ESTIMATES

Canada Industrial Relations Board

Performance Report

For the period ending
March 31, 2002

Canada

The Estimates Documents

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament.

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*.

The Estimates, along with the Minister of Finance's Budget, reflect the government's annual budget planning and resource allocation priorities. In combination with the subsequent reporting of financial results in the Public Accounts and of accomplishments achieved in Departmental Performance Reports, this material helps Parliament hold the government to account for the allocation and management of funds.

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Foreword

In the spring of 2000, the President of the Treasury Board tabled in Parliament the document "Results for Canadians: A Management Framework for the Government of Canada". This document sets a clear agenda for improving and modernising management practices in federal departments and agencies.

Four key management commitments form the basis for this vision of how the Government will deliver their services and benefits to Canadians in the new millennium. In this vision, departments and agencies recognise that they exist to serve Canadians and that a "citizen focus" shapes all activities, programs and services. This vision commits the Government of Canada to manage its business by the highest public service values. Responsible spending means spending wisely on the things that matter to Canadians. And finally, this vision sets a clear focus on results – the impact and effects of programs.

Departmental performance reports play a key role in the cycle of planning, monitoring, evaluating, and reporting of results through ministers to Parliament and citizens. Departments and agencies are encouraged to prepare their reports following certain principles. Based on these principles, an effective report provides a coherent and balanced picture of performance that is brief and to the point. It focuses on outcomes - benefits to Canadians and Canadian society - and describes the contribution the organisation has made toward those outcomes. It sets the department's performance in context and discusses risks and challenges faced by the organisation in delivering its commitments. The report also associates performance with earlier commitments as well as achievements realised in partnership with other governmental and non-governmental organisations. Supporting the need for responsible spending, it links resources to results. Finally, the report is credible because it substantiates the performance information with appropriate methodologies and relevant data.

In performance reports, departments and agencies strive to respond to the ongoing and evolving information needs of parliamentarians and Canadians. The input of parliamentarians and other readers can do much to improve these reports over time. The reader is encouraged to assess the performance of the organisation according to the principles outlined above, and provide comments to the department or agency that will help it in the next cycle of planning and reporting.

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

Comments or questions can be directed to:

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Canada Industrial Relations Board
Performance Report

for the period ending
March 31, 2002

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 fourth annual performance report of the Canada Industrial Relations Board (CIRB) for the period ending March 31, 2002.

During the 2001-02 fiscal year, demand for the CIRB's services has continued to be high, a trend that has characterized the CIRB since its inception in January 1999. This has resulted in a significant case-load increase and near-doubling of Board jurisprudence over that period. Moreover, due to the extremely dynamic nature of the current Canadian industrial relations climate, Board members are being required to not only respond to a higher volume of cases, but also to a substantial increase in the complexity of issues to be resolved. Meeting these dual demands continues to place significant pressures on the schedules and workload of the Board.

The CIRB has been aided in its ability to meet this increasing demand by the approval this year by Treasury Board of the necessary resources to allow operational and technological enhancements. This has enabled the Board to embark on processes to improve its case and record management systems. It has also permitted a modest expansion of the CIRB's staff complement, notably "front-line" staff who undertake the investigation and processing of files, and who provide alternative dispute resolution services to Board clients. The CIRB continues to promote, wherever possible, the joint resolution of issues by the parties, and currently resolves some two-thirds of all complaints without a hearing.

I feel assured that the experiences of the Board over the past year, coupled with its recognition of current and future challenges, position it well to continue to meet the increased demand for its services in a timely and effective manner.

J. Paul Lordon
Chairperson

Section II. Strategic Context

A. Context and Background

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 under provincial jurisdiction
- Undertakings of the First Nations on reserves
- Certain Crown corporations (including, among others, Atomic Energy of Canada Limited)

