ESTIMATES

Canada Industrial Relations Board

Performance Report

For the period ending
March 31, 2000

Canada

Improved Reporting to Parliament
Pilot Document

The Estimates of the Government of Canada are structured in several parts. Beginning with an overview of total government spending in Part I, the documents become increasingly more specific. Part II outlines spending according to departments, agencies and programs and contains the proposed wording of the conditions governing spending which Parliament will be asked to approve.

The *Report on Plans and Priorities* provides additional detail on each department and its programs primarily in terms of more strategically oriented planning and results information with a focus on outcomes.

The *Departmental Performance Report* provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the spring *Report on Plans and Priorities.*

Available in Canada through your local bookseller or by mail from

Canadian Government Publishing — PWGSC

Ottawa, Canada K1A 0S9

Catalogue No. BT31-4/19-2000
ISBN 0-660-61404-9

Foreword

On April 24, 1997, the House of Commons passed a motion dividing on a pilot basis the *Part III of the Estimates* document for each department or agency into two separate documents: a *Report on Plans and Priorities* tabled in the spring and a *Departmental Performance Report* tabled in the fall.

This initiative is intended to fulfil the government's commitments to improve the expenditure management information provided to Parliament. This involves sharpening the focus on results, increasing the transparency of information and modernizing its preparation.

The Fall Performance Package is comprised of 83 Departmental Performance Reports and the President's annual report, *Managing for Results 2000*.

This ***Departmental Performance Report,*** covering the period ending March 31, 2000 provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the department's *Report on Plans and Priorities* for 1999-00 tabled in Parliament in the spring of 1999.

Results-based management emphasizes specifying expected program results, developing meaningful indicators to demonstrate performance, perfecting the capacity to generate information and reporting on achievements in a balanced manner. Accounting and managing for results involve sustained work across government.

The government continues to refine its management systems and performance framework. The refinement comes from acquired experience as users make their information needs more precisely known. The performance reports and their use will continue to be monitored to make sure that they respond to Parliament's ongoing and evolving needs.

This report is accessible electronically from the Treasury Board Secretariat Internet site: http://www.tbs-sct.gc.ca/rma/dpr/dpre.asp

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Canada Industrial Relations Board
Performance Report

for the period ending
March 31, 2000

Approved by:_____

The Honourable Claudette Bradshaw
Minister of Labour

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Section I: Message from the Chairperson

I am pleased to present the second annual performance report of the Canada Industrial Relations Board (CIRB) for the period ending March 31, 2000.

In the autumn of 1999, the CIRB identified a number of objectives and priorities in its annual Report on Plans and Priorities. It also developed a strategic plan, establishing a series of measures to be undertaken to improve the Board's effectiveness, manage its caseload more expeditiously and become more responsive to the needs of the industrial relations community.

Much progress has been made on all fronts. All issues arising from the transition from the Canada Labour Relations Board to the CIRB were addressed and resolved effectively. The Board case management practices have been revised to increase their efficiency and effectiveness. In an effort to improve its ability to inform, communicate and consult with its clients, the Board has also created an Information Management Branch. It has concluded a full review of its technological environment and established a multi-year IT investment strategy to renew its outdated systems, to improve the timeliness and quality of information and to take advantage of new legislative provisions which allow the Board to make better use of technology to further expedite its hearing processes. Financial practices were revised and updated, and a shared financial services agreement entered into with the Public Service Staff Relations Board, thus establishing a more independent but less costly auditing and control function. The Board facilities have been completely renovated, resulting in a significant reduction of space requirements and cost, while improving the facilities used by clients. Additional performance measures for adjudicative, mediative and investigative functions have been developed. Following extensive consultations with our clients throughout the country, the CIRB is in the process of revising and updating its Regulations and rules of practice.

The Board's operating pressures remain significant. The number of cases brought before the CIRB by clients has reached record levels; at the same time, disposition times for certifications, complaints and all other files received by the CIRB since its inception continue to be the fastest on record. While these accomplishments are extremely encouraging, the Board must re-examine its level of resources to continue to deal successfully with the increasing workload.

I believe that we have made significant progress towards establishing an effective and efficient organization, better able to meet the needs and expectations of our clients. With the continued involvement of our partners and the industrial relations community, I have no doubt that the CIRB will continue to adapt successfully to meet the challenges ahead.

J. Paul Lordon
Chairperson

IN MEMORIAM

Jean Galipeault
Vice-Chair
Deceased on June 24, 2000

By the time we produced this report, we learned of the death of one of the Vice-Chairs of the Canada Industrial Relations Board, Mr. Jean Galipeault.

Mr. Galipeault had been appointed as Vice-Chair of the CIRB on February 1, 1999.

Prior to his appointment, Mr. Galipeault was employed at the Public Service Staff Relations Board for 18 years. He served as a full-time member for
14 years following 4 years with the Board's Mediation Services.
Mr. Galipeault practised law in Québec City between 1960 and 1974. In his private practice he worked in such areas as labour law. He was employed as a professional journalist with *Le Soleil* in Québec City and *La Presse* in Montréal before turning to law. He also served as a full-time member of the Veterans Review and Appeal Board for nearly four years.

He will be sorely missed by the industrial relations community and his colleagues at the Board.

Section II: Departmental Performance

A. Societal Context

The Canada Industrial Relations Board (CIRB) is an independent, representational, quasi-judicial tribunal responsible for the interpretation and application of the *Canada Labour Code*, Part I, Industrial Relations, and certain provisions of Part II, Occupational Safety and Health. It was established in January 1999 through amendments to Part I of the *Canada Labour Code*. At that time, the Federal Minister of Labour, the Honourable Claudette Bradshaw, stated that the Canada Industrial Relations Board "... will be a great asset to both labour and management in the federally regulated sector."

The CIRB has jurisdiction in all provinces and territories with respect to federal works, undertakings or businesses in the following sectors:

- Broadcasting
- Chartered banks
- Postal services
- Airports and air transportation
- Shipping and navigation
- Interprovincial or international transportation by road, railway, ferry or pipeline
- Telecommunications
- Grain handling and uranium mining and processing
- Most activities in the Yukon, Nunavut and the Northwest Territories, including those that would normally be in provincial jurisdiction
- Undertakings of the First Nations on reserves
- Certain Crown Corporations (including, among others, Atomic Energy of Canada Ltd.)

This jurisdiction covers some 700,000 employees and their employers and includes enterprises that have an enormous economic, social, and cultural impact on Canadians from coast to coast. This variety of activities, their geographical spread, and their national significance contribute to the uniqueness of the federal jurisdiction and the role of the CIRB, and pose particular challenges for the Board's work.

The Board has established a series of strategic objectives in support of its mandate:

- to seek solutions to labour relations problems by determining the cause and nature of conflict and by applying the appropriate dispute resolution mechanism, including fact finding, mediation and adjudication;
- to conduct its activities in a timely, fair and consistent manner;
- to consult its clients on its performance and in the development of its regulations, policies and practices;
- to promote an understanding of its role, processes and jurisprudence; and

- to conduct its business and to manage its resources in a manner that is fiscally sound in accordance with the *Financial Administration Act* and the policies and directives of the Central Agencies.

