

**Health Services Appeal  
and Review Board**

**Commission d'appel et de  
révision des services de la santé**



May 31, 2010

The Honourable Deb Matthews  
Minister of Health and Long-Term Care  
Minister's Office  
Hepburn Block, 10th Floor  
80 Grosvenor Street  
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 Annual Report for the fiscal year of 2008-2009.

The Appeal Board continues its commitment to the initiatives outlined in the report and to ensuring excellence in the service it provides to the Ontario public.

Yours sincerely,

A handwritten signature in purple ink that reads "Linda P. Lamoureux".

Linda P. Lamoureux  
Chair  
Health Services Appeal and Review Board

c: Lori Coleman, Registrar, Health Services Appeal and Review Board



May 31, 2010

Ms. Linda Lamoureux  
Chair  
Health Services Appeal and Review Board  
151 Bloor Street West, 9<sup>th</sup> Floor  
Toronto, ON M5S 2T5

Dear Ms. Lamoureux,

It is my pleasure to report to you on behalf of the Health Boards Secretariat. The Health Boards Secretariat (Secretariat) provides comprehensive administrative, corporate, fiscal and case management support to the Health Services Appeal and Review Board. In addition, the Secretariat provides a similar support function for the Health Professions Appeal and Review Board, the Ontario Hepatitis C Assistance Plan Review Committee, the Transitional Physicians Audit Panel as well as payment processing functions for other health related services.

On April 30, 2008, the Health Boards Secretariat announced changes to its organizational structure. Previously structured in a linear system, the new delivery model actions a case management approach designed to handle a high volume caseload in an adjudicative environment where procedures and work volumes are fluid. This model utilizes staff expertise by having one staff manage a case from start to finish, enhancing staff commitment and knowledge of individual cases and clients. The result is a greatly improved experience for parties to the Board's appeals as well as Board Members.

In line with this reorganization, a comprehensive training program was created before recruiting a diverse group of staff. This year, new employees have undergone a broad-based orientation and numerous team building and communications exercises to ensure that the vision, mission and mandate of the new organization would be strongly supported. To complement the revitalized human resources model, the Secretariat continues to work to consolidated practices and procedures to become more consistent and user friendly to the public. The Health Boards Secretariat has already seen an increase in the number of appeals processed, an improved response time to customer inquires and further, is expecting to see a decrease in the length of time an individual appeal will take to be processed.

As in previous years, funding is allocated to the Secretariat from the Consolidated Revenue Fund. There are some limitations in detailing expenditures as they relate specifically to the agencies supported by the Secretariat. You'll note that expenditures such as salaries and facilities are not included in the financial data on page 12 as it would be arbitrary to determine what portion of cost should be attributed to the Health Services Appeal and Review Board alone. These costs are, however, incorporated in the fiscal planning cycle by the Secretariat and are reported to the Ministry.

You will note, from the statistical data on pages 9 to 11 that the number of new appeals received by the Board increased since 2007/08 and that the number of hearings convened decreased. The Board held a number of matters in abeyance pending a ruling by the Divisional Court, and anticipates that hearing and

pre-hearing activity will increase markedly in the coming year as those matters previously held in abeyance proceed through the appeal process. Similarly, while expenditure attributed to per diem honouraria for members fell below last year's total, it is anticipated to increase in the coming year with the anticipated increase in hearing and pre-hearing activity.

I trust that this information is of assistance to you, and I look forward to continuing to lead services providing support to the Health Services Appeal and Review Board.

Yours truly,

A handwritten signature in cursive script, reading "Lori Coleman".

Lori Coleman  
Chief Operating Officer, Health Boards Secretariat  
Registrar, Health Services Appeal and Review Board

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## A. MESSAGE FROM THE CHAIR

As Chair of the Health Services Appeal and Review Board, it is my privilege to provide an update on the Board's activities for the 2008 – 2009 period. The Appeal Board is trusted with conducting hearings & reviews & making decisions, orders & recommendations concerning decisions made by parties acting under 14 pieces of legislation. I would like to thank the members of the Appeal Board and the Registrar and Chief Operating Officer of the Health Board Secretariat, Lori Coleman, and her team for their support and dedication throughout this period.

