



**MINISTER
OF FAMILY SERVICES AND HOUSING**

Room 357
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

September 2008

His Honour the Honourable John Harvard, P.C., O.M.
Lieutenant Governor of Manitoba
Room 235, Legislative Building
Winnipeg, Manitoba
R3C 0V8

May It Please Your Honour:

I have the pleasure of presenting herewith the Annual Report of the Social Services Appeal Board for the year 2007/2008.

Respectfully submitted,

Original Signed By
Gord Mackintosh

Gord Mackintosh





**Social Services
Appeal Board**

**7th Floor, 175 Hargrave Street
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September 2008

Honourable Gord Mackintosh
Minister of Family Services and Housing
357 Legislative Building

Dear Sir:

Attached is the Annual Report of the Social Services Appeal Board for the fiscal year ending March 31, 2008. The Social Services Appeal Board is required to produce an independent Annual Report according to *The Social Services Appeal Board Act* which was proclaimed in February 2002.

The Board is proud of its continued efforts to provide a fair and equitable appeal process for the citizens of Manitoba, and continues to carry out its mandate of providing advice to the Minister on program and policy issues that arise through appeal hearings.

This document reports the Board's continued work in these areas, and I respectfully submit it to your attention.

Yours truly,

Kristine Barr
Chairperson



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BOARD MEMBERSHIP

The Social Services Appeal Board (SSAB) consists of 15 members who are appointed by the Lieutenant Governor in Council. Members must represent the social, economic, and cultural diversity of the province. They must also exhibit knowledge of the social programs and services that have the right of appeal to the appeal board. Members cannot be employees of a minister responsible for an act in which the right of appeal is granted. Each member is appointed for a term of two years and may be reappointed for two additional two-year terms.

Staff that support the activities of the board are employed by the Department of Family Services and Housing.

Appeal Board Appointees during the 2007/08 fiscal year:

Chairperson:	Kristine Barr
Vice-chair:	George Dyck
Members:	Robert Doherty Patrick Fortier Gina Guiboche Marlene Head Jany Keenan Larry Morrissette George Pelletier Dennis Ruggles Linda Shewchook (resigned December 2007) Andrew Simpson Audra Taylor Mark Koenker

Social Services Appeal Board Staff:

Heather Hamelin, Director
Judi Moxley, Assistant Director
Linda Bothorel, Administrative Assistant
Karen McKane, Administrative Secretary

Legal Counsel: Lawrie Cherniack

BOARD BIOGRAPHIES – 2007/08

Kristine Barr, Chairperson:

Kristine is a family lawyer with the firm of Chapman Goddard Kagan. She has served as an elected school trustee in the Winnipeg School Division since 1998 and is currently the Chair of the board. Kristine co-founded the Teen Talk Program at Klinik Community Health Centre where she previously worked as an educator, peer support coordinator and the provincial "Think Again" teen pregnancy prevention campaign coordinator. She has volunteered with a number of community organizations such as the Rainbow Resource Centre, the Women's Health Clinic and the Manitoba Association of Women and the Law. Kristine is committed to human rights and working for social justice.

George Dyck, Vice-Chairperson

George obtained a B. Sc. in mathematics and physics in 1964, certification in nuclear medicine technology in 1969, certificate in adult education in 1979 and an M. Sc. in physiology in 1981. George was employed as an instructor "C" at Red River Community College for 22 years before retiring in 1998 for health reasons. He was a long-time board and executive member and immediate past president of the Canadian Paraplegic Association (MB) Inc. (CPA) as well as a board and executive member of Ten Ten Sinclair Housing Inc., board member of the Manitoba Paraplegia Foundation, board and executive member of Canadian Centre on Disability Studies (CCDS), Chair of Handi -Transit Policy Advisory Committee, Chair of African Task Force of International Committee of CCDS and editor of the newsletter of the Manitoba OldTyme and Bluegrass Society.

Jany Keenan

Retired. Worked as a registered nurse for many years. Graduated from the University of Manitoba with a law degree in 1993. Jany practiced law until 1996 and then joined the Department of Justice until retirement. Board member of C.E.D.A. (Community Education Development Association) since 1996. Active in advocating for children in schools and making presentations to the school board on their behalf.

Robert Doherty:

Currently self-employed - Prairie Testing and Counseling Service. Previous experience includes counselor at Assiniboine Community College and vocational counselor, Westbran. Community involvement includes: Director, Brandon Optimist Club; Director, Brandon Friendship Centre, volunteer of Canadian Diabetes Association, Y.M.C.A and Manitoba Heart and Stroke Foundation.

Larry Morrissette:

Larry is currently Executive Director of Ogijita Pimatiswin Kinamatwin - an aboriginal youth training program in Winnipeg. He continues to be a sessional instructor for the Faculty of Social Work where he has been for a number of years. Larry is co-founder of Children of the Earth High School and has been active involved with community issues impacting aboriginal people. Larry is active on several inner-city boards.

Patrick Fortier:

Patrick has worked extensively for a variety of departments in the federal public service and has also worked for the Province of Manitoba. He is an active member of the franco-manitoban community, volunteering for many community organizations and sitting on the boards of the Société franco-manitobaine and the Musée de Saint-Boniface. He has a bachelor of arts degree from both the Collège universitaire de Saint-Boniface and the University of Manitoba with a major in economics and a minor in history and is currently completing his master's degree in public administration at the University of Winnipeg.

Dennis Ruggles:

Dennis has worked as a transit worker for several years where he was active in the Amalgamated Transit Union, serving as president, chief union steward, executive board member and appointed delegate. He has served as executive director for the Injured Workers Association of Manitoba and as a campaign. He was elected to the Seven Oaks School Division in October 2006.

Audra Taylor:

Currently doing graduate studies in social work, administrative and policy stream. Audra was previously employed at the Family Centre of Winnipeg as a Family Support Supervisor in the Family Support Program and Special Needs Family Child Care. She was previously employed as coordinator of The Facts of Life Line.

Served as a vice president on the board of directors of the Day Nursery Centre and served on the board of the Women's Health Clinic.

Currently serves on Wolseley School Parent Council and is a volunteer at Wolseley School. Coordinated first Great Canadian Shoreline Clean-up of Winnipeg Beach. Bachelor degrees in human ecology, family studies. Field placement in social work – Canada Russia Disability Program, social work stream.

Andrew Simpson:

Former student at University of Manitoba. Involved in a car accident in December 1974. Hospitalized for 2 ½ years. Since then he has taught swimming to disabled individuals, studied environmental industries and helped others with physical problems. Volunteered at Oak Hammock Marsh, worked at Lower Fort Garry Nursery and assisted with Elections Canada.

