HEALTH SERVICES APPEAL AND REVIEW BOARD

Annual Report 2002

Fiscal Period April 1, 2001 to March 31, 2002

Ontario

Health Services Appeal and Review Board
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Commission d'appel et de révision des services de santé
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Ontario

November 18, 2002

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 third Annual Report for the fiscal year 2001/2002.

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 A. Harris
Chair
Health Services Appeal and Review Board

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Ontario

December 10, 2002

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 (the Appeal Board) for the 2001/2002 fiscal year.

HEALTH BOARDS SECRETARIAT

The Health Boards Secretariat (the Secretariat) 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 Secretariat provides case management, scheduling, facilities and corporate administration and financial services to the Appeal Board.

The Appeal Board 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 2001/02, there was the equivalent of 3.8 full-time staff dedicated to the Appeal Board plus approximately 1/2 of the Registrar/Chief Operating Officer's time, 1/3 of the Finance staff, 1/2 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 $304,479.00. This represents an increase of $81,377.00 from the previous fiscal year, and includes the relevant merit increases applied to staff salaries, as well as salary for staff on sick leave plus the new general Clerical Assistant position. The Deputy Registrar's time has also increased from .6 FTE to .8 FTE

The Financial Performance Chart (01/02) as seen on page 18 presents the Board's specific expenditures from the Secretariat's "*Other Direct Operating Expenditures*" (ODOE) allocation.

Limitations:

As you are aware, the Appeal Board's budget is wholly contained within the overall Branch budget of the 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 Appeal 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 Appeal 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

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CHAIR'S MESSAGE

In past annual reports of the Health Services Appeal and Review Board, I have advised that the Appeal Board had begun a variety of initiatives designed to improve the efficiency, cost-effectiveness and accessibility of the Appeal Board. I am pleased to report that, in the past year, we have realized many of the benefits from these initiatives.

For several years, all members of the Appeal Board have had access to secure e-mail accounts. This means that most administrative matters concerning the members are conducted electronically and members are not required to attend at the Appeal Board offices for this purpose. Most members of the Appeal Board attend at the Appeal Board offices only for hearings and a monthly board business meeting, the purpose of which is primarily education.

The public, too, will soon have access to the Appeal Board through its new web-site. This web-site provides important information about the appeal process as well as links to the applicable legislation and other relevant web-sites.

The Appeal Board has been using new forms designed to make the appeal process more straightforward for parties to appeals. With these clearer and simpler forms, we are finding there are fewer questions from parties and matters proceed faster through the appeal process.

The number of appeals to the Appeal Board continues to grow steadily. Most parties have a hearing before the Appeal Board within a short time after completing the appeal documents; however, the number of appeals that are carried forward from one year to the next continues to grow. Tribunal staff have noted that matters are proceeding faster through the process as a result of the improved forms and business practices. This, in turn, means that the number of matters carried forward is growing at a significantly slower rate.

The Appeal Board has decided some important and complicated cases this year that are referred to in the Case Reports section of this report. I am pleased to report that, despite this shift to more sophisticated questions, the Appeal Board continues to provide convenient and cost-effective access to well-reasoned and thoughtful decision-making.

While the initiatives were important to the progress of the Appeal Board in the past year, of course, none of it would have been possible without the dedication and hard work of staff and members of the Appeal Board. My deepest thanks to each of you.

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

JURISDICTION OF THE APPEAL BOARD

The Health Services Appeal and Review Board (the Appeal Board) is an independent quasi-judicial tribunal created by the ***Ministry of Health Appeal and Review Boards Act***. The Appeal Board 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 bulk of the Appeal Board's work involves hearing appeals under the ***Health Insurance Act***, the ***Long-Term Care Act,*** the ***Health Protection and Promotion Act***, and the ***Independent Health Facilities Act.*** In the following section, there is a brief discussion of the Appeal Board's jurisdiction under those statutes.

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 OHIP eligibility and coverage. 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 regarding approval for special procedures.