B. Performance Results

Chart of Key Results Commitments

Canada Industrial Relations Board	
To provide Canadians with:	**To be demonstrated by:**
effective industrial relations in any work, undertaking or business that falls within the authority of the Parliament of Canada **$ 13,384,381**	**decisions on applications and complaints provided in a fair, expeditious and economical manner** **successful resolution of labour relations problems through mediation and alternative dispute resolution mechanisms** **an involved and well-informed labour relations community** **effective regulations and practices developed through consultation with clients**

C. Performance Accomplishments

The Transition

The transition from the Canada Labour Relations Board to the Canada Industrial Relations Board is now nearly complete. The transition process was managed to ensure that service to clients was maintained with no interruptions. As a result, there was a gradual movement of files from the former Board to the current Board.

Some cases were completed by former members as is the practice when considerable work, including hearings held, has already been done on a complex case. Most matters were transferred to the new Board's members as soon as the appointment of vice-chairs and members to the new Board allowed. The initial appointments to the CIRB became effective over the period January-August 1999.

At the dissolution of the CLRB, there were 542 active matters. Of that number, 134 matters in progress were left with former CLRB members for completion. Currently, only 6 case files remain with former members of CLRB.

The total cost of transition from the CLRB to the CIRB in fiscal year 1999-2000 was approximately $1,000,000. Part of this amount, some $187,000, was spent on the relocation of new members based on Treasury Board's directives and $865,000 as payments to former members for work on the completion of outstanding cases.

The New Board

Since its inception, the CIRB has experienced a significant and steady increase in the volume of its workload. In its first year of operation, the CIRB received 847 cases. This compares with a four-year average of 741 cases received by the predecessor Board.

In terms of the Board's performance in this period, the CIRB disposed of 861 cases in 1999-2000. This compares to an average of 681 cases disposed of in the previous four years. Sixty-six (66) percent of the complaints received by the CIRB were settled without the need for Board adjudication.

Despite the increased workload, the CIRB has improved the time for processing and resolving cases (see figure 2 on page 9).

It should be noted that while the CIRB experienced a 20% increase in its workload, its resource capacity at the Board level has gone down 20%, from 14 full-time members in the former CLRB to 11 full-time members in the present CIRB. It should also be noted that, in May 2000, 6 part-time members were appointed to the CIRB.

Many of the performance improvements are attributable to the new Board's operationalization of the new provisions in the *Canada Labour Code* designed to allow the CIRB to operate more expeditiously and economically. These legislative amendments include the clarification of the Chair's powers to assign and reassign cases and the ability to assign certain cases to single-member panels, rather than three-member panels. Also, the Board must now issue ordinarily its decisions within 90 days after reserving decision, i.e. after the conclusion of the hearing process. The amendments led to a complete reorganization of the Board's case management structure and practices during the first year of the CIRB's operations.

In the process of reviewing its internal procedures, the Board established performance targets for its case management, as reported in its Report on Plans and Priorities. Other improvements include the Board's ability to hold a number of hearings on consecutive days at any specific location, through a more coordinated approach and the use of block scheduling. Pre-hearing case management sessions and other pre-hearing processes have also made a significant difference in expediting hearings by allowing the parties to disclose and

produce documents, identify and plan the number of witnesses, explore the possible utilization of alternative dispute resolution mechanisms, etc.

After reviewing its case management procedures, the Board focused on its information management practices. It created an Information Management Branch responsible for reviewing and improving the Board's ability to inform, communicate and consult with its clients. In order to develop Regulations pursuant to the amended *Code*, to ensure greater operational efficiencies and to enhance communications with industrial relations practitioners, the Board initiated a series of extensive consultations with representatives of the business, labour and legal communities. The Board also informed and consulted with its clients through its "Focus" newsletter and through its representational members. Concurrently, a review of the CIRB's technological environment was undertaken to improve the quality and timeliness of information and to take advantage of new legislative provisions which allow the Board to make better use of technology to further expedite its hearing processes, e.g. video-conferencing.

In addition to new information and case management practices, several other initiatives were undertaken by the CIRB to further enhance the efficiency and effectiveness of the new Board. Such initiatives included:

- the development of a complete strategic plan to address all the issues arising during the transition period;
- the revision of the Board's financial practices and the conclusion of a shared financial services agreement with the Public Service Staff Relations Board (PSSRB). This has led to a harmonization of the CIRB's and PSSRB's financial policies, the establishment of additional expert internal review mechanisms for financial practices and full FIS system compliance of CIRB financial services;
- the renovation of the Board's facilities, to reduce its space requirements and make better use of the open work concept. This has had the effect of reducing the cost of the rental space for the facilities by almost $400,000 (within the envelope alloted by PWGSC) while at the same time improving the CIRB's client-oriented facilities such as the library, hearing and meeting rooms;
- the review and establishment of appropriate performance measures, as reported in the Board's Report on Plans and Priorities; and,
- the initiation of a training program in mediation and alternative dispute resolution. This initiative was funded through a grant from Justice Canada's ADR program. Further development of the Board's mediation program will enable the Board to assist the parties in resolving disputes prior to engaging in more costly and time-consuming hearing processes.

It is a complex task to ascribe quantitative measures to the outcomes of the Board's work. The Board protects the freedom of association, the freedom to join the trade union or employers' organization of choice, but exercises no influence in the choice made. The Board adjudicates unfair labour practices with the goal of preventing labour unrest. Although it is difficult to measure accurately either the results of freedom of association or the prevention

of labour unrest, these outcomes, goals and values are broadly recognized as vital elements in maintaining an equitable and democratic society, and a healthy and productive economy.

The Board's contribution in the achievement of these goals and its impact on the parties and Canadians may nevertheless be illustrated through the following examples:

- Following the merger of telecommunication providers in Western Canada, the Board was asked to determine the appropriate bargaining units and representation rights. The Board held hearings into the matter and encouraged the parties to reach an agreement on their own. The parties agreed to a single unit and a single bargaining agent to represent the unionized workers. This agreement was presented to the Board and a representation vote affecting approximately 17,000 employees was ordered and conducted by the Board.

  As a result of the Board's intervention, the employer's application was able to proceed in a timely manner. The employer is in a better position to proceed with its business plans and to address and satisfy shareholder concerns, knows the bargaining agent with which it must negotiate and is in a better position to contribute to labour relations stability within its workforce.

  Also as a result of the Board's intervention, the employees were presented with an opportunity to select by way of majority vote the bargaining agent of their choice and the period of uncertainty resulting from the merger was minimized.

- During negotiations involving the firefighters at one of Canada's busiest international airports, the Board was asked to determine the number of firefighters that would be required to remain on the job in the event of a strike. A hearing was held and in a short delay the Board issued a ruling with respect to essential services which impacted directly on public health and safety.

- The Board was asked to intervene in a dispute involving a major employer in the broadcasting industry and its technicians and to resolve an illegal strike situation. The Board intervened rapidly, a hearing was held and an interim order was issued, averting the strike.

- The first unfair labour practice to appear at the Board following a major acquisition in the airline industry was resolved in a matter of days. Within a week a hearing was scheduled. Prior to the hearing and with the agreement of the parties, the vice-chair acted as mediator to guide the dialogue between the parties. A settlement was reached after four days with an outcome likely more favorable to both sides and to the workplace than if the case had been simply adjudicated.