George Pelletier:

Board member for Legal Aid Manitoba from 2002 until 2005. Past board member of Manitoba Metis Federation from 1997 to 2000. Past Chairperson of Westman Metis Association 1990 until 1997. Member of Knights of Columbus for the past 30 years. Recently joined United Commercial Travellers Association.

Gina Guiboche:

Currently the Financial Awards Officer with the University College of the North (UCN). Past term position with Manitoba Advanced Education on the implementation team for UCN Five Year Strategic Plan. Community wellness administrator/marriage and family therapist for the Mental Health Department for Opaskwayak Cree Nation.

Term Review Committee for Provincial Judicial Appointment Nominees. Board experiences on local, provincial and Canadian levels for education, denomination work.

Currently working on her PhD in higher education leadership online through the University of Calgary.

Marlene Head:

Member of Opaskwayak Cree Nation near The Pas, Manitoba. Presently employed as a post-secondary counselor with Opaskwayak Educational Authority. Presently holding two Chairperson portfolios: Opaskwayak Cree Nation Child & Family Services, and Opaskwayak Women's Circle (co-founder and member since 1994). Graduated from the University of Manitoba with a bachelor of social work in 2000. Traditional fisherman, trapper, hunter, and gatherer. Former Chairperson of the Opaskwayak Health Authority. Strong advocate for post-secondary students, women, children and the disadvantaged through volunteer and participation in events/activities relating to empowering women and youth, human rights, diabetes, awareness, etc. Happily married for 28 years with four sons and one grandson.

Mark Koenker:

An ordained pastor of the Evangelical Lutheran Church in Canada (ELCIC). Active on the boards of numerous non-profit and community-based organizations, most recently as founding member and vice president of Heart Housing Inc. Mark is currently employed as pastor of Rural Beausejour Lutheran Parish, a three-congregation parish northeast of Beausejour and serves on the National Church Council of the ELCIC. He has also worked in government.

JURISDICTION OF THE SOCIAL SERVICES APPEAL BOARD

The Social Services Appeal Board is the independent appeal body for the majority of programs and services provided by the Department of Family Services and Housing. The board reports directly to the Minister of Family Services and Housing.

The board was first established in 1959 by *The Department of Welfare Act*. In 1974, that Act was repealed and the board continued under the provisions within *The Social Services Administration Act*. On February 18, 2002, *The Social Services Appeal Board (SSAB) Act* was proclaimed.

Under *The Social Services Appeal Board Act*, the board has the ability to determine its own administrative policies and procedures. A series of information bulletins has been developed and made available in order to provide this information to the public.

The board's decision cannot be overturned by the minister's office. Only the board, through a reconsideration of its decision, or the Court of Appeal, may overturn a decision.

There are several different issues that can be appealed. These are summarized below:

Adoption Agency Licensing

Under Section 9 of *The Adoption Act*, an individual may file an appeal with the appeal board if the director refuses to issue a licence for an adoption agency. An individual may also file an appeal if a licence that was previously issued has been suspended, cancelled or not renewed.

Child Care Facility Licensing

A person who is refused a licence for the operation of a child care facility other than a foster home or whose licence is suspended, cancelled or refused renewal may appeal this decision to the appeal board under Section 8(5) of *The Child and Family Services Act*.

Child Care Licensing and Subsidies

Section 20 of *The Community Child Care Standards Act* allows the board to hear appeals on the following four issues:

- the refusal to issue a licence to a child care facility
- the suspension or revocation of a child care facility licence
- the imposition of terms or conditions on a child care facility licence
- the denial or amount of a child care subsidy

Financial Assistance Programs

Employment and Income Assistance Program

Subsection 9(3) of *The Employment and Income Assistance Act* gives an individual the right to appeal to the appeal board for the following reasons:

- a. he or she was not allowed to apply or re-apply for income assistance or general assistance
- b. his or her request for income assistance or general assistance or for an increase in income assistance or general assistance was not decided upon within a reasonable time
- c. his or her application for income assistance or general assistance was denied
- d. his or her income assistance or general assistance was cancelled, suspended, varied or withheld
- e. the amount of income assistance or general assistance granted is insufficient to meet his or her needs

55 PLUS Junior Component

The Junior Component of the 55 PLUS Program gives the right to appeal if an applicant is told that he or she is not eligible to receive benefits under the 55 PLUS Program. An appeal may also be filed if an individual disagrees with the level of benefits that he or she is receiving under the program. The right to appeal for these reasons is granted under Section 9 of the Income Supplement for Persons Not Eligible for Old Age Security Benefits (55 PLUS) Regulation of *The Social Services Administration Act*.

Manitoba Prenatal Benefit

If an individual disagrees with the assessment or re-assessment of his or her Manitoba Prenatal Benefit, the individual can appeal this decision under Section 12 of the Manitoba Prenatal Benefit regulation under *The Social Services Administration Act*.

Residential Care Facility Licensing

A person may appeal the department's decision to deny, suspend or cancel a licence for a residential care facility. An individual may also file an appeal with the appeal board if a letter of approval relating to a residential care facility is cancelled or suspended. The right to appeal these decisions is granted under Section 13 of *The Social Services Administration Act*.

Vocational Rehabilitation Services Program (Eligibility)

The appeal board hears appeals regarding the Vocational Rehabilitation Services Program. An appeal may be filed if the director refuses an application on the grounds that the applicant does not meet the eligibility criteria for enrolment. The right to appeal this decision is granted under Section 6 of the Vocational Rehabilitation of Disabled Persons Regulation under *The Social Services Administration Act*.

Vulnerable Persons Living with a Mental Disability Program (Eligibility and Individual Care Plan)

The appeal board is also responsible for hearing appeals regarding *The Vulnerable Persons Living with a Mental Disability Act*. Section 16 of the Act allows individuals to appeal when a person's eligibility for entrance into the program is denied, or there is a dispute concerning the individual's support services plan.

FINANCIAL INFORMATION

In 2007/08, the annual budget for the Social Services Appeal Board was \$439,300. This amount was apportioned into \$351,000 for staff and board salaries and benefits, and \$88,300 for operating costs. The actual expenditures were \$394,800 for an under expenditure of \$44,500.

The board members' per diem payments are paid from salary expenses. In the 2007/08 fiscal year, the amount spent on board per diems was \$68,711.

Actual Expenditures*

09-1C Social Services Appeal Board

Expenditures by sub-appropriation	Actual 2007/08 \$000	FTE**	Estimate 2007/08 \$000	Variance Over(Under)
Total salaries and employee Benefits	304.9	4	351.0	(46.1)
Total other expenditures	89.9		88.3	1.6

* Amounts are expressed as thousands of dollars.