Many of the appeals brought to the Appeal Board under the ***Health Insurance Act*** are initiated by patients who are unrepresented by counsel. For most of those appeals, the Appeal Board is able to hear and decide the appeal within a short period of time. Increasingly, however, the issues raised in appeals under the ***Health Insurance Act*** are more sophisticated and complex. The patients in those cases are often represented by counsel. The time to bring an appeal to a hearing, the time to hear the appeal and the time to decide the appeal lengthens in these proceedings.

After a hearing, 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 is 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 balancing the interests of finality and fairness.

Long Term Care Act

The Appeal Board hears appeals from decisions of approved agencies under the ***Long Term Care Act*** respecting:

- eligibility for community service,
- excluding a particular community service from a plan of service,
- the amount of any particular community service, and,
- terminating the provision of service.

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 unless the parties agree to a postponement.

Within a very short time after the request for hearing is filed with the Appeal Board, the Appeal Board convenes a pre-hearing conference before a member of the Appeal Board who has developed expertise under the ***Long Term Care Act.*** The member works with the parties to narrow the issues before the matter proceeds to a hearing before a panel of the Appeal

Board. The Appeal Board has found that this approach provides efficient and inexpensive access to the Appeal Board and, in many cases, the matter is resolved to the satisfaction of all the parties.

After a hearing, the Appeal Board's authority under the ***Long-Term Care Act*** is to affirm the decision of the approved agency, 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.

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 ***Long Term Care Act*** appeals, the practice of the Appeal Board is to convene a pre-hearing conference before an experienced Vice-Chair of the Appeal Board. As appropriate, the Vice Chair works with the parties to narrow the issues and determine any procedural issues before the matter is heard by a panel of the Appeal Board.

As with the ***Health Insurance Act*** appeals***,*** 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***.

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 Appeal Board continually reviews the Rules 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 are extensive. They 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 commitment to public service, the Rules will very soon be available to the public on the Appeal Board's web-site. We anticipate that the web-site will be operational in the 2002- 2003 fiscal year.

ACCOMPLISHMENTS DURING THE PAST YEAR

Continuing Initiatives

The Appeal Board's Annual Report for 2000-2001 described the Appeal Board's commitment to several initiatives designed to simplify the process of the Appeal Board and to improve access to the Appeal Board by parties. During the past year, the Appeal Board made significant progress on many of these initiatives.

Review of Business Practice

In 2000-2001, we reported that the Appeal Board reviewed its business processes and all the forms and letters issued in proceedings under the ***Health Insurance Act,*** the statute under which the vast majority of proceedings before the Appeal Board are commenced. The Appeal Board's objective in undertaking this review was to make the processes and forms more accessible to the parties who appear before the Appeal Board.

This analysis continued in 2001 – 2002 for proceedings under the ***Long-Term Care Act,*** and the ***Health Protection and Promotion Act.*** The Appeal Board focussed on proceedings under these two statutes because many of the proceedings before the Appeal Board are commenced under these statutes and, importantly, the parties to these proceedings are often un-represented by counsel. It was important, in the Appeal Board's view, that the process be accessible to those parties, in particular.

This project is now complete for proceedings under the ***Health Insurance Act,*** the ***Long-Term Care Act*** and the ***Health Protection and Promotion Act.*** Board staff have already noted reduced confusion, expedited appeals and a facilitated public access from the use of the simplified procedures and forms.

Pamphlet Describing the Appeal Board

Since early in the fiscal year, the Appeal Board has been issuing a pamphlet describing the Appeal Board's jurisdiction and process to every person who requests a hearing under the ***Health Insurance Act.*** As with the business processes project described above the pamphlet is directed to proceedings under the ***Health Insurance Act*** which are the largest volume of Appeal Board proceedings and in which Appellants are often unrepresented by counsel.