- In the East Coast longshoring industry, complaints were filed alleging hiring practices were in violation of the *Code*. The involvement of the Board staff facilitated a settlement, thereby stabilizing the workforce and averting any possible disruption of port operations.

Other key decisions issued by the Board are summarized at the end of this report (see pages 24 to 29).

The Board's mediation efforts continue to resolve contentious labour relations issues with substantial savings in both time and cost for the parties and without disruptions in or degradations to the quality of services provided to Canadians, such as in the air transportation and railway industries.

In the performance statistics that follow, the Board provides some detailed performance information on the volume of work, the speed with which it was handled and the quality of the work performed. The performance information is presented on a basis generally consistent with that of previous years.

Statistical Information

Figure 1 - Workload

Total Files- Certifications, Complaints and Other[1]							
					1999-2000		
	95/96	96/97	97/98	98/99	All[3]	CIRB Only[4]	New CIRB[5]
On hand	431	453	439	471	677	581	263
Received/reopened	835	666	658	806	848	848	847
Total files	1266	1119	1097	1277	1525	1429	1110
Granted	347	221	228	193	282	266	219
Rejected	169	192	155	136	207	190	120
Withdrawn/resolved	297	267	243	276	372	343	253
Total disposed	813	680	626	605	861[2]	799[2]	592
Pending	453	439	471	672	664	630	518

[1] These figures reflect the number of matters (based on sections of the Canada Labour Code), and not necessarily the number of cases.
[2] Performance statistics for 6 CLRB and 3 CIRB cases are not included as all matters have not been dealt with.
[3] These figures represent all cases currently before members of the former CLRB and before the CIRB.
[4] These figures include only cases before the CIRB or inherited by the CIRB from the former CLRB.
[5] These figures include only cases received by the CIRB since its inception on January 1, 1999.

The total files, as set out in Figure 1, represent one of the highest workload levels on record. As a result of the pressures from a 20% increase in the Board's workload, it is

becoming increasingly difficult for the Board to sustain the performance levels achieved in this first year of operation.

Despite the increased workload, the Board is committed to managing aggressively all cases and to reducing further the number and age of active cases. To accomplish this, the Board is working towards a continued improvement of its case management practices and procedures, and increased resourcing of its information management activities.

Processing Time

"Processing time" is the time required to complete a file - time spent investigating, mediating, holding hearings, where required, and rendering decisions. The processing time is calculated to reflect the performance of the CIRB on its own files as well as on those files inherited from the previous Board.

Figure 2 - Processing time (average number of days from received to disposed)

		1999-2000			Difference[2]	
	4 yr avg[1]	All Cases[3]	CIRB only[4]	CIRB new[5]	CIRB only[4]	CIRB new[5]
All cases						
with hearing	434	403	344	149	-90	-285
without hearing	144	176	167	114	23+	-30
Certification						
with hearing	433	422	326	176	-107	-257
without hearing	111	122	120	105	9+	-6
Unfair labour practice complaints						
with hearing	371	386	321	162	-50	-209
without hearing	185	238	228	140	43+	-45

[1] The 4-year average is calculated based on performance data from 1995-96 to 1998-99.
[2] The difference is calculated based on the 4-year average and CIRB's performance.
[3] These figures represent all cases currently before members of the former CLRB and before the CIRB.
[4] These figures include only cases before the CIRB or inherited by the CIRB from the former CLRB.
[5] These figures include only cases received by the CIRB since its inception on January 1, 1999.

Figure 2 above demonstrates that the CIRB took an average of 344 days to dispose of all cases that were heard. This represents an improvement of 3 months over the average for the last four years of the CLRB. Nearly half of these cases (62) were received by the CLRB prior to January 1, 1999 and taken over by the CIRB. Cases received by the CIRB after this date took an average of 149 days from receipt to disposition.

For cases disposed without hearing, the data shows that the CIRB processed some cases it inherited from the former CLRB less rapidly. The data does confirm, however, that the CIRB has improved by 1 month the average processing time for new files it has received since its inception in 1999, compared to the previous four years. Twenty-two (22) percent of the cases disposed without hearings were received before January 1, 1999.

Certification cases disposed without hearings took about the same time as the previous four years, while those disposed after hearings show a marked improvement in processing time of between 3.5 months for all cases and 8 months for cases received after January 1, 1999.

Unfair labour practice complaints show an improvement of between 1.6 months for all cases disposed after hearings and almost 7 months for hearing cases received since January 1, 1999. All complaints disposed without hearings show an increase in processing time of 1.4 months while those received since January 1, 1999 show a decrease in average processing time of one and a half months.

The rapid and effective resolution of all complaints and applications before it remains a key performance goal of the CIRB.

Investigation and Mediation Performance in the Regional Offices

The Regional Offices investigate applications to establish and modify bargaining rights, and mediate unfair labour practice complaints. The ability of the Regions to promote the settlement of complaints is of significant benefit to the parties involved, and eliminates the involvement of the Board and the need to hold costly and time-consuming hearings. (Hearing costs, excluding salaries, are estimated at $2,300 per day for the CIRB alone, while engendering significant additional expenses for the parties involved.)

Settlement rates for complaints remained fairly constant with previous figures, although there was a slight increase (2.3%) in the resolution of complaints received after January 1, as noted in Figure 3 below.

Figure 3 - Successful Complaint Resolution in 1999-2000

Regional Performance	Target	Achieved		
		All[1]	CIRB Only[2]	New CIRB[3]
Withdrawal/Settlement rate on complaints	50%	65.6	65.8	68.1%

[1] These figures represent all cases currently before members of the former CLRB and before the CIRB.
[2] These figures include only cases before the CIRB or inherited by the CIRB from the former CLRB.
[3] These figures include only cases received by the CIRB since its inception on January 1, 1999.

Decision-making

Board performance is also measured by the length of time it takes to dispose of matters before it. A panel (comprised of the Chairperson or a Vice-Chairperson in a single member panel or the Chairperson or a Vice-Chairperson and two Members in a full panel), may decide cases on the basis of written and documentary evidence (file documentation, investigation reports, written submissions) or decisions may be deferred until further evidence and information is gathered by way of a public hearing. Figure 4 presents the disposition time for both types of decision-making. [The Board measures its disposition time for cases decided with a public hearing from the date it reserves its decision (which generally coincides with the last day of the hearing) until the date the decision is issued to the parties. Where cases are decided without a public hearing, the disposition time is measured from the date the case is deemed to be "ready" for the Board's consideration until the date the final decision is issued.] Disposition times for certifications, complaints, and all other new files received by the CIRB since January 1, 1999 continue to be the fastest on record.

Figure 4 - Decision making (avg. number of days from last hearing day or ready date to disposition)

		1999-2000			Difference[2]	
	4 yr avg[1]	All Cases[3]	CIRB Only[4]	CIRB new[5]	CIRB only[4]	CIRB new[5]
All cases						
with hearing	181	161	135	65	-46	-116
without hearing	43	50	44	23	1+	-20
Certification						
with hearing	156	238	208	113[6]	52+	-43
without hearing	31	20	17	14	-14	-17
Unfair labour practice complaints						
with hearing	146	111	86	62	-60	-84
without hearing	61	79	70	32	9+	-29

[1] The 4-year average is calculated based on performance data from 1995-96 to 1998-99.
[2] The difference is calculated based on the 4-year average and CIRB's performance.
[3] These figures represent all cases currently before members of the former CLRB and before the CIRB.
[4] These figures include only cases before the CIRB or inherited by the CIRB from the former CLRB.
[5] These figures include only cases received by the CIRB since its inception on January 1, 1999.
[6] In 3 of the 5 cases included in this figure, the last hearing day is not the day the Board reserved its decision on the matter.