** Full time equivalents do not include board positions.

Board members are paid a per diem when they attend hearings, meetings, and training sessions. For a full day, the Chairperson receives \$243.00 and board members receive \$139.00. For a half day, the Chairperson receives \$138.00 and the board members receive \$79.00.

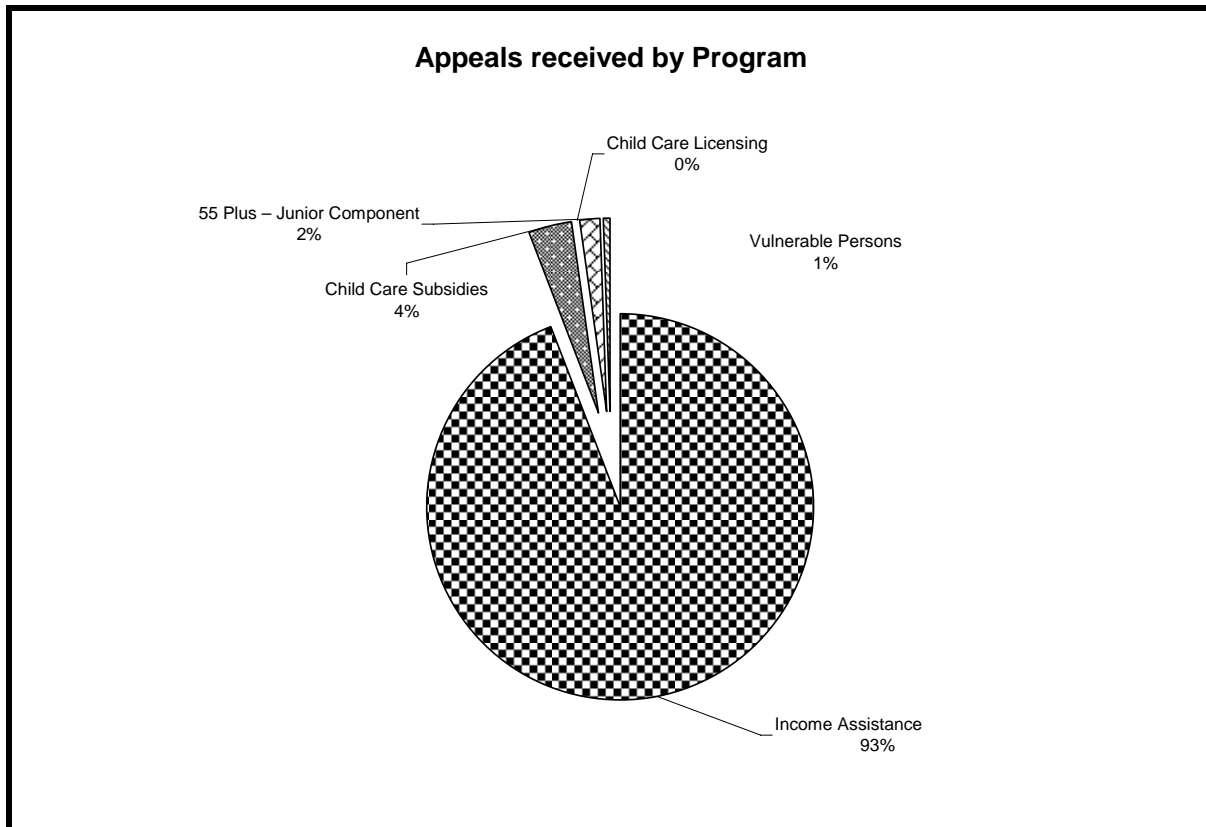
APPEAL ACTIVITY

In the 2007/08 fiscal year, there were a total of 599 appeals filed compared to 674 the previous fiscal year.

Appeals Filed by Program:

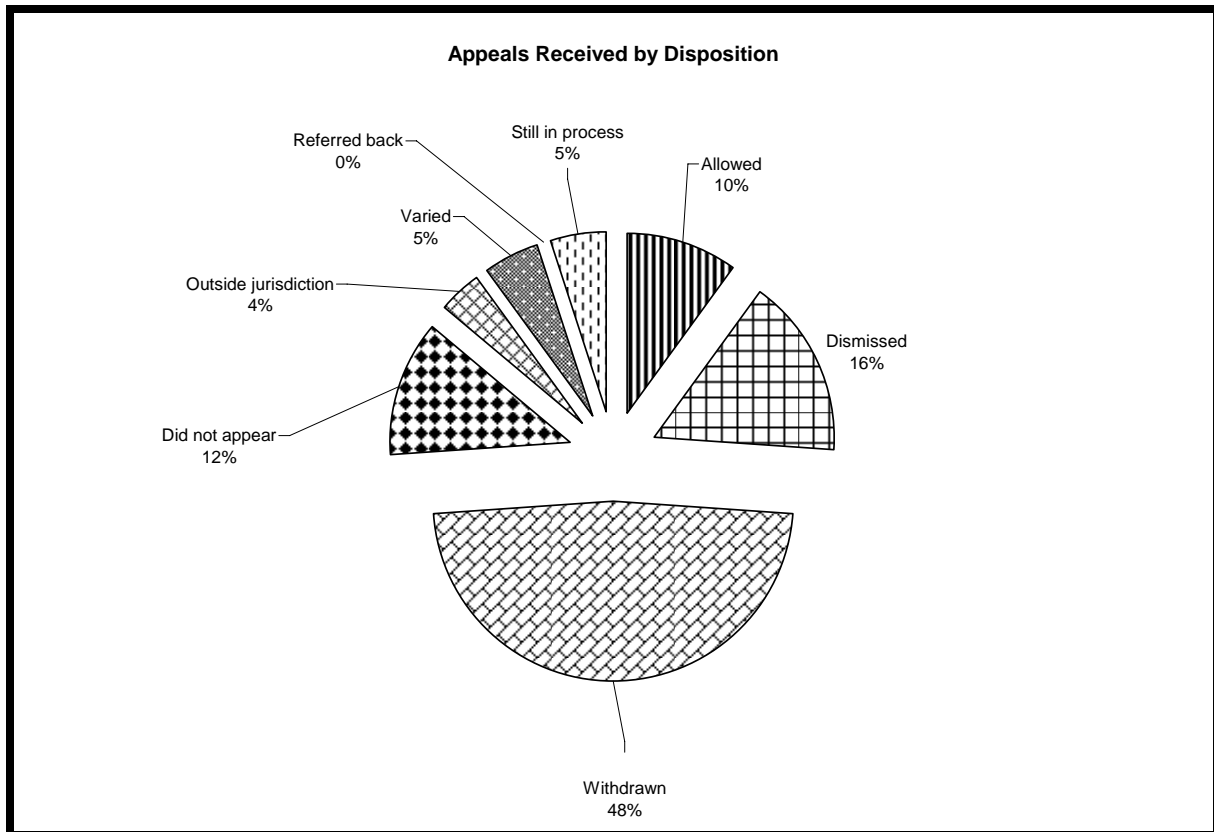
The 599 appeals are broken down by program area are as follows:

Income Assistance	564
Child Care Subsidies	21
Child Care Licensing	1
55 Plus – Junior Component	9
Vulnerable Persons	4



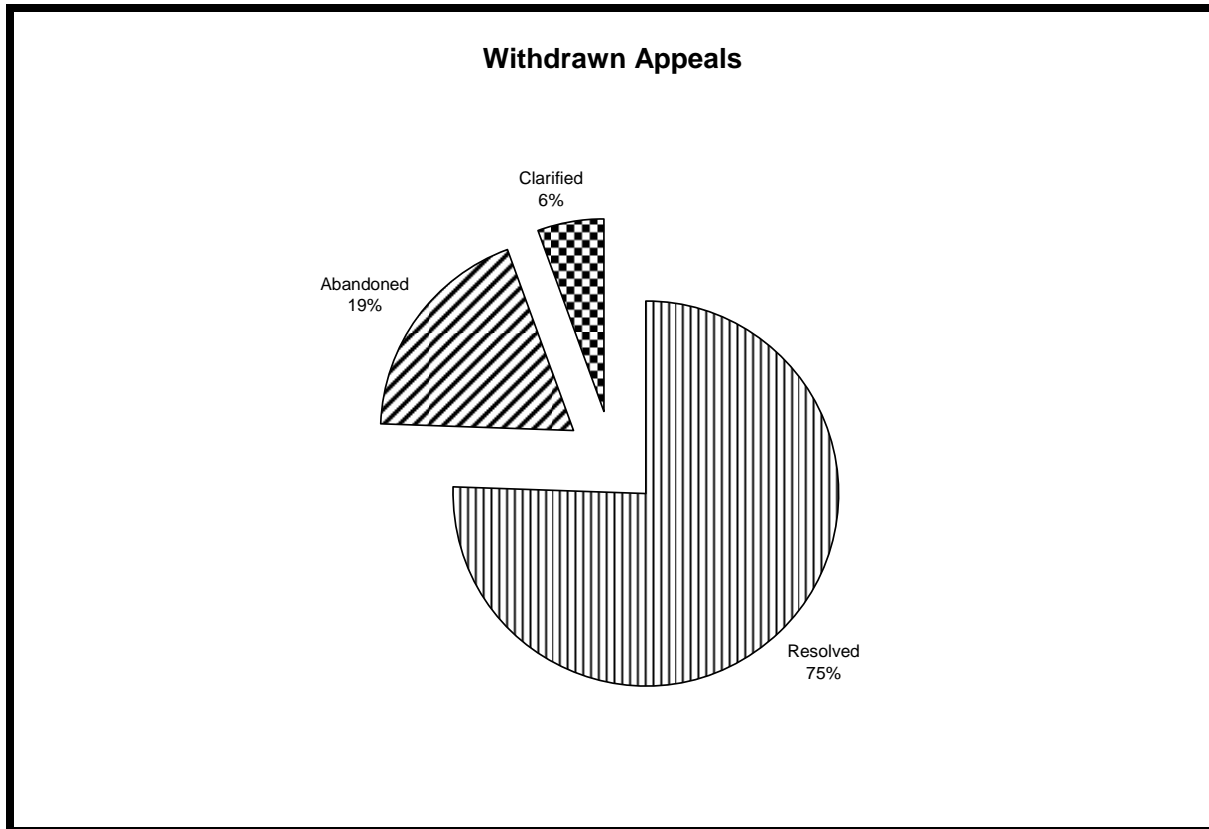
Appeals Filed by Disposition:

	<u>2007/08</u>	<u>%</u>	<u>2006/07</u>	<u>%</u>
Allowed	59	10	74	11
Dismissed	95	16	129	19
Withdrawn	285	48	302	45
Did not appear	66	12	59	9
Outside jurisdiction	28	4	41	6
Varied	35	5	27	4
Referred back	1	0	7	1
Still in process	30	5	35	5
TOTAL	599	100	674	100



Withdrawn Appeals:

Resolved ¹	215
Abandoned ²	54
Clarified ³	16



The 285 appeals that were withdrawn combined with the 59 that were allowed result in 344 or 57% of total appeals whose outcome was in favour of the appellants.

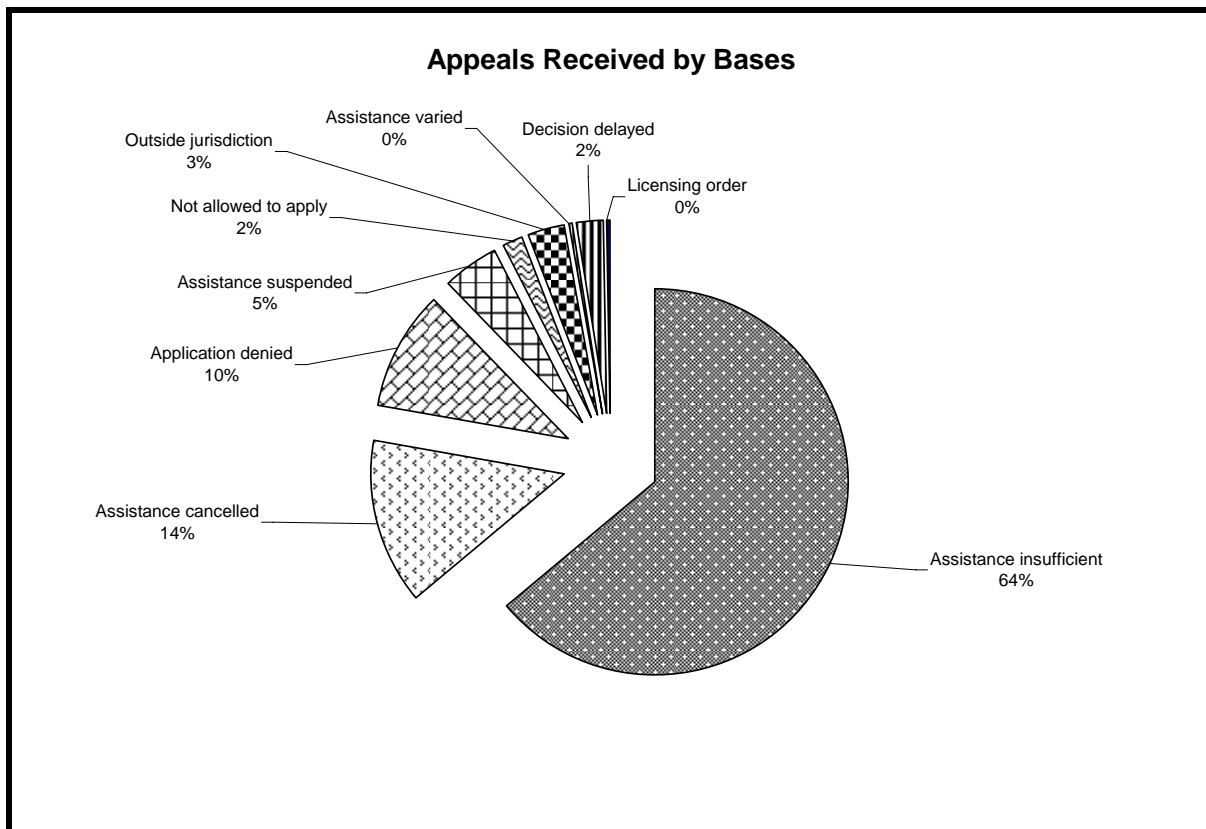
Notes:

- ¹ A **resolved** appeal means that some action was taken by the department to address the concerns raised in the appeal.
- ² An **abandoned** appeal means that the appeal board has been unable to contact the appellant for a significant period of time and their appeal has been closed.
- ³ A **clarified** appeal means that an explanation by the department caused the appeal to be withdrawn.

Bases of Appeal:

Of the 599 appeals filed during the 2007/08 fiscal year, the bases of appeal were as follows:

Assistance insufficient	382
Assistance cancelled	84
Application denied	59
Assistance suspended	29
Not allowed to apply	10
Outside jurisdiction	18
Assistance varied	2
Decision delayed	14
Licensing order	1



Allowed Appeals:

For the 2007/08 fiscal year, there were 59 appeals allowed. Disposition of the allowed appeals was as follows:

Employment and Income Assistance	58
Child Care Subsidy	1

Reasons for Appeal:

Of the appeals received for 2007/08, the most common reasons for filing appeals were as follows:*

Medical eligibility	136
Financial resources	61
Health needs	51
Overpayments	41
Shelter costs	50
Non cooperation	49
Special needs	32
Common-law union	15
Irresponsible job termination	17
Moving costs	13
Education needs	3
Sanctions	5

These reasons apply to 473 appeals, or 78% of the total appeals filed.

* Reasons for appeal apply only to Employment and Income Assistance appeals.

REQUESTS FOR RECONSIDERATION

Number of Requests:

	<u>2007/08</u>	<u>2006/07</u>
Total requests received	22	29
From appellant	17	22
From respondent	5	7

Program Breakdown of Reconsideration Requests:

	<u>2007/08</u>	<u>2006/07</u>
Income Assistance	22	29

Disposition of Reconsideration Requests:

	<u>2007/08</u>	<u>2006/07</u>
Requests granted	3	7
Requests denied	17	21
Withdrawn	2	1

Of the Requests Granted:

	<u>2007/08</u>	<u>2006/07</u>
Decision upheld	1	1
Decision varied	1	1
Decision overturned	1	1
Request withdrawn	0	1
Pending	0	3

SUMMARY OF ADVISORY ROLE

The Social Services Appeal Board Act enables the appeal board to advise and make recommendations to the minister about social services provided under the designated acts. The board met in its advisory capacity three times during the 2007/2008 fiscal year.

The following is a summary of the issues brought to the attention of the minister during the 2007/08 fiscal year.

The first issue which came to the attention of the board concerned individuals who were in receipt of medical eligibility under Section 5(1) (a) of *The Employment and Income Assistance Act*. The Employment and Income Assistance regulation makes some exclusions regarding persons who reside in certain residential institutions who are not eligible to receive the additional assistance for persons with disabilities monthly assistance of \$80 per month. The board recommended that this exclusion be removed, as persons who reside in these institutions may have many expenses associated with managing their disability that are not provided for by the institutions.

The second recommendation was with respect to a monthly health compensation payment which was set up by the Ontario government for mercury poison compensation. Currently, both the Ontario government, and the federal government exempt these payments from affecting income assistance benefits, however the Manitoba government has been deducting these payments from provincial income assistance benefits. The board recommended that these payments be exempt.

The board made a recommendation regarding persons who apply for general assistance who are transferring from another source of income assistance such as from the child and family services system, immigrant settlement allowance, or another province. Currently a person applying for general assistance is not allowed to have a liquid asset exemption at the point of intake, which means any cash or assets they have will be deducted from their first month's assistance cheque. However, in any subsequent month, they are allowed a liquid asset exemption of \$400. The board recommended that a person transferring from another source of income assistance, be allowed the \$400 liquid asset exemption at the point of intake.

The board has seen an increase in the number of appellants who are not able to get the required documentation from their health care professional because there is a charge to obtain the medical note. The board has recommended that anytime the department requires that a person obtain a medical note, and there is a cost for that note, that the department provides the funds to obtain the required document.

The board expressed concern regarding the practice of discontinuing benefits for persons who do not meet the conditions of their work expectations. The regulations states that the director may discontinue or reduce the amount of income assistance a person receives when they do not meet their work expectations. However the board has observed that whenever a single general assistance recipient has not met their work expectations, the option of reducing the benefits are never utilized. The

board recommended that the department employ a reduction rather than a full denial whenever possible. The board further recommended that whenever a person's assistance was cancelled or denied, they always be provided with a path or action plan that could be completed in order to regain their eligibility.

The board also made a recommendation regarding how the department assesses eligibility under Section 5(1) (a) for persons whose main barrier to employment is an addictions issue. The board has observed that an addiction has not been treated as a medical issue, and the medical panel does not consider an addiction as a physical or mental incapacity. The board believes that depending on the severity of the addiction, it could affect a person's functioning to the point where they are unable to earn a living sufficient to meet their basic needs, and would recommend that addictions not be automatically removed from consideration for medical eligibility.

The board had three requests for speech communication devices which assist persons with language difficulties to be understood by others. In all three of these cases, the appellant had lived several years with one of these devices until the unit became damaged and unable to be repaired. The department had routinely denied these requests. The board allowed each of these appeals on their own individual merits and recommended to the department that they revise their policies to allow for the approval of these devices as a medical necessity that would ensure a person's safety and independence.