The pamphlet is written in easy to understand, non-technical language. It is written in a format that attempts to identify questions that someone new to the processes of an administrative tribunal, and this tribunal in particular, may ask. The questions and answers in the pamphlet will also be available electronically in the "frequently asked questions" section of the Appeal Board's web-site.

Guidelines and Practice Directions

Guidelines and practice directions for the Appeal Board have not as yet been produced. With appropriate funding, this remains a priority for the future.

Web-site for the Health Services Appeal and Review Board

We have noted above that certain information will be available in an electronic format through the Appeal Board's web-site.

Work on the web-site began in the fiscal year 2001-2002. The Appeal Board has designed a web-site that is consistent in appearance with other Ministry of Health and Long-Term Care tribunals. In building a web-site, we hope to broadcast, more widely and in a popular format, information about the Appeal Board in general and proceedings before the Appeal Board, in particular, under the ***Health Insurance Act.***

Included on the web-site will be:

- past and future Annual Reports of the Appeal Board;
- all the information that is included in the pamphlet published by the Appeal Board;
- the Rules of Practice and Procedure of the Appeal Board;
- links to the fourteen statutes under which the Appeal Board has jurisdiction and the ***Statutory Powers Procedure Act***;
- copies of forms that may be required to be filed in proceedings under the ***Health Insurance Act***;
- a link to the Ministry of Health and Long-Term Care web-site

The address for the web-site is www.hsarb.on.ca. The Appeal Board expects that it will be accessible early in the fiscal year 2002 – 2003. At this time, interested parties will be able to retrieve documents from the web-site, but, will not be able to file those documents electronically.

New Initiatives

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 Appeal Board. They are:

Business Plan for 2001 - 2002

During 2001 – 2002 the Appeal Board undertook a significant strategic planning exercise which 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 the third continuing year, the Appeal Board is happy to report that, with few exceptions, it has continued to issue decisions with comprehensive written reasons within three months of completing a hearing.

This achievement is thanks to both the commitment to writing by individual appeal board members and the work of staff in maintaining and monitoring the tracking system for outstanding decisions.

In-house Learning Programs

The Appeal Board continues to be deeply committed to in-house training for members of the Appeal 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 Appeal Board members on the following topics:

- Appeal Board's Power to Issue Summons
- Section 14 ***Health Insurance Act***
- Supreme Court of Canada Decision in Ellis Don
- Section 28.4 Evidence
- Reasonable Apprehension of Bias
- Conduct of a Hearing
- Administrative Law Primer
- Opening Statements

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:

- "Biased, who me?"
- "Access to Justice"
- "Complaints"
- "Alternative Dispute Resolution and Justice Principles – Achieving a Balance"
- "Conduct of a Hearing 'What would you do if...' Workshop on Hearing Procedures"
- "I'm Being Sued for $Millions! Help!"

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
- Applying Alternative Dispute Resolution
- Canadian Council of Administrative Tribunals

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

As a member of the Canadian Institute of Administrative Justice (CIAJ), the Chair was invited to attend a roundtable of twenty-five judges, administrative tribunal chairs, and academics from across Canada to discuss "dialogue between the courts and tribunals".

Case Reports

In the past year the Appeal Board has considered several cases of particular importance to the Appeal Board's jurisprudence. Those decisions are summarized briefly below. Comments on the importance of these decisions are also included.

Charter Cases

LH v OHIP

In this appeal, the Appellant challenged the constitutionality of a provision of the Schedule of Benefits under the ***Health Insurance Act.*** The Attorney-General challenged the Appeal Board's jurisdiction to consider such an argument by the Appellant.

In deciding the Attorney-General's motion, the Appeal Board applied the law in a decision of the Supreme Court of Canada, ***Cuddy Chicks Ltd.*** v. ***Ontario (Labour Relations Board)***. The Appeal Board considered very carefully the scheme of the enabling legislation, the procedures of the Appeal Board, the special expertise of the Appeal Board and the history of the Appeal Board. The panel also noted that administrative tribunals, generally, are speedy, inexpensive and readily accessible, especially relative to the courts.