Further Challenges

The Canada Industrial Relations Board is now facing the following challenges.

A 20% increase in the Board's workload in 1999-2000 is taxing the Board's resources in all areas: investigation, mediation, adjudication, decision-making and delivery.

The technological and information environment of the Board has not been significantly upgraded in nearly 10 years, and deficiencies in this environment are now preventing the Board from taking full advantage of a legislative framework which was designed to enable more efficient and expeditious operations. The accessibility of Board services to its clientele, particularly remotely and through the regional offices, does not meet the expectations of the statute and of the Board's own strategic planning process.

Clients have expressed the requirement for more mediation and front-line assistance from the Board's labour relations officers. These demands and expectations, in conjunction with the increased volume of cases being submitted to the Board, are creating significant resource pressures and potential limitations on the Board's capacity to deliver expeditiously the services required by the industrial relations community.

Work is underway to address all of these challenges. The CIRB has developed a business case for investment in its information management and information technology environment. It has also taken steps to ensure a stronger regional presence to respond to these challenges as best as it can.

Some elements of the Board's environment are not under its control. The Board responds to the demands and requirements of the labour relations community. Its clients determine the volume, complexity, and immediacy of the cases which are brought to the CIRB. While the Board strives to obtain voluntary resolutions to all cases, some require the deliberation and full decision-making authority of the Board. As a result, the nature of the cases will influence and will cause considerable variations in the time and cost required to bring them to resolution.

D. Presentation of Financial Information

Canada Industrial Relations Board	
Planned Spending	$ 8,658,000
Total Authorities	$10,812,381
1999-00 Actual	**$10,360,345**

Note: The summary financial information presented for the Board's sole business line, adjudication, includes three figures. These figures are intended to show the following:

- *what the plan was at the beginning of the year (Planned Spending);*
- *what additional spending Parliament has seen fit to approve to reflect changing priorities and unforeseen events (Total Authorities); and*
- *what was actually spent (1999-00 Actual)*

The total authorities granted to the Board were $2,154,381 more than originally planned spending. The additional authorities approved were to provide for additional employee compensation, including benefits, for additional costs related to the transition from the CLRB to the CIRB and for the upgrade of the CIRB information management system. The actual spending was 96% of the total authorities for the fiscal year. Details are provided in Section IV.

Section III: Consolidated Reporting

A. Special Travel Policies

The CIRB Travel Policy reflects the Treasury Board Travel Directive in its application to all CIRB staff, as well as to Board Members who are Governor in Council appointees (GICs). In the case of its GICs, the Board generally adheres to the GIC's Special Authorities Directive (which forms part of the Treasury Board Travel Directive) with restrictions on meals and accommodations. The CIRB Travel Policy, in its entirety, is available upon request.

Section IV: Financial Performance

A. Financial Performance Overview

The total authorities granted to the Board were $2,154,381 more than originally planned. The additional authorities approved were to provide for:

- additional employee compensation due to collective bargaining: $320,302;
- employee benefits related to the above additional personnel costs: $172,000;
- authorized spending of proceeds from the disposal of surplus Crown assets: $2,927;
- additional costs related to transitioning from the CLRB to the CIRB: $1,350,000; and
- carry-forward from previous years used for the reduction in size and reconstruction of the Board's headquarters: $309,152.

The actual spending was 96% of the authorized amounts. Transition costs were incurred in 1998-99 and in 1999-2000. We expect that some more minimal transition costs will be incurred in 2000-01.

B. Financial Summary Tables

The following tables are applicable to the Board:

Table 1 - Voted Appropriations
Table 2 - Comparison of Total Planned Spending to Actual Spending
Table 3 - Historical Comparison of Planned Actuals

Financial Table 1

Voted Appropriations

Financial Requirements by Authority ($ thousands)

Vote		1999-00		
		Planned Spending	**Total Authorities**	**Actual**
	Effective Industrial Relations			
25	Program expenditures	7,535.0	9,517.5	**9,065.3**
(S)	Contributions to employee benefit plans	1,123.0	1,295.0	**1,295.0**
	Total Department	8,658.0	10,812.5	**10,360.5**

Financial Table 2

Departmental Planned versus Actual Spending ($ thousands)

	1999-00		
Business Line: Adjudication	**Planned**	**Total Authorities**	**Actual**
FTEs	97		**86**
Operating	8,658.0	10,812.5	**10,360.3**
Cost of services provided by other departments	2,572.0	2,572.0	**2,572.0**
Net Cost of the Department	11,230.0	13,384.0	**12,932.0**

Financial Table 3

Historical Comparison of Departmental Planned versus Actual Spending ($ thousands)

			1999-00		
	Actual 1997-98	**Actual 1998-99**	**Planned**	**Total Authorities**	**Actual**
Effective Industrial Relations	**8,596.0**	**9,606.0**	8,658.0	10,812.5	**10,360.3**

Total authorities are main estimates plus supplementary estimates.

Section V: Departmental Overview

A. Mandate, Mission and Values

The *Constitution Act, 1867,* provides that provincial jurisdiction extends over "Property and Civil Rights", meaning that the negotiation of collective agreements containing terms and conditions of employment for employees is generally regulated by the provinces. The Constitution, however, assigns exclusive jurisdiction to Parliament over specific sectors of the economy, and as such, it has seen fit to enact laws regulating employment matters within those sectors that have constitutionally been reserved to it. The laws governing the federal jurisdiction are contained in the *Canada Labour Code*, which is divided into three parts:

Part I- Industrial Relations
Part II- Occupational Safety and Health
Part III- Labour Standards

Part I of the *Code* sets out the terms under which trade unions may acquire the legal right to represent employees in the negotiation of collective agreements with their employer. It also delineates the process under which collective bargaining takes place and provides remedies to counter infractions committed by any party subject to the *Code*'s provisions.

Part I of the *Canada Labour Code* had remained virtually unchanged since 1972. However, with the coming into force on January 1, 1999 of Bill C-19, an *Act to amend the Canada Labour Code (Part I),* R.S. 1998 C. 26, significant changes were made to the *Code* in an effort to modernize it and improve the collective bargaining process for federally regulated industries. The *Act* replaced the Canada Labour Relations Board with the Canada Industrial Relations Board as an independent, representational, quasi-judicial tribunal responsible for the interpretation and application of Part I, Industrial Relations, and certain provisions of Part II, Occupational Safety and Health, of the *Canada Labour Code*.

The Canada Industrial Relations Board's ***mandate*** *is to contribute to and promote effective industrial relations in any work, undertaking or business that falls within the authority of the Parliament of Canada.*

In support of its mandate, the Board established the following vision and values.

