

**CANADIAN  
DEFENCE  
LAWYERS**

May 2, 2023

VIA EMAIL: LATregistrar@ontario.ca

Harry Gousopoulos, Executive Director  
Tribunals Ontario  
15 Grosvenor Street, Ground Floor  
Toronto, Ontario M7A 2G6

Dear Executive Director Gousopoulos:

**RE: Recommendations for New Tribunals Ontario and License Appeal Tribunal – Automobile  
Accident Benefits Service Key Performance Indicators (KPIs)**

Thank you for your invitation of Thursday, April 13, 2023 for feedback from the stakeholder organizations, including the Canadian Defence Lawyers (CDL), regarding Key Performance Indicators (KPIs) for LAT-AABS. CDL is the only national organization representing the interests of civil defence lawyers. As a significant percentage of CDL's membership practices accident benefits litigation in Ontario, CDL appreciates Tribunals Ontario's request for input.

While the LAT adjudicates matters arising under a variety of statutes, the volume of disputes involving the Statutory Accident Benefits Schedule eclipses all others, with a current active file load of 15,507 as of fiscal quarter 3 of 2022-2023. Our submissions are focused on providing commentary with that context in mind.

The following are the proposed KPIs for the LAT-AABS:

<b>Performance Measures</b>	<b>Target</b>
Volume of in-person, electronic and written hearing events held at the LAT-AABS	N/A
Number of eligible accommodation requests granted (in whole or in-part) by the LAT-AABS	N/A
Percentage that the first hearing event (i.e. a case conference) is scheduled within 90 calendar days from the receipt of a completed appeal/application	80%
Decisions issued within 90 calendar days from the conclusion of a hearing	80%
Percentage of cases within the 12-month case lifecycle for LAT-AABS	80%
Percentage of cases resolved through alternative dispute resolution (in whole or in-part) within the LAT-AABS	N/A

### **(1) Volume of in-person, electronic and written hearing events held at the LAT-AABS**

CDL supports allocating Tribunal resources in a manner proportionate to the benefits in dispute. For example, disputes over the Minor Injury Guideline would require less resources versus matters involving a catastrophic impairment dispute. However, clarification of this metric is required as follows:

- Whether there is a specific pending target for each type of hearing, such as written or videoconference hearing, and the rationale.
- The timeframe for this metric should be defined proportionate to the benefits in dispute and designation (Minor Injury Guideline, non-catastrophic or catastrophic).

### **(2) Number of eligible accommodation requests granted in whole or in part by the LAT-AABS**

CDL recommends that “accommodation request” be clarified. It is not a defined term within the Tribunal’s current Operation Statistics data. “Accommodation request” may refer to requests for accommodations under the *Ontario Human Rights Code* as referenced in Rule 7 of the *Common Rules*, or possibly to adjournment requests and similar “accommodations” under Rule 16.

### **(3) Percentage that the first hearing event is scheduled within 90 calendar days from the receipt of a completed appeal/application**

CDL supports a target for all case conferences **to occur** within 90 days of a completed application rather than simply being ‘scheduled’. A 90-day target for case conference occurrence will facilitate the early identification and resolution of potential procedural concerns that may jeopardize the fair, efficient, and proportional resolution of a dispute.

### **(4) Decisions issued within 90 calendar days from the conclusion of a hearing**

CDL supports this metric. We also suggest that case conference reports and orders be issued within a specified time frame from occurrence.

CDL would also encourage the tracking of the use of Rule 3.4 to determine whether there is an opportunity for the Tribunal to evaluate the efficacy of its current gate-keeping function.

### **(5) Percentage of cases within the 12-month case lifecycle for LAT-AABS**

CDL is concerned that a blanket lifecycle performance indicator does not consider the differences in complexity between, for example, a MIG application versus a catastrophic impairment determination application. The current KPI of 80% would hinder the Tribunal’s ability to assess the efficacy of its services relating to the most serious of claims, including those where catastrophic impairment is involved. In its current iteration, this target would be met, regardless of how long the average catastrophic file remains open should files involving a catastrophic impairment consist of less than 15% of all applications filed. If a lifecycle target must be present, it should be differentiated by complexity of matter.

CDL recommends also reporting information about case age and the separate reporting of case age information for adjourned matters.

CDL cautions against the adoption of an overly formulaic or quantitative application of this KPI. Our membership’s experience with the Tribunal’s restrictive approach on adjournments resulted in

applications withdrawn through tolling agreements causing further delays upon resubmission, and further cost to the parties.

**(6) Percentage of cases resolved through ADR within LAT-AABS**

This performance indicator requires its terms to be defined. A clear definition is needed for “alternative dispute resolution”. The Tribunal closed an average of 3,470 files per quarter over the last 4 quarters. On average, only 3.5% of those closures were due to merits decisions. The remainder were “closed by early resolution”. CDL recommends that the specific reasons for closure be differentiated and tracked with a specific emphasis on whether the closure was due to settlement and whether the settlement occurred before, during, or after a Case Conference. CDL suggests closures by “early resolution”, or “ADR” be due to settlement, rather than withdrawal or abandonment.

**Final Comments:**

CDL supports the timely, efficient, and fair resolution of disputes at the Tribunal. We appreciate the ongoing opportunity to provide input and are encouraged that the Tribunal continues to evaluate its performance and metrics. CDL would also again encourage regular Stakeholder input going forward as input from the Tribunal’s Stakeholder organizations would only serve to assist with the Tribunal’s KPI goals.

CDL welcomes any questions and the opportunity to provide further contributions to the operational success of the Tribunal.

Yours very truly,



Andrea R. Lim  
President  
Canadian Defence Lawyers



Michelle Friedman  
Chair of the Accident Benefits Substantive Committee  
Canadian Defence Lawyers

**CC:** Sean Weir, Executive Chair, License Appeal Tribunal  
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– Automobile Accident Benefits Service Key Performance Indicators:**

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