During the period of this Annual Report, the Appeal Board continued to focus on improving the quality of and access to its services. Key accomplishments, set out in detail in the Accomplishments Section, were achieved in the areas of access to justice, member recruitment and development and process improvements. Most notably the Appeal Board began providing services outside of Toronto. In September 2008, the Appeal Board heard a significant number of appeals under the *Immunization of School Pupils Act* in Woodstock, Ontario. It is one of the few occasions when the Board has held a hearing in a town hall environment, and travelled to another location to accommodate all the parties. The Appeal Board plans to improve access to its services.

During this period, the Divisional Court released its decision in the case of *C.C.-W., J.F.-T. and The Estate of Linda Mailloux (Deceased) v. The General Manager, Ontario Health Insurance Plan*. The decision involved three prior approval appeals relating to OHIP's refusal to reimburse the Applicants for the cost of medical treatment provided outside Ontario because the medical treatment had not been approved in advance. It is an important decision with significant implications for anyone seeking reimbursement for out of country health services.

The Court dismissed one of the appeals, and sent the other two back to the Board for reconsideration in light of the reasons set out in the Court's decision. The Court agreed with the decisions of the Board that the General Manager of OHIP does not have discretion to retroactively grant prior approval for payment of out of country expenses. However, the Court found that the power to grant retroactive approval is implied in certain urgent circumstances in order to give effect to the overall purpose of the out-of-country provisions.

The Appeal Board is now to decide whether the urgency of the circumstance in those two cases prevented the Applicants from obtaining prior approval, so that, as a matter of practical necessity, OHIP has implied power to grant retroactive prior approval.

It continues to be my pleasure to work with colleagues, and staff who share a commitment to public service. In the coming year the Appeal Board will continue its work to improve service delivery.

## B. JURISDICTION OF THE APPEAL BOARD

The Health Services Appeal and Review Board (HSARB) is an independent quasi-judicial tribunal created by the *Ministry of Health Appeal and Review Boards Act, 1998*. The Appeal Board has a review and appeal mandate under fourteen different statutes. These are:

*The Ambulance Act*  
*The Charitable Institutions Act*  
*The Commitment to the Future of Medicare Act*  
*The Healing Arts Radiation Protection 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 HSARB was established to conduct hearings and reviews and makes decisions, orders and recommendations regarding:

- decisions of the Ontario Health Insurance Plan respecting eligibility and payment;
- decisions of agencies under the *Long Term Care Act* respecting eligibility for service;
- orders of the Medical Officer of Health or public health inspectors;
- decisions of the Director with respect to licensing under the *Nursing Homes Act*;
- determinations of the placement coordinator respecting eligibility for admission to an approved charitable home for the aged; and
- decisions of the Director with respect to licensing of independent health facilities.

The Health Services Appeal Board also has an associated Panel called the Transitional Physician Audit Panel (TPAP) that hears appeals from decisions by the General Manager of OHIP in respect of payments to physicians.

This year, the bulk of the Appeal Board's work involved hearing appeals under the *Health Insurance Act*, *The Immunization of School Pupils Act* and the *Health Protection and Promotion Act*.

#### *Health Insurance Act*

Most of the matters heard before the HSARB are appeals under the *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 (eligibility and subscriber appeals). The Appeal Board also hears appeals from directions of the Practitioner Review Committee respecting payments by OHIP in respect of insured services. Finally, the Transitional Physician Payment Review Board, a Panel of the Appeal Board, is responsible for appeals from the audits of physician billings.

Most of the appeals before the Appeal Board under the *Health Insurance Act* relate to questions of whether treatments are insured services of OHIP. Many of these appeals are initiated by patients who are unrepresented by counsel. The second largest group of appeals involve the question of whether treatment provided outside of the country is an insured service of OHIP under Section 28.4 of Regulation 552 (a provision that allows for full funding of the treatment).

#### *The Immunization of School Pupils Act*

The Appeal Board hears appeals under the *Immunization of School Pupils Act* where a hearing is requested by a parent of the pupil (if the pupil is sixteen or seventeen years of age) with respect to whom a medical officer of health has made an order under the *Act* requiring that a pupil be excluded from school due to an outbreak or an immediate risk of an outbreak of a designated disease. The jurisdiction of the Appeal Board is set out in Section 15 of the *Act* noting that the Appeal Board by order may confirm, alter or rescind the decision or order of the medical officer of health and for such purposes the Board may substitute its finding for that of the medical officer of health.