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. Resources Used

Strategic Outcome	Planned Results	Related Activities	Resources (000)	Resources (%)
• effective industrial relations in any work, undertaking or business that falls within the authority of the Parliament of Canada	• decisions on applications and complaints provided in a fair, expeditious and economical manner	• intake and investigative services • case management activities • Board deliberations, public hearings and in-camera meetings • production, translation, and distribution of Board decisions • legal and research services in support of Board deliberations and court proceedings • information management services and the development of mechanisms to make the Board's activities more accessible and less costly	**7,762.6**	**68**
	• successful resolution of applications and complaints through alternative dispute resolution mechanisms	• alternative dispute resolution services	**1,472.0**	**13**
	• an involved and well-informed labour relations community	• publication and distribution of *Reasons for Decision*, newsletters, information circulars and Practice Notes • direct consultations with clients • response to *ad hoc* inquiries from the public • public access to a resource centre on industrial relations and administrative law • enhancement of CIRB Web site • presentations by Board members and staff to the industrial relations community • client consultations, publications and distribution of *Regulations* and Practice Notes	**1,387.9**	**12**
			10,622.5	**93**

Note:

– Financial, Administrative and Human Resources services in support of Key Results Commitments represent 7%.

– Financial tables can be found in Appendix A.

C. Current Climate

Over recent years, the climate for labour relations in Canada has experienced rapid and dramatic change. Heightened competition resulting from the globalization of markets, technological change, the volatility of national and international economies, and the escalating incidence of corporate mergers have all had impacts on employers and employees in Canada. This has been particularly true for industrial relations in industries within the federal jurisdiction, notably in the air, road and rail transportation sectors, and among telecommunications and broadcasting industries.

As a result, the CIRB has increasingly been called upon to address a range of complex and often urgent issues whose implications affect not only the parties involved, but extend to the broader economic and social well-being of many Canadian enterprises and citizens. Throughout the past year, these issues have included:

- the acquisition and exercise of free collective bargaining rights, the promotion of sound labour-management relations, and the encouragement of the constructive settlement of disputes;

- the assurance that collective bargaining between employers and unions is conducted fairly and in good faith;

- the protection of individuals' rights to receive fair treatment from their union and their employer;

- the determination of the levels of services required to be maintained during a work stoppage to ensure the protection of the health and safety of the Canadian public, in such enterprises as airports, atomic energy production, and the air navigation system;

- the assistance provided to companies and unions in resolving the labour relations implications of corporate mergers and take-overs — including the determination of representation rights and the merger of collective agreements and seniority rights — in the airline and telecommunications industries;

- the rapid cessation of all illegal work stoppages or lockouts.

Fulfilling these responsibilities is not without challenges. The complexity and significance of the issues facing federally regulated employers and unions require the Board to judiciously apply a wide range of knowledge and skills in industrial relations and administrative law, often in diverse and technically sophisticated contexts. The commitment of the Board to promote, wherever possible, the joint resolution of issues by the parties — along with clients' demands for the Board's assistance in mediating many disputes — requires not only that Board staff and members maintain a high skill level in the areas of alternative dispute resolution, but also entails increasing demands on the Board's resources. Accordingly, the

Board has placed considerable emphasis in augmenting both its skill and resource levels, to meet the needs of its clients.

D. Volume and Complexity of Cases

Since its inception on January 1, 1999, the CIRB has experienced a sustained increase in workload over the case-load levels typical of the predecessor Canada Labour Relations Board (CLRB). Over the past three years, following an initial large increase, the Board's workload has remained relatively constant, at a level some 40% higher than that of the predecessor CLRB. The following statistics show the volume of matters handled by the CIRB.