The board continues to recommend an annual review of rates to reflect the increase in the cost of living and particularly shelter costs. The board noted that the Employment and Income Assistance Regulation allows for the director to pay up to the actual amount of rent, taking into consideration individual circumstances. The board encouraged the department that in lieu of increasing the published guideline rental amounts, more discretion be used in taking into account individual circumstances. Several examples were provided where discretion could be utilized.

SELECTED OVERVIEWS AND CASE SUMMARIES

The following case summaries have been selected to illustrate some typical appeal situations, and to explain the rationale the board uses when making decisions. It is hoped these summaries provide some assistance to community members in understanding the function of the board and what to expect when preparing for an appeal.

Sample #1

Program: Employment and Income Assistance

Basis of appeal: Income assistance insufficient

Appeal detail: Medical eligibility

Decision: Allowed

Case Details

Mr. M. appealed that his application for medical eligibility under Section 5(1)(a) of *The Employment and Income Assistance Act* was denied.

Mr. M. had submitted a medical assessment form indicating his diagnosis as an “inability to walk due to childhood poliomyelitis”. The doctor had not indicated on the assessment form whether or not Mr. M. was able to work, but the doctor had indicated that Mr. M. would have permanent limitation of functions.

Mr. M. had no use of his legs and used a wheelchair for his mobility. He was a recent immigrant to Canada, and had no work experience in either Canada or his home country. Before immigrating to Canada, Mr. M. supported himself by providing “a look out” or sometimes by heating a rock in the fire and ironing a passerby’s clothing on the ground.

A letter of support from the Society for Manitobans with Disabilities indicated that Mr. M. was very motivated to overcome his barriers and find employment, but in their opinion his disability had an enormous impact on his employability. The agency had tried three separate work placements; all without success.

The department had denied the request for medical eligibility on the basis that Mr. M. had been attending English as an Additional Language classes, had been self sufficient in his home country, and had written in his self-report that he could do sedentary work.

Decision

The board allowed this appeal as they believed that although Mr. M. showed great enthusiasm to try and work and be self-supporting it was the opinion of the experts at SMD that this was not a realistic plan for him at that time. It was obvious to the board that Mr. M. had multiple barriers to employment caused by his disability, and only supports available to him under 5(1) (a) would enable him in the future find employment.

Sample #2

Program: Employment and Income Assistance
Basis of Appeal: Income assistance insufficient
Appeal Detail: Medical transportation
Decision: Dismissed

Case Details

Ms. B. resided in a small town in rural Manitoba and had numerous medical appointments. Ms. B. had a doctor several hundred kilometers away from where she resided. The department advised Ms. B. that they would only pay for medical transportation to the nearest location where her medical needs could be addressed. If she chose to continue seeing her doctor, they would only reimburse her an amount equivalent to transportation to the nearest medical centre.

Ms. B. argued that she should have the right to choose her own doctor where she felt she was provided with the best care.

Decision

The board determined that under *The Employment and Income Assistance Act* the department is obligated to provide medical transportation to the nearest medical centre where the person can receive appropriate medical care. Ms. B. did not present evidence to the board that the nearest medical centre could not meet her medical needs; it was a matter of comfort and preference. Although the board agreed that Ms. B. had the right to see the doctor of her choice, she was only eligible for transportation costs to the nearest medical center. She would have to pay for the cost of this choice herself. Ms. B.'s appeal was therefore dismissed.

Sample #3

Program: 55 Plus-a Manitoba Income Supplement

Respondent: Provincial Services

Basis of Appeal: Application denied

Decision: Dismissed

Case Details

55 Plus is a provincial income supplement program providing benefits to low-income Manitobans who are 55 years of age and older. When a couple applies for this benefit, their eligibility is assessed based on family income and eligible persons each receive their own cheque on a quarterly basis.

Mr. and Mrs. D. applied for the 55 Plus Program. Mr. D. had income in the amount of \$23,871.00 per year and Mrs. D. did not have any income. Mr. D. indicated at the hearing that he understood why he was not eligible for the 55 Plus program, but believed that his wife, who had no income, should be eligible for benefits.

Decision

The board determined that the governing regulation clearly stated that eligibility for 55 Plus benefits for an applicant and their spouse will be based on net family income. As the department correctly based both Mr. and Mrs. D.'s eligibility on Mr. D.'s income, the appeal was dismissed.

Sample #4

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance cancelled

Decision: Varied

Case Details

Ms. O. appealed that her income assistance benefits had been cancelled for not meeting work expectations under Sections 10(1) and 10(2) of The Employment and Income Assistance Regulation.

Ms. O. was referred by her case coordinator to attend an employment preparation program known as WKRP (Workplace Readiness Program). Ms. O. signed an action plan in which she agreed to attend the program on a daily basis and if sick, she must phone to advise the program and provide a doctor's note.

Ms. O. attended the first day of the program, but called in sick the second day. She provided a doctor's note verifying she was in attendance at the doctor's office that day. She did not attend the program any further. The case coordinator called the doctor's office to determine when she would be able to return to the program. The doctor advised the worker that her condition did not warrant missing any days of school/work. Ms. O.'s income assistance file was then closed.

Ms. O. indicated that she had lost her eyeglasses and had pink eye. She also indicated that her eyes were very swollen and she had a lot of pain. She stated that she was still having trouble with her eyesight and was going for a follow up appointment to determine if there was any scarring.

Decision

The board determined that at the time the department made its decision, they had sufficient rationale to cancel Ms. O.'s income assistance. The board agreed that the note provided by the doctor did not provide sufficient justification for Ms. O. to stop attending the program and Ms. O. should have maintained contact with the program and her worker. The board however believed that with the additional information Ms. O. provided at the hearing, it would have been unlikely that she would have been able to actively participate in the program without her eyewear and with the pain she had been experiencing at the time. The board therefore varied the decision of the director and ordered the department to re-enroll Ms. O. on income assistance effective the date of the hearing.

Sample #5

Program: Employment and Income Assistance
Basis of Appeal: Income Assistance insufficient
Decision: Allowed

The following appeal also illustrates the request for reconsideration process.

Case Details

Ms. C. appealed the amount that she was receiving for shelter allowance.