Pursuant to Section 15(5) of the *Immunization of School Pupils Act*, the Appeal Board is required to hold a hearing within 15 days after the Appeal Board receives notice in writing requiring the hearing.

#### *Health Protection and Promotion Act*

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. 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.

## C. ACHIEVEMENTS OF THE APPEAL BOARD

The period of this annual report marks a high level of achievement for the Appeal Board, enacting positive change toward improvement of its services to the public. The following achievements have been accomplished over this period;

### *Access to Justice:*

- In an effort to provide greater accessibility for parties, work has been underway to prepare to offer out of town hearings and reviews and hold bilingual proceedings.
- Enhancements and improvements continue to be made to the Appeal Board's website, including improving access to applicable regulations and decisions.

### *Member Recruitment and Development:*

- The Board welcomed fourteen new people to its membership from across Ontario, reflecting increased geographic diversity of the Board. Members have been exposed to an enhanced education program including all-member, new-member and Presiding member training modules.

### *Process Improvements:*

- *Streamlining processes for Consistency with other Health Boards:* In order to offer the public a consistent framework for appeals to Health Boards, staff have implemented processes to create consistency between the Health Services and Health Professions Appeal and Review Boards.
- *Reviewing Board Processes to Ensure Fair, Accessible Hearings:* The Appeal Board continues to work to review appeal processes, such as the request for review stage, to ensure that parties experience a fair, accessible and consistent approach at all stages of their appeal.

### *Significant Decisions:*

- The Divisional Court and Court of Appeal decisions in *Flora* and *JFT*, reaffirmed the level of deference that ought to be accorded to Appeal Board decisions.

## D. OPERATIONAL PERFORMANCE

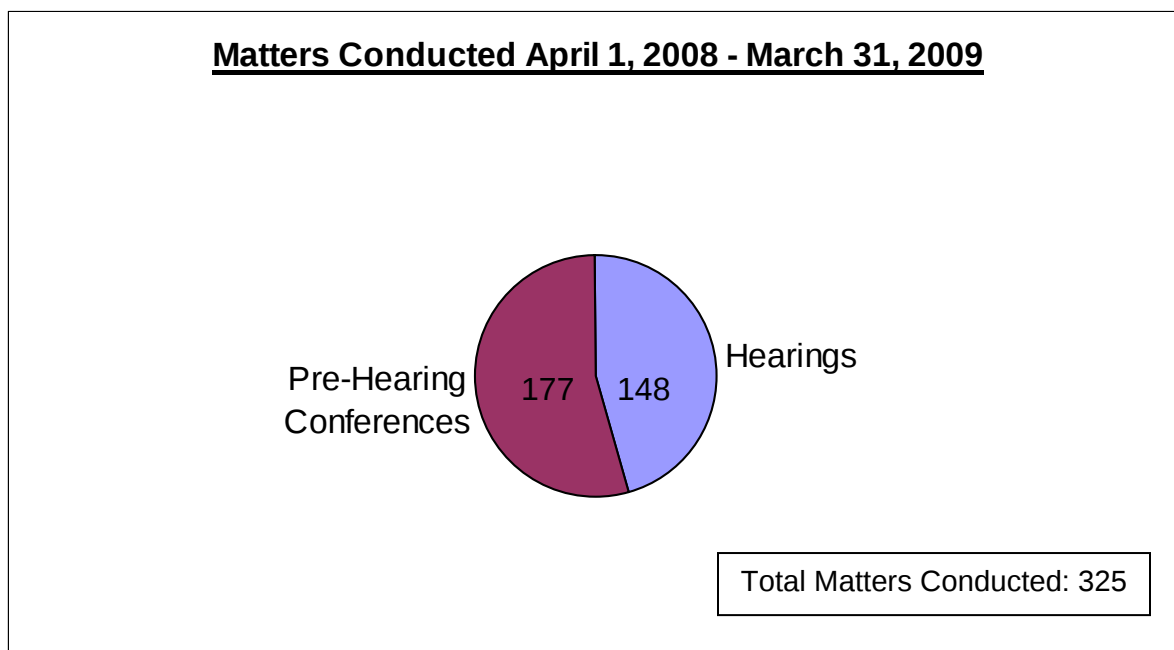
| INTAKE BY CASE TYPE                                                |                               |                               |                               |
|--------------------------------------------------------------------|-------------------------------|-------------------------------|-------------------------------|
|                                                                    | Apr 1, 2006 –<br>Mar 31, 2007 | Apr 1, 2007 –<br>Mar 31, 2008 | Apr 1, 2008 –<br>Mar 31, 2009 |
| <i>Health Insurance Act</i>                                        | 435                           | 353                           | 397                           |
| <i>The Immunization of School Pupils Act</i>                       | 4                             | 15                            | 51                            |
| <i>The Health Protection and Promotion Act</i>                     | 22                            | 9                             | 11                            |
| <i>The Independent Health Facilities Act</i>                       | 18                            | 11                            | 9                             |
| <i>The Long-Term Care Act, 1994</i>                                | 8                             | 10                            | 6                             |
| <i>Commitment to the Future of Medicare Act</i>                    | 1                             | 1                             | 1                             |
| <i>The Ambulance Act</i>                                           | 0                             | 0                             | 0                             |
| <i>The Charitable Institutions Act</i>                             | 2                             | 1                             | 0                             |
| <i>The Healing Arts Radiation Protection Act</i>                   | 0                             | 0                             | 0                             |
| <i>Homes for the Aged and Rest Homes Act</i>                       | 0                             | 0                             | 0                             |
| <i>The Health Facilities Special Orders Act</i>                    | 0                             | 6                             | 0                             |
| <i>The Laboratory and Specimen Collection Centre Licensing Act</i> | 0                             | 0                             | 0                             |
| <i>The Nursing Homes Act</i>                                       | 0                             | 0                             | 0                             |
| <i>The Private Hospitals Act</i>                                   | 0                             | 0                             | 0                             |
| <b>Total Requests Received</b>                                     | <b>490</b>                    | <b>406</b>                    | <b>475</b>                    |