The Appeal Board found that it has jurisdiction to consider constitutional challenges to its enabling legislation. The Attorney-General appealed this decision to the Divisional Court; however, the matter was settled and the appeal withdrawn.

KA v OHIP

Before this appeal came before the Appeal Board, another group of similar cases were appealed to the Appeal Board and raised a constitutional challenge respecting a provision in the Schedule of Benefits of the ***Health Insurance Act.*** In each of those cases, the Appellants were males who sought breast reduction surgery or mastectomy. This service, in the case

of men only, was not insured under the ***Health Insurance Act.*** This group of appeals was never considered by the Appeal Board since they were settled by the parties before a hearing.

In ***KA v OHIP***, the Appellant was a man seeking a mastectomy. At the hearing, OHIP advised that, although "male mastectomy" was still not an insured service under the ***Act***, the policy of the General Manager was to consider applications by males individually under the breast reconstruction provisions of the Schedule of Benefits. In this case, the application was refused by the General Manager.

The appeal was allowed by the Appeal Board and the General Manager was directed to pay for the surgery in this case. The panel expressed concern that, as currently written, the Schedule of Benefits treats men and women very differently in the case of mastectomies and this raises potential issues of unfairness, inequity or discrimination.

Health Insurance Act Appeals

Resident of Ontario

TR v OHIP

OHIP had made a determination that the Appellant was no longer a resident of Ontario and, thus, not entitled to be insured under the ***Health Insurance Act.*** TR appealed that decision.

The evidence before the Appeal Board showed that, for nine months of each year, TR spends her time at a home in Arizona. For the remaining three months of the year, she returns to an apartment hotel in Ontario.

The Appeal Board was not satisfied that the Appellant spent the requisite 153 days in a twelve-month period in Ontario and, therefore, was not a "resident" of Ontario under the ***Act***. Her appeal was dismissed.

EE v OHIP

The Appellant was enrolled as an insured person under the ***Act*** three months after he became a "resident" of Ontario under the ***Act***. In his appeal to the Appeal Board, the Appellant asked the panel to "waive" the three-month waiting period.

The Appeal Board reviewed the evidence and was satisfied as to the date the Appellant became a "resident" of Ontario. Further, the Appeal Board was satisfied that the Appellant did not qualify for any of the exemptions to the three-month waiting period that are set out in the ***Act***. The Appellant urged the Appeal Board to waive the three-month waiting period for compassionate reasons; however, the Appeal Board has no jurisdiction to do so.

DE v OHIP

In the past year, there have been several appeals by Ontario students seeking exemption from the residency requirements of the ***Health Insurance Act*** while they are studying out of the country. Section 1.1 of Regulation 552 under the ***Act*** recognizes several exemptions, including, education (subsection 1.1) and "extended vacation or any other reason" (subsection 1.1(6)).

The relationship between these two exemptions, in particular, has been the subject of several different appeals to the Appeal Board. In this appeal, an Ontario resident spent one year in the United States while playing hockey for an American team. He was exempt from the residency requirements pursuant to subsection (6), the "any other reason exemption. The following year he requested a further exemption while he studied at an American university. OHIP denied his request.

On appeal, the Appeal Board found that the terms of subsection (6) contemplate that qualified residents of Ontario are entitled to two "separate or consecutive" twelve-month exemptions under subsection (6). As the Appellant had only used one of those two twelve-month exemptions, he was entitled to a second twelve-month exemption while attending university in the United States.

Generally Accepted as Appropriate Treatment

PG v OHIP

The Appellant required "re-do bypass surgery" and, for reasons related to the risk of surgery in this patient, several physicians in Ontario refused to perform the surgery. At the Cleveland Clinic, doctors were prepared to operate on the Appellant. The Appellant appealed OHIP's decision that the surgery at the Cleveland Clinic was not an insured service under the ***Act***.