- decisions on applications and complaints provided in a fair, expeditious and economical manner
- successful resolution of labour relations problems through appropriate dispute resolution mechanisms
- an involved and well-informed labour relations community
- effective Regulations and practices developed through consultation with clients

In the discharge of its mandate and the exercise of its powers, the Board aims to be progressive and innovative, efficient and effective and accountable. The working environment at the Board promotes learning and development, harmony, teamwork and respect.

The Board's role is to exercise its powers in accordance with the Preamble to the *Code*, which states that Parliament considers "... the development of good industrial relations to be in the best interests of Canada in ensuring a just share of the fruits of progress to all..." To that end, the Board aims to be responsive to the needs of the labour relations community across Canada in all aspects of delivering its program.

B. Departmental Organization

The Board is now composed of a Chairperson, four full-time Vice-Chairpersons, six full-time members and six part-time members (six representing employees and six representing employers). The appointment of the part-time members was done on May 29, 2000, subsequent to the period under review. All are appointed by Order in Council. The Chairperson and Vice-Chairpersons are appointed for terms not to exceed five years, and the members are appointed for terms not to exceed three years.

The Chairperson is the chief executive officer of the Board, with the authority to supervise and direct its work, including:

- the assignment and reassignment to panels of matters being considered by the Board
- the composition of panels, and assigning Vice-Chairpersons to preside over them
- determining the dates, times and places of hearings
- the conduct of the Board's work
- managing the Board's internal affairs, and
- overseeing the duties of the Board's public-service staff.

The Board's headquarters are located in the National Capital Region. Support to the Board is provided by the Executive Director and the Senior Legal Counsel, both reporting directly to the Chairperson. The Executive Director is responsible for regional operations,

case management, information management and information technology, financial and administrative services and human resources. The Legal Services Branch provides legal assistance, as required by the Board, and acts as the Board's legal counsel in most judicial review proceedings.

The Board also has five regional offices in Dartmouth, Montréal, Ottawa, Toronto and Vancouver, with a satellite office in Winnipeg. These offices are staffed by labour relations professionals and case management teams. Each regional office is headed by a regional director, who reports to the Executive Director in Ottawa.

Business Line Description

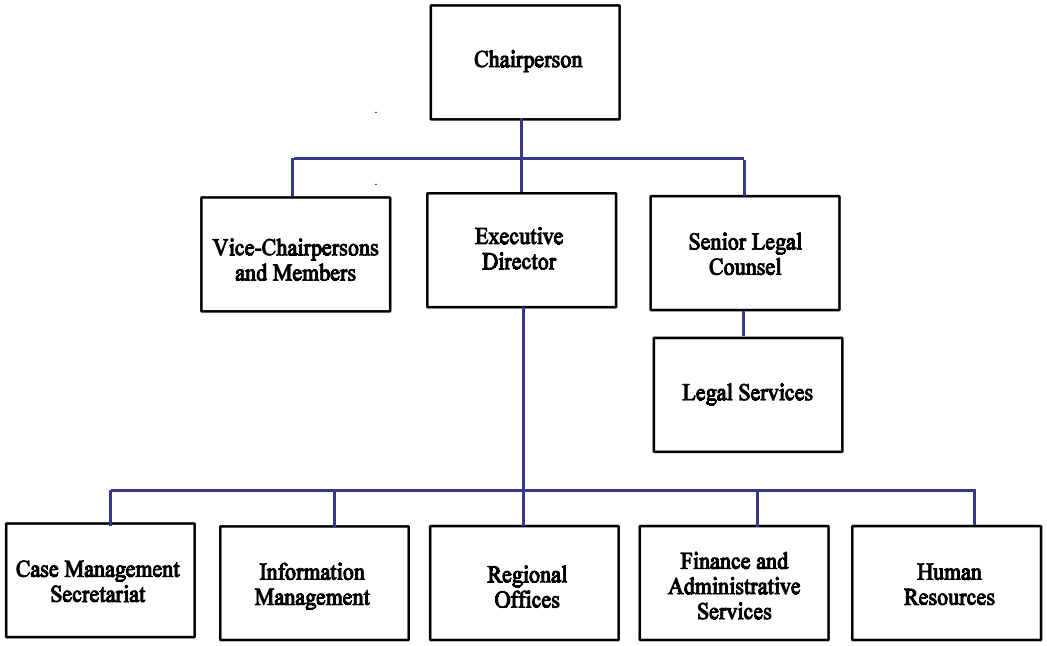
The Board has a single business line - the administration of the *Canada Labour Code*. To achieve this business line, the Board has three major service lines: adjudication, mediation and information/communication.

When differences arise between bargaining agents and employers that cannot be resolved by the labour relations officers (LROs) in the regional offices, these differences are referred to the Board for adjudication. A large majority of all matters before the Board are decided based on the parties' written submissions and on the detailed investigation reports filed by the regional offices. The remainder are decided after the holding of public hearings at which the parties submit evidence and argument in support of their respective positions. All Board decisions are issued in writing and when the reasons for decision are issued, they are subsequently published in both official languages for the benefit of the labour relations community at large.

Mediation services are provided through the regional offices in an effort to resolve labour relations issues quickly and efficiently. Labour relations officers and case management staff at the Board’s regional offices are responsible for the processing and investigation of applications, complaints and referrals filed by the Board's clients. The LROs hold informal discussions and mediation sessions with the parties in order to resolve contentious issues. Settling complaints and disputes at the regional level eliminates the need for costly public hearings, accelerates the decision-making process, and in some instances, can avoid the unlawful shutdown of important services. Solutions arrived at between the parties contribute to greater harmony in the workplace.

Information/communication services are provided on an ongoing basis by the Board, management and staff who continue to be active in the labour relations community, through direct consultation with clients, by responding to *ad-hoc* enquiries, and through presentations by Board members and staff. Information concerning the Board’s jurisprudence and activities is made available through the publication and distribution of *Reasons for Decision*, newsletters and information circulars. The CIRB also provides information through its Web site and is currently developing its new Regulations and practice notes following extensive consultations with its clients throughout the country.

Organization Chart



Section VI: Other Information

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B. Legislation Administered and Associated Regulations

Canada Labour Code (Part I - Industrial Relations) **R.S.C. 1985, c. L-2**
Canada Labour Code (Part II - Occupational Safety and Health) R.S.C. 1985, c. L-2
Canada Labour Relations Board Regulations, 1992, SOR/91-622

C. Listing of Statutory Annual Reports and Other Departmental Reports

Canada Industrial Relations Board Annual Report

D. OTHER INFORMATION

Summary of CIRB Key Decisions

This section deals with key decisions issued by the Canada Labour Relations Board between January 1, 1999 and March 31, 2000.

Red Bank First Nation, [1999] CIRB no. 5

The Board had to determine whether a by-law passed by a Band Council pursuant to the *Indian Act* governing the relationship between the Band Council and its employees precluded the application of the *Canada Labour Code*. Given the primacy of an Act of Parliament over a regulation or by-law and considering the purpose of the *Code*, the Board answered in the negative. The Band Council's application for reconsideration of the Board's decision to certify the PSAC as bargaining agent for Council employees was therefore dismissed.