The Health Services Appeal and Review Board was established to conduct hearings and reviews, and to make decisions, orders and recommendations regarding:

- Decisions of the Ontario Health Insurance Plan respecting eligibility and payment;
- Decisions of agencies under the *Long Term Care Act* respecting eligibility for service;
- Orders of the Medical Officer of Health or public health inspectors;
- Decisions of the Director with respect to licensing under the *Nursing Homes Act*;
- Determinations of the placement coordinator respecting eligibility for admission to an approved charitable home for the aged; and
- Decisions of the Director with respect to licensing of independent health facilities.

The information below details the total matters conducted for the Appeal Board.

| <b>MATTERS CONDUCTED</b> |                                       |                                       |                                       |
|--------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
|                          | <b>Apr 1, 2006 –<br/>Mar 31, 2007</b> | <b>Apr 1, 2007 –<br/>Mar 31, 2008</b> | <b>Apr 1, 2008 –<br/>Mar 31, 2009</b> |
| Hearings                 | 280                                   | 205                                   | 148                                   |
| Pre-Hearing Conferences  | 303                                   | 311                                   | 177                                   |
| Total Matters Conducted  | 583                                   | 516                                   | 325                                   |



| <b>ITEM</b>                             | <b>Apr 1, 2004 –<br/>Mar 31, 2005</b> | <b>Apr 1, 2005 –<br/>Mar 31, 2006</b> | <b>Apr 1, 2006 –<br/>Mar 31, 2007</b> | <b>Apr 1, 2007 –<br/>Mar 31, 2008</b> | <b>Apr 1, 2008 –<br/>Mar 31, 2009</b> |
|-----------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
| Active Caseload at beginning of period  | 235                                   | 322                                   | 384                                   | 421                                   | 474*                                  |
| Requests Received                       | 435                                   | 437                                   | 490                                   | 406                                   | 475                                   |
| Total Case Load                         | 670                                   | 759                                   | 874                                   | 827                                   | 949                                   |
| Total Matters Reviewed                  | 196                                   | 227                                   | 280                                   | 205                                   | 148                                   |
| Total Matters Concluded                 | 152                                   | 148                                   | 173                                   | 215                                   | 349**                                 |
| <b>Active Caseload at end of period</b> | <b>322</b>                            | <b>384</b>                            | <b>421</b>                            | <b>407</b>                            | <b>600</b>                            |

\* The active caseload for the beginning of the 2008-2009 period now includes 'decision-pending' files.