The Appeal Board heard evidence from two physicians who treated and examined PG in Ontario and from the surgeon at the Cleveland Clinic who performed the surgery. The Appeal Board found that the weight of medical opinion was that the surgery was not appropriate for a person in PG's condition and, accordingly, found the surgery at the Cleveland Clinic is not an insured service of OHIP under the ***Act***.

Delay in Obtaining Treatment in Ontario

RS v OHIP

The Appellant in this case suffered from "high risk" prostate cancer. The evidence before the Appeal Board was that, because there is no triage system to "fast track" prostate cancer patients, the first available date for

surgery in Ontario was four months after diagnosis. The evidence of the Appellant's family physician and confirmed by two urologists was that, under the circumstances, the Appellant was at high risk of metastatic cancer as a result of the delay in getting surgery.

The Appeal Board found that, although radical prostatectomy is performed in Ontario, it was necessary for the Appellant to have the surgery performed out of the country to avoid a delay that would result in medically significant tissue damage. Thus, the service is insured by OHIP under the ***Health Insurance Act.***

GM v OHIP

The Appellant was diagnosed with a recurrence of sarcoma and required palliative radiation treatments. She was advised by physicians in her city that such treatment could not begin for at least a month. A family member arranged for the same treatment to begin within the week in the United States.

In the written hearing before the Appeal Board, the Appeal Board noted that the treatment performed in the United States was exactly the treatment proposed in Ontario and, therefore, the treatment was "generally accepted as appropriate in Ontario". The Appeal Board was not satisfied, however, that the one-month delay in beginning radiation in Ontario was a delay that would lead to "death or medically significant tissue damage". Thus, the treatment in the United States was not an insured service of OHIP under the ***Health Insurance Act.***

Experimental Treatment

JN v OHIP

In this appeal the Appellant asked OHIP to insure insertion of an artificial vision device that would alleviate his blindness. The Appeal Board heard evidence about the nature of the treatment being performed in Portugal and was satisfied that the treatment is "generally accepted within Ontario as experimental". Thus, the service is not an insured service of OHIP under the ***Health Insurance Act.***

Cosmetic Surgery

CA v OHIP

Panniculectomy (excision of fatty tissue) is an insured service of OHIP under the ***Health Insurance Act*** only if there is "significant symptomatology". In this appeal, the Appellant described for the Appeal Board her condition after giving birth to ten children and her efforts to rid herself of the excess abdominal tissue. The Appeal Board was not satisfied, on the evidence

before it, that there was “significant symptomatology” associated with this condition and it found that the surgery is not an insured service of OHIP.

Appeal Board’s Jurisdiction to Award Security for Payment

JF v OHIP

The Appellant in this appeal had been ordered by the General Manager to repay OHIP an amount in excess of $200,000.00. None of the money was re-paid and the Appellant appealed the direction to the Appeal Board.

The question of the Appeal Board’s authority to order “security for payment” pursuant to section 21(1.1) of the ***Health Insurance Act*** was raised in a motion brought by the Medical Review Committee of the College of Physicians and Surgeons (the MRC).

The Appellant challenged section 21(1.1) as contrary to the ***Charter of Rights and Freedoms*** (the Charter) and, in the alternative, argued that this was not an appropriate case to make an order for security for payment.

Orders are made by the Appeal Board only after hearing from the parties and considering the particular facts of the case. For this reason, the Appeal Board found that section 21(1.1) does not, on its face, discriminate and, therefore, is not contrary to the Charter.

As for whether this was an appropriate case for making such an order, the Appeal Board noted that there are no regulations specifying when such an order must be made. On the limited evidence before it, the Appeal Board found that an order to pay the full amount owing to OHIP would be a financial hardship to the Appellant; however, the Appeal Board was not satisfied that the Appellant was impecunious. Accordingly, the Appeal Board ordered the Appellant to pay $5000.00 in security for part of the amount owing. This payment was subject to two conditions: (1) the Appellant’s right to bring a motion to vary the order, and (2) the Respondent’s right to bring a further motion to dismiss the appeal for non-compliance with the order.