British Columbia Terminal Elevator Operators' Association, [1999] CIRB no. 6

Employers applied to the Board for an order pursuant to section 87.7(3) to enforce the continuation of services to grain vessels when grain workers refused to cross picket lines established by striking PSAC members (grain weighers). Because the striking employees and their employer fell outside the scheme of the *Canada Labour Code*, the Board did not have jurisdiction under section 87.7 to make the requested orders. The Board also found that the grain workers' refusal to cross picket lines constituted an illegal strike, notwithstanding the provision in the collective agreement allowing employees to refuse to cross picket lines at their place of employment. The Board stated that the parties may not contract out of the statutory obligation not to strike during the term of a collective agreement and the effect of a collective agreement clause allowing employees to honour a picket line must be limited to an agreement as to the rights and liabilities between the parties in the context of the grievance-arbitration process.

CFRN-TV (a Division of BBS Incorporated) et al., [1999] CIRB no. 7

The Board found that the conditions for a single employer declaration were met and that there was a sufficient labour relations purpose to justify exercising its discretion pursuant to section 35. Although the employer's intentions were not to undermine bargained or bargaining rights, the consequence of its use of its corporate structure to achieve its business goals had that effect. Having found that granting a single employer declaration would be conducive to labour relations stability and harmony, the Board decided to exercise its discretion to grant the requested declaration.

Greater Moncton Airport Authority Inc., [1999] CIRB no. 12

The union objected to the Board's jurisdiction to decide the matter of essential services on the grounds that the notice to bargain was served prior to the enactment of the revised *Canada Labour Code, Part I*, and that the Minister's referral was *ultra vires* as it violated the intent and spirit of the statute. Finally, this matter was presented to the Board as a Ministerial reference per section 87.4(5) under which the Board has jurisdiction to deal with the specific issues raised in the ministerial referral, and to interpret the legislation in a manner that is consistent with its intent, yet sensitive to the parties. Consequently, the Board had jurisdiction to deal with this matter.

The Town of The Pas, [1999] CIRB no. 14

Following the transfer of the management, operation and maintenance of the Town of The Pas Airport from Transport Canada to the Town, the Board found that it had constitutional jurisdiction to deal with the application for certification filed by the union to represent airport equipment operators at the Airport. The Board determined that the primary functions of the employees, i.e. maintenance, were vital and essential to the safe and effective operation of the

Airport, a core federal undertaking. The Board also concluded that the Airport operations were severable from the rest of the Town's general operations.

CITY-TV, CHUM City Productions Limited, MuchMusic Network and BRAVO!, Division of CHUM Limited, [1999] CIRB no. 22

The Communications, Energy and Paperworkers Union applied under section 18 for a review of its bargaining certificate for a unit of employees of the television operations of CHUM, to redesignate the proper name of the employer and to include employees of CityInteractive, a division of CHUM Ltd. CityInteractive is engaged in the design and production of interactive marketing materials and provides interactive services. CHUM argued that CityInteractive's activities did not fall within federal jurisdiction. The Board held that it had jurisdiction over CityInteractive's labour relations as CityInteractive is part and parcel of the CHUM whole.

Aéroports de Montréal, [1999] CIRB no. 23

The Board had to determine the essential services that must be continued in the event of a strike by the firefighters at the Aéroports de Montréal. In doing so, the Board considered the three following questions. (1) Who is the public referred to in section 87.4? (2) What is meant by the safety and health of that public? (3) How should the Board designate the services, in order to prevent an immediate and serious danger to the public's safety or health in the event of a work stoppage? The Board concluded that the services normally provided by a complement of six members of the unit must always be maintained in the event of a strike.

Clive Winston Henderson, [1999] CIRB no. 29

The complainant's seniority position was lowered following the settlement of grievances of other employees who were placed ahead of him. The complainant was only advised of this change after it was agreed upon, and the union then denied him any further access to the arbitration process. The bargaining agent's refusal to file a grievance on the complainant's behalf was found to be discriminatory and arbitrary and thus a breach of the duty of fair representation.

George Cairns et al., [1999] CIRB no. 35

The International Brotherhood of Locomotive Engineers (BLE) is certified to represent a new bargaining unit comprised of "operating engineers," a new classification that merged the duties of locomotive engineers (previously represented by BLE) and conductors (previously represented by the United Transportation Union (UTU)). The BLE failed to balance the legitimate interests of all its members adequately and fairly when it negotiated an agreement with VIA. The union's behaviour was tantamount to an absence of representation and constituted a breach of the duty of fair representation. The Board ordered that the agreement

be reopened on three specific issues and that the BLE hold a consultative process to determine the interests and needs of the conductors and hire a professional to assist them in the process.

BCT.Telus et al., [1999] CIRB no. 36

The International Brotherhood of Electrical Workers (IBEW) raised a preliminary objection respecting the Board's jurisdiction to hear an application for a single employer declaration, on the grounds that the Board lacked judicial independence. The Board dismissed the objection. Although the Chairperson has the power to assign and reassign matters and determine the composition of panels, the Chairperson must observe the principles of fairness. In any case, use by the Chairperson of this power does not constitute interference by the executive or legislative branches of government. Finally, the dissolution of the CLRB by legislation was done for legitimate reasons and did not create a perception of lack of independence

PLH Aviation Services Inc. et al., [1999] CIRB no. 37

This single employer application involved major airline companies that had pooled their resources for the provision of fuelling services at the Vancouver Airport. Air Canada and Canadian Airlines International Limited, via the newly created Vancouver Fuel Committee (VFC), entered into an operating agreement with PLH Aviation Services Inc. to operate the fuelling services at the airport. The union, which held bargaining rights with PLH, asked the Board to issue a single employer declaration pursuant to section 35. The Board granted the application mainly because of the control exercised by the airline companies, through the VFC, over the bargaining relationship between PLH and the union.

Air Canada et al., [1999] CIRB no. 44

The Board refused to exercise its discretion to declare Air Canada and its connector airlines a single employer. It refused to do so in an earlier decision on the basis that there was no evidence of actual or likely undermining of bargaining rights. The Board must respect the bargaining unit structure that parties have created for themselves and that the Board has approved as appropriate bargaining units.

Transx Ltd., [1999] CIRB no. 46

Despite repeated requests by the union and the intervention of the Board, the employer failed to comply fully with an order to reinstate and compensate employees it had discharged for union activity. Furthermore, it conducted surveillance of some union organizers and discharged a group of employees a second time, on false pretences. The Board found that the employer's actions were violations of the *Code* of the most serious nature, designed to intimidate employees. Therefore, a representation vote would not likely reflect the true wishes

of the employees. In order to undo the harm already done to employees' freedom of choice, the union was automatically certified.

Rogers Cablesystems Limited, [2000] CIRB no. 51

Union seeking consolidation of two separate bargaining units pursuant to section 18.1. The Telecommunications Workers' Union's proposal to consolidate the unit was consistently rejected by the employer at the bargaining table. The admitted purpose for the consolidation was to extend one unit's work jurisdiction clause to the other unit thus ensuring the union's complete control over the work jurisdiction in the two areas. The application was dismissed. There were no significant changes in the industry warranting the Board disrupting stable labour relations, and no compelling reasons that the bargaining structure was no longer appropriate and warranted interference.