The current guideline rate for a single person in receipt of medical benefits is \$285 per month. (An additional \$35 per month is available through the Shelter Benefit Program.) As Ms. C. was required to pay for her hydro costs, \$15 of her shelter allowance was allocated for hydro and \$270 was allocated for rent. When Ms. C. first moved into her accommodations the rent amount was \$370 per month. Ms. C. authorized the department to send the entire \$370 to her landlord by deducting the monthly payable amount for her basic needs by \$100. In the time Ms. C. has been residing at the same address the rent had increase twice for a total increase in rent of \$32. Ms. C. was finding that this increased amount was causing her hardship and she had requested an increase in her rental allowance to offset this amount. Ms. C. indicated that she had looked for cheaper accommodations, but could not find anything comparable for less money, and that with her current health conditions, it would be very difficult for her to move. Ms. C. indicated that she had severe heart and lung problems.

Decision

The board determined that when Ms. C. moved into her apartment she made a choice to pay the \$100 in excess rent, which she believed she could handle financially. However the subsequent increases in her rent, which were beyond her control, have created a financial hardship for her. As the regulation sets out that the director has the discretion to pay up to the actual amount of a person's rent, the board believed that it was reasonable to provide Ms. C. with \$32 per month in additional shelter costs. The board therefore ordered the department to increase the shelter allowance by \$32 for as long as Ms. C. remained at the same address.

Request for reconsideration

The department made a request that the board reconsider their decision. Of particular concern to the department was that the board's decision did not indicate that it was Ms. C.'s particular situation that warranted an increase in the shelter benefits, but that they appeared to make a determination that the director was obligated to increase the shelter allowance rate for all persons whose rent was subject to yearly rental increases.

A panel of the board reviewed this request and replied to the department that their decision was very specific to Ms. C.'s situation and not directed towards any other circumstances or Employment and Income Assistance recipients.

The Social Services Appeal Board Act

(Assented to July 6, 2001)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

DEFINITIONS AND PURPOSE

Definitions

1 In this Act,

"appeal board" means the Social Services Appeal Board referred to in section 3; (« Commission d'appel »)

"designated Act" means

- (a) *The Adoption Act*,
- (b) *The Community Child Care Standards Act*,
- (c) *The Employment and Income Assistance Act*,
- (d) *The Social Services Administration Act* or a regulation under that Act,
- (e) *The Vulnerable Persons Living with a Mental Disability Act*,
- (f) any other Act or regulation designated as a designated Act in the regulations; (« loi désignée »)

"designated officer" means a person who has authority under a designated Act to make a decision or order for which there is a right of appeal under the designated Act to the appeal board, or the person to whom that authority is delegated; (« fonctionnaire désigné »)

"minister" means the minister appointed by the Lieutenant Governor in Council to administer this Act; (« ministre »)

"panel" means a panel of the appeal board. (« comité »)

S.M. 2004, c. 42, s. 50.

Purpose

2 The purpose of this Act is to give Manitobans a fair, impartial and informal appeal process from decisions relating to various social services and programs.

APPEAL BOARD

Social Services Appeal Board

3 The Social Services Advisory Committee, which was established under *The Social Services Administration Act*, is continued under this Act as the Social Services Appeal Board.

Members

4(1) The appeal board is to consist of 15 members appointed by the Lieutenant Governor in Council.

Who can be a member

- 4(2) The members of the appeal board must, in the opinion of the Lieutenant Governor in Council,
- (a) be representative of the regional, economic and cultural diversity of Manitoba;
 - (b) be knowledgeable about social services and programs under designated Acts; and
 - (c) not be employees under the control of a minister responsible for a designated Act.

Two-year terms

- 4(3) Each member is to be appointed for a term of two years, and may be reappointed for two further two-year terms.

Reappointing a member

- 4(4) A member who has served for three terms may be reappointed for a further term, but only if at least one year has passed since the end of his or her last term.

Member continues to hold office

- 4(5) A member continues to hold office until he or she is reappointed, a successor is appointed or the appointment is revoked.

Remuneration and expenses

- 5 The members of the appeal board are to be paid remuneration and expenses at rates set by the Lieutenant Governor in Council.

Chair and vice-chair

- 6(1) The Lieutenant Governor in Council must designate one of the members of the appeal board as chair and one or more members as vice-chairs.

Duties of vice-chair

- 6(2) A vice-chair has the authority of the chair if the chair is absent or unable to act, or when authorized by the chair.

Staff

- 7 Any employees required to enable the appeal board to carry out its responsibilities may be appointed in accordance with *The Civil Service Act*.

Responsibilities of the appeal board

- 8 The appeal board has these responsibilities:
- (a) to hear and decide appeals under designated Acts;
 - (b) at the minister's request, to advise and make recommendations about matters that relate to social services and programs in Manitoba;
 - (c) on its own initiative, to advise and make recommendations to the minister about social services provided under the designated Acts;
 - (d) to perform any other duties assigned to it by an Act or regulation or by the minister.

Procedural rules

- 9 The appeal board may establish its own rules of practice and procedure and must make them available to the public.

Posting information about appeals

- 10 A designated officer must post information about the right to appeal to the appeal board, and about the appeal process, in a visible public location in any office in which decisions are made that can be appealed under a designated Act.

PANELS OF THE APPEAL BOARD

Board to sit in panels

11(1) The appeal board must sit in panels of three members when hearing appeals.

Assigning members to panels

11(2) The chair is to assign members to sit on panels.

Chair of panel

11(3) The chair or a vice-chair is to preside over a panel, or the chair may designate another member of the appeal board to preside.

Who is not eligible to be a member of a panel

11(4) A member of the appeal board is not eligible to sit on a panel if he or she

- (a) is a relative of a party; or
- (b) is not able to be impartial and independent about the outcome of the appeal.

Quorum

11(5) A quorum for a panel is the three members referred to in subsection (1).

Jurisdiction of panel

11(6) In considering and deciding an appeal,

- (a) a panel has all the jurisdiction of the appeal board and may exercise the board's powers and perform its duties; and
- (b) a decision of a majority of the members of a panel is the decision of the appeal board.

APPEAL TO THE APPEAL BOARD

Filing an appeal

12(1) A person who has a right to appeal a decision or order to the appeal board under a designated Act may commence an appeal by filing a notice of appeal with the board.

Time limit for filing

12(2) A notice of appeal must be filed within 30 days after the date of the decision or order, unless the designated Act specifies a different time limit.

Extending the time limit

12(3) The appeal board may extend the time limit for commencing an appeal, and may do so either before or after the time limit expires.

Reasons

12(4) A notice of appeal must be in writing and must state the reasons for the appeal.

Parties

13(1) The parties to an appeal are the person who has a right to appeal to the appeal board and the designated officer under the designated Act.

Parties to be present

13(2) The appellant and the designated officer or a delegate of the designated officer must be present at the hearing or, if subsection 19(2) applies, must be able to communicate with each other and the appeal board simultaneously.