\*\* Total matters concluded incorporates appeals withdrawn or abandoned and for the 2008-2009 period includes 'decision-issued' files.

## E. FINANCIAL PERFORMANCE

| HSARB                                |                |                  |                |
|--------------------------------------|----------------|------------------|----------------|
| FINANCIAL PERFORMANCE                |                |                  |                |
| DESCRIPTION <sup>1</sup>             | 2006/2007      | 2007/2008        | 2008/2009      |
| PER DIEM HONORARIA <sup>2</sup>      |                |                  |                |
| Attendance at Proceedings            | 123,685        | 181,498          | 144,111        |
| Preparation for Proceedings          | 55,780         | 77,896           | 58,683         |
| Decision Writing                     | 116,433        | 184,697          | 115,639        |
| Board Administration <sup>3</sup>    | 178,746        | 205,589          | 156,518        |
| PHC                                  | 58,000         | 90,763           | 49,178         |
| PROCEEDINGS: RELATED EXPENSES        |                |                  |                |
| Court Reporting Services             | 26,357         | 25,620           | 13,362         |
| OTHER EXPENSES                       |                |                  |                |
| Independent Legal Services           | 151,961        | 199,631          | 140,030        |
| Access & Communications <sup>4</sup> | 62,861         | 76,734           | 130,829        |
| <b>TOTAL</b>                         | <b>773,823</b> | <b>1,042,428</b> | <b>808,350</b> |

<sup>1</sup> All figures are in Canadian dollars.

<sup>2</sup> For the period of

April 1, 2006 – August 31, 2006:

Public member = \$200; Vice-Chair = \$250

September 1, 2006 – March 31, 2007:

Public member = \$355; Vice-Chair = \$444

April 1, 2007 – March 31, 2008:

Public member = \$380; Vice-Chair = \$470

April 1, 2008 – March 31, 2009:

Public member = \$391; Vice-Chair = \$484

<sup>3</sup> Includes costs for education, cancellation and all Board/Committee meetings.

<sup>4</sup> Includes costs of language and sign interpretation, assistive listening devices, translation, printing, copying, access fees, mailing, telephone, teleconference, travel expenses and office supplies.

## F. APPEAL BOARD MEMBERSHIP as at MARCH 31, 2009

| Last name      | First name      | OIC original start date | OIC expiration date | Position      | Location    |
|----------------|-----------------|-------------------------|---------------------|---------------|-------------|
| Aziz           | Muazaz          | 18-Feb-09               | 17-Feb-11           | Public Member | Mississauga |
| Belanger-Hardy | Louise          | 25-Mar-09               | 24-Mar-11           | Public Member | Ottawa      |
| Burstyn        | Marla K.        | 03-Nov-04               | 26-Feb-10           | Public Member | Toronto     |
| Cohen          | May             | 09-Apr-03               | 08-Apr-14           | Public Member | Toronto     |
| D'Amours       | Marc            | 18-Feb-09               | 17-Feb-11           | Public Member | L'Orignal   |
| Darani         | Shaheen A.      | 23-Jul-08               | 22-Jul-09           | Panel Member  | Toronto     |
| Dizgun         | L. Leslie       | 21-Dec-04               | 15-May-09           | Public Member | Toronto     |
| Downing        | Beth            | 15-Jul-05               | 14-Jul-13           | Public Member | Oakville    |
| Farha          | Soraya          | 03-Mar-04               | 02-Mar-12           | Public Member | Toronto     |
| Fisher         | Garry           | 23-Jul-08               | 22-Jul-09           | Panel Member  | Simcoe      |
| Freedman       | Paul Edward     | 21-Dec-04               | 19-Jun-10           | Panel Member  | Toronto     |
| Green          | David           | 10-Aug-06               | 09-Aug-09           | Public Member | Brampton    |
| Hasselback     | Richard         | 17-Jun-04               | 16-Jun-12           | Public Member | Toronto     |
| Jovanovic      | Stephen         | 11-Mar-09               | 10-Mar-11           | Public Member | Windsor     |
| Kelly          | Thomas J. J.    | 11-Mar-09               | 10-Mar-11           | Public Member | London      |
| Kerenyi        | Norbert Andrew  | 21-Dec-04               | 19-Jun-10           | Panel Member  | Toronto     |
| Kirke          | Leslie          | 18-Feb-09               | 17-Feb-11           | Public Member | Toronto     |
| Lamoureux      | Linda           | 23-Apr-08               | 22-Aug-13           | Chair         | Markham     |
| Lawford        | Michele Justine | 16-Feb-00               | 20-Feb-14           | Public Member | Kingston    |
| Ledger         | Shelley         | 11-Mar-09               | 10-Mar-11           | Public Member | Toronto     |
| Lum            | Lillie Lai Quon | 01-Feb-99               | 22-Mar-13           | Public Member | Thornhill   |
| Lobu           | Taivi           | 11-Mar-09               | 10-Mar-11           | Public Member | Toronto     |