Trentway-Wagar Inc., [2000] CIRB no. 57

The Amalgamated Transit Union, Local 1624, was in the process of renegotiating its collective agreement with Trentway-Wagar. The employer dismissed Local president from employment on day of his re-election to that post. The president was prevented from conducting his union duties, particularly relative to the renegotiation. The Board concluded the dismissal of the Local president must potentially have a serious adverse impact upon the collective bargaining process and cause employees to reasonably fear retaliatory action by the employer for union activities. The Board issued an interim order pursuant to section 19.1 for the reinstatement of the individual.

Island Telecom Inc. et al., [2000] CIRB no. 59

The Communications, Energy and Paperworkers Union of Canada, Locals 401 and 902, was seeking a declaration that Island Telecom Inc. and Island Tel Advanced Solutions Inc. (ITAS) are a single undertaking or business for the purposes of the *Code.* ITAS is a wholly owned subsidiary of Island Tel established in 1996 to provide Internet access to Island Tel customers. The Board concluded that employees who were doing the union's bargaining unit work at Island Tel were being transferred to or hired by ITAS to do the same work in a non-bargaining unit environment. It exercised its discretion under section 35 and made the single employer declaration as there was convincing evidence that the unions' bargaining rights were being or likely to be undermined.

ITAS claimed that the Board did not have jurisdiction to rule on this matter as ITAS is not operating as a federal work, undertaking or business. The Board determined that ITAS's activities extends beyond the limits of the province. It allows Internet users to communicate, transmit and receive information across the world. ITAS also falls under federal jurisdiction because it was intended to be, and is, operated as an integral functional unit of Island Tel.

Westhore Terminals Ltd., [2000] CIRB no. 61

Westshore Terminals Ltd. alleged that the International Longshore and Warehouse Union, Ship and Dock Foremen, Locals 514, 502 and 517, counselled or otherwise encouraged its members to refuse to report to work and to perform their duties at the employer's coal-loading facility at Roberts Bank, Delta, B.C. According to the uncontested evidence before the Board, employees were refusing to work in combination, in concert, and in accordance with a common understanding, in support of another union and its members. It was generally accepted that, but for the provisions of the various collective agreements, the conduct of the employees would be considered unlawful as being contrary to section 89. The Board determined that the specific provisions of the collective agreements that govern the relations between the parties do not change the nature of the concerted and unlawful conduct that took place on December 30, 1999 and that constituted a strike in accordance with the provisions of the *Code*.

Claude Duguay et al., [2000] CIRB no. 62

The Canadian Union of Public Employees (CUPE) filed an application for an interim order, seeking to have suspended to final decision of the Board the requirement for the checkers to select a benefit option under the terms of an MEA-ILA pension and group insurance plan. In the Board's view, CUPE had not adduced convincing evidence that it had based its action on urgency or any risk to the rights of the parties or to the objectives of the *Code*. The Board found from the whole of the evidence produced by the parties that the issue in this case could be subject to negotiations between CUPE and SAQ; and it is with this in view that the Board ruled that it need not intervene in the balance of power between the parties at this stage of the proceedings. The application was therefore dismissed.

An application for an interim order is an exceptional measure. In addition to relying on the objectives of the *Code* respecting industrial peace and the conduct of effective labour relations, the question must be based on a colour of law before the existence of a serious question or the balance of convenience can even be considered. The Board's decision must therefore be based on matters over which it has jurisdiction.

Judicial Review

This section deals with judgments handed down between January 1, 1999 and March 31, 2000 by superior courts, with respect to decisions of the Canada Industrial Relations Board.

McLean v. *International Longshoremen's and Warehousemen's Union, Local 502,* no. A-247-98, June 23,1999 (F.C.A.)

In March 1996, the Board upheld Rodney McLean's complaint that the ILW had violated the *Code* by operating its hiring hall in a discriminatory fashion. In its decision, the Board retained jurisdiction to deal with the issue of the appropriate remedy. The Board exercised this jurisdiction on April 26,1996 by ordering that the union alter its seniority list. The order did not make any provision for the payment of damages to Mr. McLean. His request that the Board reconvene to deal with the issue of damages was refused.

The refusal was upheld by the Court on judicial review. The Court found that the Board had not failed to "hear and determine the complaint" under the Code and it was evident in the Board's decision that it had dealt with the issue and decided against ordering any economic remedy. The Board was under no duty to award damages as a remedy. The request to reconvene, the Court stated, "was no more than a belated attempt to attack the earlier decision."

Delisle v. *Canada (Deputy Attorney General),* [1999] 2 S.C.R. 989

The *Public Service Staff Relations Act* contains a provision excluding members of the RCMP from its application. Similarly, the *Canada Labour Code* contains a provision excluding public service employees from Part I of the *Code*. RCMP members, as a consequence, do not enjoy the benefits of these statutory collective bargaining regimes.

As referenced in the 24th Annual Report, the Board, therefore, dismissed an application for certification in 1986 to represent the members of the RCMP. The Board determined that it had no jurisdiction to deal with the issue and noted that a regulatory vacuum existed with respect to the RCMP.

Gaetan Delisle was President of an association representing the members of the Quebec branch of the RCMP. He sought on their behalf a declaration that these two provisions were unconstitutional as they violated the rights to freedom of association and of expression as well as the equality rights guaranteed by the *Canadian Charter of Rights and Freedoms*. The Quebec Superior Court and the Quebec Court of Appeal rejected his claim and found the provisions valid.

On appeal to the Supreme Court, the judgement of the courts below was affirmed. The Supreme Court did not accept the argument that the provisions prevented the RCMP from creating an independent employee association and that the provisions encouraged unfair

labour practices. The Court found that the right to freedom of association did not require the application of a particular statutory regime of collective bargaining and trade union representation. Rather, the protections existed independently under the *Charter*. If the RCMP were guilty of unfair labour practices these could be attacked directly under the *Charter* as invalid government action. Similarly, the right to freedom of expression does not require specific statutory obligations; it obliges the government not to interfere with a *Charter* protected freedom. Positive government action to include workers in a particular industrial relations scheme is not required when the *Charter* already prohibits interference by government with respect to freedom of association and expression. Finally, the equality rights of the *Charter* were not infringed as the distinction imposed on the RCMP by the provisions was not a ground of discrimination recognized under the *Charter*. The provisions are not discriminatory as they set the RCMP apart from other public service employees for a legitimate public purpose.

NAVCanada v. *Canadian Air Traffic Control Associatio*n (1999), 250 N.R. 321 (F.C.A.)

In March 1998, the Board ordered the union not to strike nor to engage in a work slowdown. Shortly thereafter, upon application by the employer, and without specifically notifying the union, the Board ordered that its order be filed for enforcement in the Federal Court pursuant to section 23(1) of the *Code*. The union filed submissions with the Board under that section and the following day it requested the Board to rescind its order on the grounds that the Board had breached a principle of natural justice by making the order without providing the union with an opportunity to make submissions. The Board received the submissions and allowed the employer 10 days to respond and a further 10 days for the union to file its reply. The union applied for judicial review on the grounds of breach of natural justice and the Board deferred considering the matter pending the outcome.

The application for judicial review was dismissed. Because the Board had already agreed to provide the opportunity to make submissions, the union had received the remedy it sought. The Court stated: “When a party seeks to remedy a procedural defect before a tribunal and the tribunal agrees to what the applicant seeks... it is inappropriate for the applicant to ignore the tribunal and insist on proceeding to Court.”