Figure I (a) – Workload

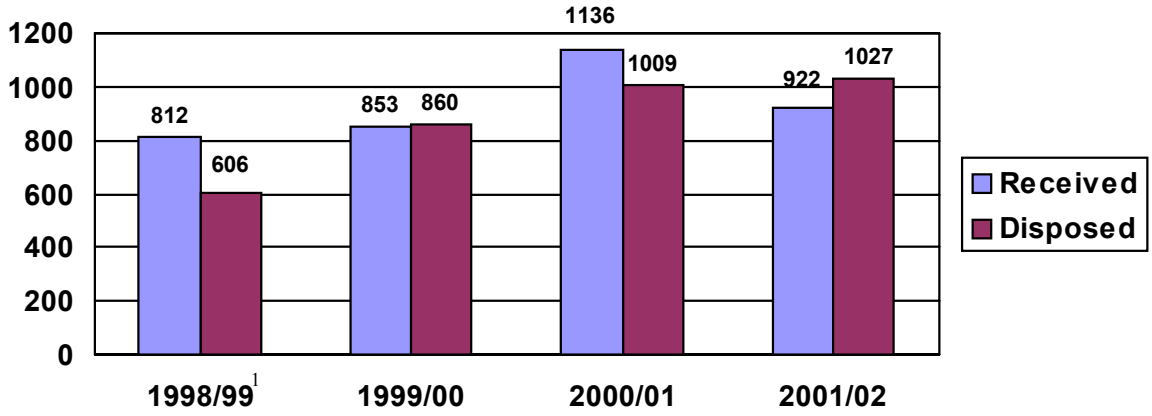
Total Files – Certifications, Complaints and Other[1]				
	98/99[2]	**99/00**	**00/01**	**01/02**
On hand	474	680	673	800
Received/reopened	812	853	1136	922
Total files	1286	1533	1809	1722
Granted	194	280	275	292
Rejected	136	209	263	243
Withdrawn/settled	276	371	471	492
Total disposed	606	860	1009	1027
Pending	680	673	800	695

[1] These figures reflect the number of matters/files (based on sections of the *Canada Labour Code*), and not necessarily the number of cases.

[2] The CIRB was established on January 1, 1999. Data prior to this date were recorded by the former Canada Labour Relations Board. Since the date of transition to the new Board, all outstanding cases of the former Board have been resolved.

While the volume of cases received by the Board has increased by 39.2% since January 1, 1999, the CIRB has increased the number of cases it disposes on an annual basis by 63.7%.

Figure I (b) – Total Cases Received and Disposed



[1] The CIRB was established on January 1, 1999; prior to that, its predecessor was the CLRB.

Beyond this numerical increase, the complexity of issues involved in many files before the Board has also intensified significantly. In addition, many single applications to the Board are simultaneously based upon more than one section of the *Canada Labour Code*, thus increasing the complexity of the file. For example, files regarding the review of the bargaining unit structure, requests for a single employer declaration, and requests for a declaration of a sale of business are frequently included in the same application. In part, this has resulted from the 1999 amendments to the *Code* that conferred upon the Board greater powers in addressing the full range of industrial relations issues in these circumstances.

The following table illustrates the impact of this trend on the total number of hearing days involving these types of issues.

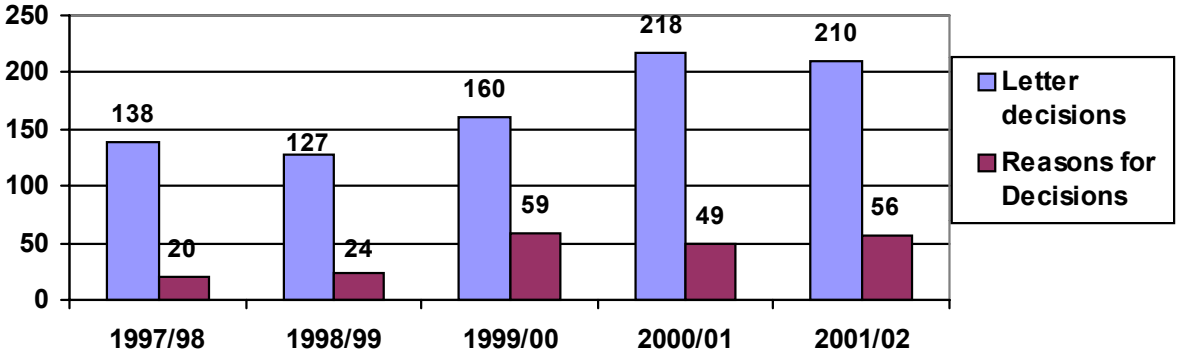
Figure II (a) – Total Number of Hearing Days

	1997/98	1998/99	1999/00	2000/01	2001/02
Review of bargaining unit structure[1]	-	-	33	40	135
Sale of business	8	23	37	40	71

[1] The review of bargaining unit structure provision (section 18.1) was added to the *Code* in 1999; prior to this, similar claims were grouped into the Review (section 18) category; no distinction was made for a bargaining unit structure review.