| <b>Last name</b> | <b>First name</b> | <b>OIC original start date</b> | <b>OIC expiration date</b> | <b>Position</b> | <b>Location</b> |
|------------------|-------------------|--------------------------------|----------------------------|-----------------|-----------------|
| McKeown          | Sharon            | 25-Feb-09                      | 24-Feb-11                  | Public Member   | Windsor         |
| Miszuk           | Hedy              | 05-Oct-06                      | 04-Oct-09                  | Public Member   | Hamilton        |
| Moss             | Christine         | 01-Feb-99                      | 22-Mar-13                  | Public Member   | Toronto         |
| Mullan           | Elizabeth         | 15-Apr-03                      | 14-Apr-14                  | Public Member   | Toronto         |
| Ng               | Nelly Wing-Kwong  | 21-Dec-04                      | 19-Jun-10                  | Panel Member    | North York      |
| Opler            | Susan E.          | 23-Jul-08                      | 22-Jul-09                  | Panel Member    | Toronto         |
| Paivalainen      | Seppo             | 02-May-07                      | 01-May-09                  | Public Member   | Thunder Bay     |
| Proulx           | Chantal           | 18-Feb-09                      | 17-Feb-11                  | Public Member   | Ottawa          |
| Ramsbottom       | David James       | 23-Jul-08                      | 22-Jul-09                  | Panel Member    | Dundas          |
| Rasky            | Holly             | 20-Jun-07                      | 19-Jun-09                  | Panel Member    | Toronto         |
| Roper            | Dawn              | 22-Jun-06                      | 21-Jun-09                  | Public Member   | Ajax            |
| Seif             | Atih              | 23-Jul-08                      | 22-Jul-09                  | Panel Member    | Thornhill       |
| St-Hilaire       | Gabrielle Helene  | 11-Mar-09                      | 10-Mar-11                  | Public Member   | Ottawa          |
| Sossin           | Lorne             | 11-Mar-09                      | 10-Mar-11                  | Public Member   | Toronto         |
| Vauthier         | Janice Helen      | 11-Mar-09                      | 10-Mar-11                  | Public Member   | Thunder Bay     |
| Yedvab           | Jay Okun          | 07-May-04                      | 04-Jul-12                  | Public Member   | Toronto         |

## **G. HEALTH BOARDS SECRETARIAT STAFF as at MARCH 31, 2009**

|                     |                                                  |
|---------------------|--------------------------------------------------|
| Lori Coleman        | Registrar                                        |
| Rafia Sheikh        | Deputy Registrar                                 |
| Natalya Demyanenko  | Case Management Coordinator                      |
| Teri D'Annunzio     | Case Management Coordinator                      |
| Maureen Baker       | Case Officer                                     |
| Alexander Papp      | Case Officer                                     |
| Anna Dunscombe      | Case Officer                                     |
| Sandra Evora        | Case Officer                                     |
| Christine Nieckarz  | Administration Coordinator                       |
| Sofiea Choudhary    | Administrative Assistant                         |
| Alpha Aberra        | Administrative Assistant                         |
| Jada Fung           | Administration Assistant                         |
| Mathanan Kailas     | Senior Technology/Business Systems Administrator |
| Aravinth Ramalingam | Systems Support Analyst                          |
| Ashif Kassam        | Systems Officer                                  |
| Sara van der Vliet  | Executive Assistant/Researcher                   |
| Tanya Perdikoulis   | Executive Assistant/Researcher                   |