Long-Term Care Act Decisions

AP v NYCCAC

This was an appeal under the ***Long-Term Care Act*** of a decision of a Community Care Access Centre (CCAC) denying the Appellant services on the basis that he is not, nor is he eligible to be, an insured person under OHIP. The Appeal Board heard that this decision was based, not on regulation, but on a policy developed by the Community Care Access Centre that reflected an agreement between the Centre and the Ministry of Health and Long-Term Care.

The Appeal Board found that only the Lieutenant Governor-in-Council has the authority under the statute to set eligibility criteria for services under the ***Long-Term Care Act***. The CCAC had established the criterion that one must be an insured person under the ***Health Insurance Act*** in order to be eligible for services under the ***Long-Term Care Act*** and, in so doing, had acted without authority.

The result of such a finding was, as the panel noted in the decision, that there is a gap in the ***Long-Term Care Act*** respecting the provision of personal support services. The panel found that it, too, had no statutory authority to set the eligibility criteria in this case. Thus, there were no eligibility criteria in place by which the CCAC could assess this individual's eligibility for services under the ***Act***.

The Minister sought judicial review of this decision of the Appeal Board; however, before the matter could be heard by the Divisional Court, regulations were promulgated by the Lieutenant Governor-in-Council respecting eligibility for personal support services under the ***Long-Term Care Act.*** The application for judicial review was withdrawn.

On January 10, 2002, Regulation 02/02 under the ***Long-Term Care Act*** was passed which provides that personal support services shall not be provided to a person unless that person is an insured person under the ***Health Insurance Act***.

Rules of Practice and Procedure

Appeal Board's Jurisdiction to Award Costs

AJ and EG v DPH

The Appeal Board's jurisdiction to award costs is set out in Rule 19 of the Rules of Practice and Procedure of the Health Services Appeal and Review Board. The Appellant's claim was for $100,000.00 for lost income as a result of the actions of the Health Unit. The Appeal Board found that its jurisdiction to award costs for economic loss under rule 19 is limited to economic loss suffered as a result of the frivolous, vexatious or unreasonable behaviour of another party in the conduct of the proceeding. As the matter was settled quickly and to the Appellant's satisfaction very shortly after the request for a hearing was filed, there was no evidence of unreasonable conduct of the Health Unit. The claim for costs was refused.

Members of the Appeal Board

In the past fiscal year, the Appeal Board addressed the issue of succession that was of concern last year. In the past year, four people have been appointed to the Appeal Board. Each of them brings to the Appeal Board experience with the work of administrative tribunals and the issues considered by 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 Appeal Board as of March 2002.

John Anderson – is a physician practising in Windsor.

Barbara Collins – is Vice President, Planning, at a public hospital. She is also a Vice Chair of the Appeal Board.

Elizabeth Elstner – is a lawyer and formerly a member of the Assessment Review Board.

Brock Grant – is a lawyer consulting in the area of human rights. He was previously Director of Legal Services with the Ontario Human Rights Commission.

Beverly Harris – is Chair of the Appeal Board. She is a lawyer residing in Kitchener.

Judith Hinchman – is a lawyer who is a Vice-Chair of the Appeal Board.

Tom Kelsey – is a lawyer in Toronto and a Vice-Chair of the Appeal Board.

Lillie Lum – is a nurse and professor at Ryerson University. Dr. Lum is also appointed, as a public member, to the Ontario Review Board.

Dr. Kenneth Melvin – is a cardiologist practicing in Toronto.

Sandra Meyrick – is a lawyer practicing in Toronto. She is a Vice-Chair of the Appeal Board.

Christine Moss – is a management consultant residing in Toronto.

Bonnie Patrick – is a lawyer practicing in Windsor and a Vice-Chair of the Appeal Board.