These trends and developments have also resulted in a significantly increased number of written decisions by the Board. These decisions serve both to resolve the issues relevant to complex circumstances and to clarify the way the *Code,* including the new *Code* provisions, will apply in evolving circumstances.[1] This has resulted in an approximate doubling of Board jurisprudence.

Figure II (b) – Total Board Decisions by Type



The following examples illustrate the complexity of issues that have required concerted mediation and adjudication efforts by the Board, including the issuance of detailed and often lengthy written decisions:

- ***Air transportation*:** Following the much-publicized merger between two national air carriers, single employer applications were filed with the CIRB. To date, there have been related applications based on 7 additional sections of the *Code* added to the initial application, with 28 parties involved, affecting 9 bargaining units. This has necessitated more than 20 hearings or conferences and over 30 related decisions.

- ***Telecommunications:*** The merger of a family of western telecommunications companies led to an application to the CIRB that referenced six different sections of the *Code*. The initial file was received on February 1, 1999 and work continues. The case has proliferated to encompass 23 parties and 5 bargaining units. There have to date been in excess of 30 hearings and meetings held, with 6 related decisions and 14 related files.

- ***Banking:*** A single file in the financial services sector required more than 15 months to resolve. Initially filed as a bad faith bargaining complaint, proceedings pursuant to six related sections of the *Code* were subsequently added, involving applications for

[1] The Board issues detailed *Reasons for Decision* in matters of broader national significance and/or significant precedential importance. In other matters, more concise letter decisions help expedite the decision-making process, therein providing more timely industrial relations outcomes for parties.

certification, revocation of certifications, interim orders, and unfair labour practice complaints. By its conclusion, the file had required some 35 hearings and meetings, with 4 related decisions.

In addition to applications involving numerous sections of the *Code* — thus increasing their complexity — there are also certain types of files that require priority action. Such applications necessitate rapid adjustments in the Board's case management schedule, and appear to be on the increase. For example, the total number of hearing days required for cases relating to the maintenance of activities in order to protect the health and safety of the public during a work stoppage was 14 in 1999/00; 25 in 2000/01 and 42 in 2001/02. Furthermore, the inclusion, in the 1999 amendments to the *Code*, of an express interim order power has resulted in an increasing number of instances where the Board must respond to these types of applications on short notice.

To assist the Board in hastening the resolution of cases, the CIRB this year introduced new *Regulations* aimed at streamlining Board processes in general, and explicitly providing for the expedited handling of urgent matters (see page 13 below). Such matters include applications related to unlawful strikes or lockouts, unfair labour practice complaints respecting the use of replacement workers, allegations of dismissal for union activity, and referrals to the Board from the Minister of Labour relating to, *inter alia*, the maintenance of activities required during a legal work stoppage.

E. CIRB Performance

1. Processing Time

The heightened volume and technical complexity of matters before the CIRB is reflected in the overall processing time for Board files. ("Processing time" is the time required to complete a file from start to finish: time spent opening, investigating, mediating, hearing, where required, and deciding a case.) In comparison to the previous 3-year average, Figure III (a) reveals an average increase in processing time of 12 days. However, within this overall total, the time required to resolve matters which require a hearing has actually declined by nearly four calendar weeks, whereas the resolution of cases not requiring a hearing has experienced the increase. This reflects, in part, the additional efforts undertaken to attempt to achieve mediated resolutions, and also the increasing number and complexity of cases that can be decided by the Board on the basis of written submissions.

Figure III (a) – Processing Time (average number of days from received to disposed)

	Previous 3-year Average[1]	2001-02	Difference[2]
All cases	(216)	(228)	(+12)
with hearing	420	393	-27
without hearing	163	179	+16
Certifications	(159)	(213)	(+54)
with hearing	438	606	+168
without hearing	133	152	+19
Unfair labour practice complaints	(259)	(251)	(-8)
with hearing	437	417	+20
without hearing	203	200	-3

[1] The previous 3-year average is calculated based on performance data from 1998-99 to 2000-01.
[2] The difference is calculated based on the 2001-02 CIRB performance and the 3-year average.

