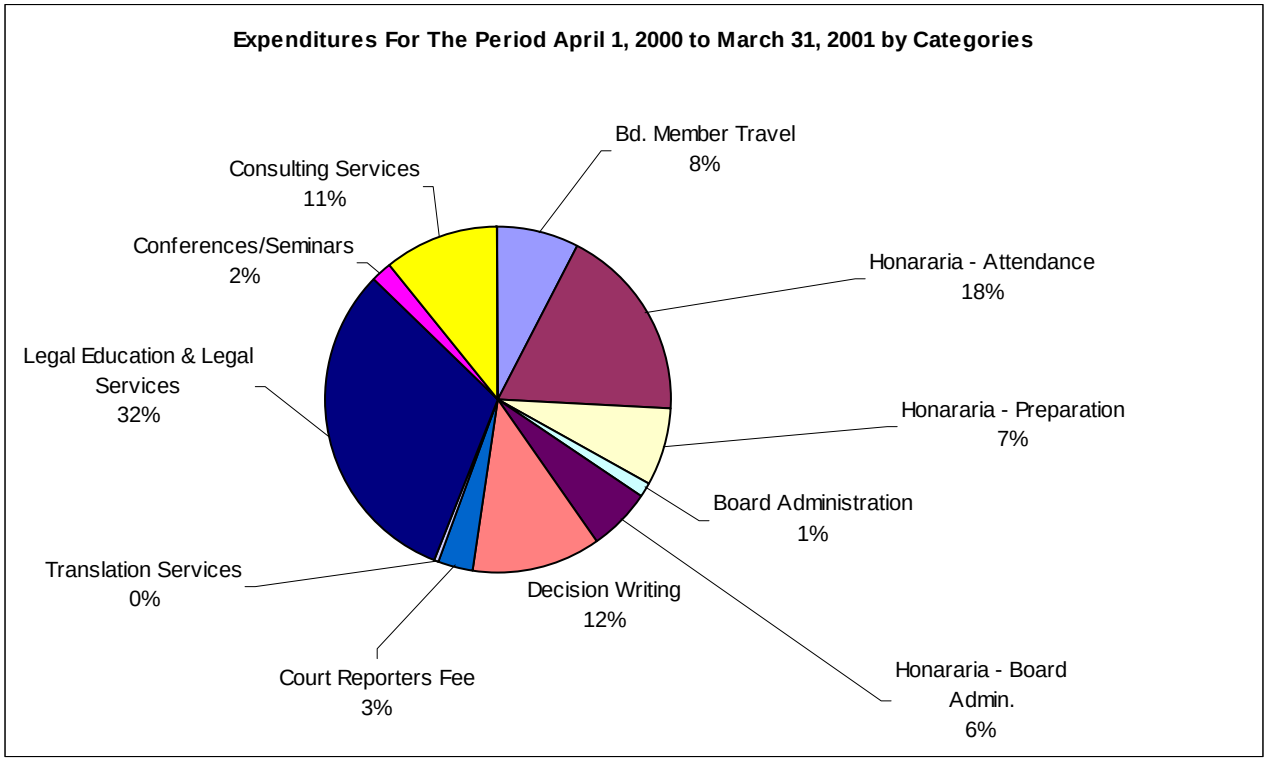
Notes:

***Approved Pressure**	
Remuneration	55,800
Education & Training	28,500
Total	**84,300**

****Deficit**	
Legal Expenses	71,223
Case Load Increase	37,798
Consulting Services	44,898
Total	**153,919**

*** Legal Services includes monthly training Of Board members by counsel.

Health Services Appeal and Review Board
Expenditures for Period April 1, 2000 to March 31, 2001



Statistical Summary for Period April 1, 1999 To March 31, 2000 & April 1, 2000 to March 31, 2001

Item	**April 1, 1999 To March 31, 2000**	**April 1, 2000 To March 31, 2001**
Appeals Brought Forward From Previous Year	114	169
Total # of Appeals Received in Year	311	299
Total # of Appeals in Hand	**425**	**468**
# of Appeals Heard by Board	151	152
# of Appeals Withdrawn or Abandoned	105	132
Appeals (not heard) Outstanding as of end of Period	**169****	**184****
# of Member Days	456	462
# of PHC Days	67	95

****** This number also includes appeals where there has been no activity and the Board is following up with the appellants to determine whether they wish to continue or withdraw their appeal.

HEALTH SERVICES APPEAL AND REVIEW BOARD STAFF

Full Time Staffing:

Muni Merani	Administration Officer
Rohini Kumara	Intake Officer

***Part Time Staffing**:*

Abby Katz Starr**	Registrar/COO
Rafia Sheikh*	Deputy Registrar - HSARB
Malini Kamalendaran**	Coord., Finance & Administration
Manuel Tan**	Financial Assistant
Helga Garmati**	Secretary to the Chair
Therese McGuirk**	Receptionist/Word Processor
Tessie Lipana**	File Clerk
Mathanan Kailas***	Systems Officer

***** Provides service to OHCAP Review Committee as well
****** Provides services to 3 other tribunals
******* Provides services to 4 other tribunals