Advocates

14 At the appellant's request, another person may communicate with the appeal board at any time on the appellant's behalf and may be present with the appellant at the hearing.

Notice to the designated officer

15(1) On receiving a notice of appeal, the appeal board must promptly give a copy of it to the designated officer.

Designated office must forward documents

- 15(2) On receiving the notice of appeal, the designated officer must promptly give the appeal board
- (a) all of the documentary evidence on which the designated officer made the decision or order being appealed;
 - (b) any documents that the designated officer is specifically required to provide to the board under the designated Act; and
 - (c) any other documents the designated officer thinks might be relevant to the appeal.

Hearing date

16(1) For each appeal, the appeal board must arrange the earliest possible hearing date. The hearing must not be commenced more than 30 days after the board receives the notice of appeal, unless the board at the request of the appellant, grants an extension.

Notice

16(2) Unless the parties agree to a shorter period of notice, at least six days before the hearing the appeal board must give the parties written notice of the date, time and place of the hearing.

Parties may examine evidence

17 The appeal board must give each party a reasonable opportunity to examine and copy any information that has been submitted to the board for the purpose of the hearing.

Powers and duties of the board

- 18 The appeal board must inform itself fully of the facts concerning each appeal. For that purpose, the board
- (a) may require the attendance of witnesses and the production of documents in addition to the witnesses called by the parties and the documents produced by the parties; and
 - (b) has the powers of a commissioner under Part V of *The Manitoba Evidence Act*.

Hearing process: rules of evidence do not apply

19(1) The appeal board is not bound by the rules of evidence that apply to judicial proceedings.

Hearing by teleconference

19(2) A hearing may be held by means of a conference telephone call, or by another method of communication that permits the appeal board and the parties to communicate with each other simultaneously.

Closed hearing if appellant requests

19(3) The hearing is to be closed to the public if the appellant asks for it to be closed; otherwise it is to be open to the public.

Adjournment

19(4) The appeal board may adjourn a hearing when it considers it appropriate to do so.

ORDER OF THE APPEAL BOARD

Order of the board

- 20(1) Unless the designated Act states otherwise, after a hearing the appeal board may, by written order,
- (a) confirm, vary or rescind the order or decision of the designated officer;
 - (b) make any order or decision that the designated officer could have made; or
 - (c) refer the matter back to the designated officer for further consideration by the designated officer in accordance with any direction of the appeal board.

Reasons

- 20(2) The appeal board must give written reasons for its order.

Time limit for making order

- 20(3) The appeal board must make its order within 15 days after the hearing ends.

Order given to the parties

- 20(4) The appeal board must give the parties a copy of the order and inform them of their right to appeal a question of law or jurisdiction to The Court of Appeal.

Method of giving the order

- 20(5) The order must be given to the parties personally or by regular lettermail or by another method acceptable to the appeal board and the parties.

Order must be given effect

- 21 A designated officer must give effect to the order of the appeal board.

Reconsideration of the order

- 22(1) At the request of a party to the appeal or on its own initiative, the appeal board may reconsider all or part of its order and may confirm, vary, suspend or rescind its order.

Time limit for making request

- 22(2) A written request for a reconsideration, stating the reasons for the request, must be filed with the appeal board within 30 days after the date of the board's order.

Time limit for deciding request

- 22(3) The appeal board must, by order, make a decision as to whether an order will be reconsidered, within 15 days after the date the request for a reconsideration is filed.

Reasons

- 22(4) The board must give written reasons if it decides not to reconsider an order.

APPEAL TO COURT OF APPEAL

Appeal to Court of Appeal

- 23(1) Any party to the appeal before the appeal board may appeal the board's order to The Court of Appeal on any question involving the board's jurisdiction or on a point of law, but only after obtaining leave to appeal from a judge of The Court of Appeal.

Time limit

- 23(2) An application for leave to appeal must be made within 30 days after the date of the appeal board's order, or within any further time that a judge allows.

Parties

23(3) The parties to the appeal before the appeal board, and the appeal board, are entitled to be heard on the application for leave to appeal and on the appeal itself.

Order of Court of Appeal

24 The Court of Appeal may

- (a) quash, vary or confirm the order of the appeal board; or
- (b) refer the matter back to the appeal board for further consideration in accordance with any direction of the Court.

REGULATIONS

Regulations

25 The Lieutenant Governor in Council may make regulations

- (a) designating Acts or regulations for the purpose of the definition "designated Act" in section 1;
- (b) respecting any other matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of this Act.

ANNUAL REPORT

Annual report

26 Within six months after the end of the government's fiscal year, the appeal board must provide the minister with a report about the board's activities during that fiscal year. The minister shall lay a copy of the report before the Legislative Assembly within 15 days after receiving it if the Assembly is sitting or, if it is not, within 15 days after the next sitting begins.

PROTECTION FROM LEGAL ACTION

Protection from legal action

27 No action or proceeding for damages may be brought against the appeal board or any member of the board because of anything done or omitted in good faith

- (a) in the performance or intended performance of a duty under this Act; or
- (b) in the exercise or intended exercise of a power under this Act.

TRANSITIONAL

Transitional: definitions

28(1) *In this section,*

"former Act" means *The Social Services Administration Act, R.S.M. 1987, c. S165; (« ancienne loi »)*

"former designated Act" means *a designated Act as it read immediately before the coming into force of this Act. (« ancienne loi désignée »)*

Appeals already commenced

28(2) *Where on the day this Act comes into force an appeal under a former designated Act to the Social Services Advisory Committee under the former Act has been commenced but not finally disposed of, the appeal shall be continued and completed in accordance with that former designated Act as if this Act had not come into force.*

CONSEQUENTIAL AMENDMENTS

29 to 32

NOTE: These sections contained consequential amendments to other Acts that are now included in those Acts.

33

NOTE: This section contained consquential amendments to *The Social Services Administration Amendment Act*, S.M. 2000, c. 31, and is not yet proclaimed.

34

NOTE: This section contained consequential amendments to *The Vulnerable Persons Living with a Mental Disability Act* that are now included in that Act.

C.C.S.M. REFERENCE AND COMING INTO FORCE

C.C.S.M. reference

35 This Act may be cited as *The Social Services Appeal Board Act* and referred to as chapter S167 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force

36(1) This Act, except section 33, comes into force on a day fixed by proclamation.

Coming into force: section 33

36(2) Section 33 comes into force on the day *The Social Services Administration Amendment Act*, S.M. 2000, c. 31, comes into force.

NOTE: S.M. 2001, c. 9, except section 33, was proclaimed in force February 18, 2002.