2. Decision-making Time

One component of overall processing time is the length of time required to prepare and issue a decision, following the completion of the investigation and/or hearing of a matter. 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 a case on the basis of written and documentary evidence (i.e., file documentation, investigation reports, written submissions), or decisions may be deferred until further evidence and information is gathered via public hearing. Figure III (b) presents the disposition time for both types of decision-making.[2]

[2] 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) to 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 to the date the final decision is issued.

Figure III (b) – Decision-making
(average number of days from last hearing day or ready date to disposition)

	3-year Average[1]	2001-02	Difference[2]
All cases			
with hearing	171	118	-53
without hearing	42	64	+22
Certifications			
with hearing	150	210	+60
without hearing	24	41	+17
Unfair labour practice complaints			
with hearing	143	110	-33
without hearing	58	74	+16

[1] The 3-year average is calculated based on performance data from 1998-99 to 2000-01.

[2] The difference is calculated based on the 2001-02 CIRB performance and the 3-year average.

The disposition time for all cases heard improved significantly over the 3-year average by almost two months. It must be noted that this same indicator for 2000-01 also improved dramatically from the previous 4-year average. This demonstrates that the Board has met the increase in case-load by elevating its overall productivity and output. However, the experience that the Board has gained over the past several years — and the improvements achieved in Board performance — indicates that this current level of output can only be maintained with full resource levels among Board members.

The number of decision-making days for all cases without hearing has increased by over three weeks. This is directly related to the substantial increase in both hearing and non-hearing decision-making related to certifications (certifications comprise the bulk of non-hearing files included in the all cases indicator). Again, similar to the rationale for the increase in processing time for certifications, decision-making time has grown due to the complexity of issues involving certifications that emanate from the 1999 amendments to the *Code* involving such issues as sale of business and review of bargaining unit structure. These matters are often grouped in with a single certification application, therein escalating the time required to deal with the file.

With regard to unfair labour practices, disposition time for cases heard has continued to decrease significantly — by slightly over a month. Conversely, time taken for complaints without hearing has increased by a little over two weeks; this is perhaps due to the overall increase in unfair labour practice complaints received coupled with their propensity to be solved without hearing.

F. Outcomes Achieved

The sole strategic outcome of the Board is to contribute to and promote effective industrial relations in any work, undertaking or business that falls under federal jurisdiction. The Board interprets and applies the *Code* in a manner that supports and promotes free collective bargaining and the constructive settlement of disputes, in an effective, fair and timely manner.

The following initiatives have been achieved over the past year to facilitate this strategic outcome:

- The CIRB has issued some 260 written decisions, providing guidance and jurisprudence not only to the parties involved in specific applications, but to the broader industrial relations community. (A summary of some key decisions by the CIRB in 2001-02 is provided below, on pages 19-23.)

- At the same time, the CIRB has continued to increase its mediation and alternative dispute resolution services to employers, unions, and employees. This has resulted in the resolution of nearly two-thirds of complaints by the Board without the need for a hearing or a written decision.

- The CIRB introduced new *Regulations* on December 5, 2001 aimed at streamlining the Board's procedures, facilitating and expediting the exchange of documents and accelerating the processing of applications and the conduct of hearings. The *Regulations* were revised following extensive consultations with the labour relations community and Board clients.

- The CIRB has initiated the development of Practice Notes and information circulars to provide clear and concise summaries of Board practices to its clients and the general public.

- The CIRB extensively revised and updated its Web site in order to make more information about the Board — including its decisions — more widely available and accessible to the Canadian public.[3]

- CIRB members and staff have made presentations and addresses at a number of industrial relations conferences and seminars across Canada. This has provided ongoing contact with and feedback from the Board's client communities.

[3] http://www.cirb-ccri.gc.ca

- In response to its increased workload and to client feedback, the CIRB obtained an increase in its resource base to augment its staffing levels. As a result, additional staff have been hired to provide front-line investigation and mediation services, to facilitate case management at the CIRB's headquarters operations, and to assist in the translation and production of Board decisions.