Elaine Shin – is a former physiotherapist and a lawyer practicing in Toronto.

Edward Takacs – is the President and Chief Executive Officer of a public hospital in Alliston.

Two members of the Appeal Board are currently on a leave of absence from the Appeal Board:

Dr. Barbara Birchwood – Dr. Birchwood is one of three physicians on the Appeal Board.

Michele Lawford – is a lawyer practicing in Toronto.

Two members of the Appeal Board resigned during the fiscal year 2001 – 2002:

Dr. Beverley Richardson – was appointed to the Appeal Board for a term expiring in 2003. Due to professional obligations, Dr. Richardson was unable to complete her term with the Appeal Board. The Minister accepted her resignation from the Appeal Board and her appointment was revoked by Order-in-Council.

Kathleen Osborne – was appointed to the Appeal Board for a term expiring in early 2002. She was a Vice-Chair of the Appeal Board. As a result of a move to British Columbia, Ms Osborne was unable to complete her term with the Appeal Board. The Minister accepted her resignation and her appointment was revoked by Order-in-Council.

FINANCIAL INFORMATION

Fiscal Year 2001/2002 Financial Performance

DESCRIPTION	2001/02	2000/01	1999/2000
	all figures in dollars		
PER DIEMS[1]			
Attendance at Proceedings	70,400	75,900	66,675
Preparation for Proceedings	26,125	29,700	28,850
Decision Writing	48,325	50,188	43,000
Appeal Board Administration	18,575	24,675	21,788
Travel[2]	32,136	32,478	35,435
Conferences	10,266	8,137	16,095
PROCEEDINGS: RELATED EXPENSES			
Court Reporting Services	21,446	13,336	9,702
OTHER EXPENSES			
Legal fees, education and training[3]	117,224	131,223	126,485
Consulting[4]	17,873	44,898	56,003
Sundry[5]	19,313	7,684	2,453
Total	381,683	418,219	406,486

[1] General Member = $200; Vice-Chair = $250; Chair=$350

[2] Members are appointed on a province-wide basis

[3] Fees for legal counsel and legal education for members

[4] Organizational and technology review

[5] Mailing, language, sign interpretation, assistive listening devices, Translation, printing, lease of computers etc. not previously tracked

Statistical Summary for Period April 1, 1999 To March 31, 2000 & April 1, 2000 to March 31, 2001 and April 1, 2001 to March 31, 2002

Item	**April 1, 1999 To March 31, 2000**	**April 1, 2000 To March 31, 2001**	**April 1, 2001 To March 31, 2002**
Appeals Brought Forward From Previous Year	114	169	184
Total # of Appeals Received in Year	311	299	322
Total # of Appeals in Hand	**425**	**468**	**506**
# of Appeals Heard by Appeal Board	151	152	147
# of Appeals Withdrawn or Abandoned	105	132	149
Appeals (not heard) Outstanding as of end of period.	**169****	**184****	**210****
# of Member Days	456	462	441
# of PHC Days	67	95	186

** This number also includes appeals where there has been no activity and the Appeal 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 [1]	Administrative Officer
Patricia Godden [2]	Administrative Officer
Rohini Kumara	Intake Officer
Monique Ravignat [3]	Administrative Officer

Part Time Staffing:

Abby Katz Starr [4]	Registrar/COO
Rafia Sheikh [5]	Deputy Registrar - HSARB
Malini Kamalendaran [6]	Coord., Finance & Administration
Gabriel Fahel [7]	Financial Assistant
Denise Higgins [8]	Secretary to the Chair
Therese McGuirk [9]	Receptionist/Word Processor
Tessie Lipana [10]	File Clerk
Mathanan Kailas [11]	Systems Officer

[1] Staff on leave
[2 to 3] Staff on acting assignment
[4] Provides services to 3 other tribunals
[5] Provides service to OHCAP Review Committee as well
[6 to 10] Provides services to 3 other tribunals
[11] Provides services to 4 other tribunals