Beaudet-Fortin v. *Canadian Union of Postal Workers*, no. A-23-98, November 26, 1999 (F.C.A.)

A union member was expelled from her union for participating in lawful raiding activities which, although permitted as an employee’s basic freedom under section 8(1) of the *Code*, could be sanctioned by expulsion under the union’s Articles. She filed a complaint of unfair labour practice with the Board. The Board upheld her complaint on the basis that the expulsion was a discriminatory manner of applying discipline and membership rules contrary to sections 95(f) and (g) of the *Code*.

The Court upheld the Board's decision on review as not being unreasonable in the circumstances.

International Brotherhood of Locomotive Engineers v. ***Cairns,*** no. A-749-99, January 18, 2000 (F.C.A.)

Mr. Cairns complained to the Board that the union had violated its duty of fair representation under the *Code* by preferring the interests of the locomotive engineers over those of the conductors in the negotiation of the collective agreement with VIA Rail. The Board upheld the complaint and ordered the collective agreement reopened.

The union and the employer brought an application for judicial review arguing that the Board had erred in considering the content of the negotiation and had exceeded its jurisdiction by ordering the renegotiation of the collective agreement. They then brought a motion for an order staying the Board's order pending the disposition of the review.

This judgment of the Court deals only with the motion for the stay. The Court granted the stay after applying the test as outlined by the Supreme Court of Canada in *RJR MacDonald Inc* v. *Canada.* The Court found that there were serious questions to be determined at the judicial review and that irreparable harm might be suffered without the stay as any renegotiation done pursuant to the order could compromise the employees (by requiring their lay-off, for example) if it later had to be undone. The Court did not accept that the Board was insulated from the stay by its strong privative clause in the *Code*.

Varma v. *Canadian Union of Postal Workers,* no. A-552-97, February 11, 2000 (F.C.A.)

Mr. Varma had complained to the Board that certain union executives had breached the duty of fair representation. The Board dismissed his complaint. Mr. Varma then made an access to information request under the *Privacy Act* whereby he discovered previously undisclosed information in his personnel file. His request for reconsideration was based on this newly discovered information. The Board refused to reconsider the matter as it would require speculation as to what effect the information might have had on the original panel. Mr. Varma applied for judicial review.

The Court upheld the Board's refusal. The Court noted the presence of a strong privative clause in the *Code* and found the Board's decision was not patently unreasonable. Mr. Varma had failed to explain why the information had not been discovered prior to the original hearing, nor had he shown how it could have changed the Board's decision.

Viceroy Minerals Corp v. *Teamsters, Local Union No.31*, no. A-619-98, March7, 2000 (F.C.A.)

The union applied under new section 109 of the *Code* for access to employees living on the employer's isolated premises near Dawson City to solicit union membership. Under the section, access must otherwise be impracticable. The union argued that it would not be able to contact these employees without access to the premises. The Board found that access to those employees flown into work by the employer was impracticable but was not for those travelling to work by private car. However, it interpreted section 109 as contemplating an order applying to all employees. It therefore ordered access to all employees on the premises. The employer applied for judicial review arguing that the Board had exceeded its jurisdiction in making that order.

The Court dismissed the application for review. The Court noted the strong privative clause in the *Code* and allowed the Board a high degree of deference. It was open to the Board to order access to all employees and not only to the group flying to work.

Quick Coach Lines Ltd. v. *Teamsters Local Union No.31*, no. A-650-98, March 10, 2000 (F.C.A.)

The Court dismissed the application of Quick Coach Lines for judicial review as it found the Board had not exceeded its jurisdiction by certifying the union as bargaining agent for a unit different from the one applied for under the *Code*. The union had applied for a unit including "drivers, wash rack employees and mechanics." However, the Board found that the employees in the proposed unit did not share a sufficient community of interest; consequently, it certified the union as agent for the drivers.

The Court recognized the Board as a highly specialized tribunal whose decisions are protected by a strong privative clause. The Court concluded: "In requiring the Board to determine whether the bargaining unit is appropriate, the Board must have jurisdiction to consider alternative bargaining units."

Amalgamated Transit Union*, Local Union 1624* v. *Bugay* (1999), 99 CLLC 220-031 (F.C.A.)

The Board treated a letter of complaint submitted by an individual employee as an application to reconsider an earlier Board decision declaring a partial sale of business from Voyageur to Trentway-Wagar. While the initial application concerning the sale was pending, the parties had entered into a settlement of various matters concerning the bargaining unit and this had been incorporated into the order. The Board remitted the matter back to the original panel to examine the facts and circumstances relating to the intermingling of employees and consequent seniority list. The applicants feared that the Board's reconsideration would open the negotiated settlement with respect to seniority. They sought judicial review.

The Court held that the Board had exceeded its jurisdiction by exercising its power to reconsider its own decision without first being asked to do so by a party to the collective agreement as required by former section 45(3) of the *Code*. The Court noted that there was nothing in the *Code* to prevent the Board from investigating the complaint as a breach of the duty of fair representation under section 37 and fashioning a remedy if that section were violated.

Banque Canadienne Impériale de Commerce - Centre Visa v. *Syndicat des employées et employés professionels-les et de bureau, section locale 57* (1999), 242 N.R. 188; and 99 CLLC 220-048 (F.C.A.)

CIBC filed a complaint with the Board alleging that the union, which had applied for certification, had engaged in unfair labour practices. It wanted the Board to investigate its complaint and dismiss the application for certification if the complaint was substantiated. The Board found little to substantiate the employer's claims. As it was satisfied that a majority of the employees wanted the union to represent them, the Board certified the union; however, it still intended to hold a hearing regarding the allegations of unfair labour practices.

Before the hearing could be held, the employer filed an application for judicial review. CIBC asserted that the Board's certification order was irrational as it was issued without supporting reasons.

The Court dismissed the application stating that "[T]he Board is master of its procedures. It is also master of setting its priorities." The Board is not required to delay certification whenever an employer raises allegations of unfair labour practices. The Board could not have rendered its decision without having taken these allegations into consideration.

Dynamex Canada Inc. v. *Canadian Union of Postal Workers* (1999), 99 CLLC 220-037 (F.C.A.)

In March 1997, CUPW applied for certification as the bargaining agent for a group of Dynamex employees. The Board dismissed the original application because the union had underestimated the number of employees in the unit.

In November 1997, the union filed a second application for certification as the bargaining agent of a larger group of employees. Dynamex argued that the application was not only untimely but it was for substantially the same bargaining unit as before. Therefore, the six-month time bar for reapplication, in section 31(1) of the Regulations, was contravened.

Although the Board recognized that the application was for substantially the same bargaining unit, it exercised its discretion to abridge the time and considered the application on its merits. The Board determined that the unit was appropriate for collective bargaining and ordered a representative vote. Dynamex applied for judicial review arguing that the Board lacked jurisdiction to override the time bar.

The Federal Court of Appeal held that the Board properly exercised the authority conferred by Parliament to make regulations regarding time periods under section 15(e) of the *Code*. Section 31(3) of the Regulations allows the Board to override the time bar set out in section 31(1).

The Supreme Court dismissed Dynamex's application for leave to appeal, without reasons.