- The CIRB also received Treasury Board approval for resources aimed at improving the Board's technological capabilities. Subsequently, the CIRB launched its *Horizon 2004* plan which will, over a three-year period, provide: an upgraded electronic case management system; an integrated document and information management system; video-conferencing capabilities; a CIRB intranet; secure remote access to CIRB databases for Board members and staff; and an examination of the potential for electronic filing of applications and documents. These initiatives will greatly enhance the efficiency of CIRB operations and its capacity to comply with the "Government On-Line" mandate.

G. Challenges Currently Facing the CIRB

As shown earlier, demand for the CIRB's services remains high and is anticipated to remain at current levels. With the approval by Treasury Board of additional operational resources and technological enhancements, the CIRB has been able to fill key staff positions and to initiate further improvements in its case management and records management systems. These changes have assisted the Board, overall, to elevate its output to meet this increase in case-load. The challenge will be to ensure that the skill and knowledge levels of staff are maintained at a high level, given the rapid and complex developments affecting federal jurisdiction sectors, and in the field of dispute resolution itself. The CIRB will also be faced with the challenge of ensuring that its technological upgrades are appropriately designed and implemented so as to meet the needs of the Board and its clients.

Perhaps most important, however, are the challenges faced by the Board at its adjudicative level. As described above, Board members are being required to address a growing volume and complexity of cases. In many instances, Board decisions in these matters have a substantial potential impact on the business directions of industries and on the conditions and rights of employees and their unions, or even on the general public. Such files often necessitate lengthy hearings and/or the review of substantial volume of documentation and submissions; decisions in these matters must be both comprehensive in scope and timely in execution. Meeting these demands creates significant pressures on the schedules and workloads of Board members who conduct hearings, engage in deliberations, and author decisions. In this context, it is vital that an appropriate number of members are available to enable the Board to meet its objectives and discharge its responsibilities.

Appendix A. Financial Performance Summary and Summary Tables

A. Financial Performance Summary

The total authorities granted to the Board were $4,060,148 more than originally planned. The additional authorities approved were to provide for:

- additional employee compensation due to collective bargaining and pay equity: $418,000;
- employee benefits related to the above additional personnel costs: $49,000;
- authorized spending of proceeds from the disposal of surplus Crown assets: $623;
- additional costs related to transitioning from the CLRB to the CIRB: $1,082,493;
- additional costs related to translation (Devinat case): $240,000;
- additional costs related to the improvement of the information technology infrastructure and program integrity: $1,878,182; and
- carry-forward from previous years used because of the increase of the workload: $391,850.

The actual spending was 96% of the authorized amounts. Transition costs were incurred in 1998-99, in 1999-00, in 2000-01, and in 2001-02. We do not expect any transition costs in 2002-03.

B. Financial Summary Tables

The following tables are applicable to the Board:

Table 1 - Summary of Voted Appropriations
Table 2 - Comparison of Total Planned Spending versus Actual Spending
Table 3 - Historical Comparison of Total Planned Spending versus Actual Spending

Table 1

Financial Requirements by Authority ($ thousands)

Vote		2001-02		
		Planned Spending	**Total Authorities**	**Actual Spending**
	Canada Industrial Relations Board			
10	Program expenditures	7935	11945.5	**11421**
(S)	Contributions to employee benefit plans	1173	1222	**1222**
(S)	Disposal of Crown assets		0.6	
	Total Department	9108	13168.1	**12643**

Table 2

Departmental Planned versus Actual Spending ($ thousands)

	2001-02		
Business Line: Administration of the *Canada Labour Code*	**Planned Spending**	**Total Authorities**	**Actual Spending**
FTEs	97		**98**
Operating	9108	13168.1	**12643**
Less:			
Respendable Revenues	0	(.6)	**0**
Total Net Expenditures	9,108.0	13,167.5	**12,643.0**
Other Revenues and Expenditures			
Non-respendable Revenues	(8.0)		**(1.5)**
Cost of Services Provided by Other Departments	2,383.2	2,369.6	**2,369.6**
Net Cost of the Department	11483.2	15537.1	**15011.1**

Table 3

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

			2001-02		
Administration of the *Canada Labour Code*	**Actual 1999-00**	**Actual 2000-01**	**Planned Spending**	**Total Authorities**	**Actual Spending**
Canada Industrial Relations Board	**10360.3**	**11143**	**9108**	**13168.1**	**12643**

Appendix B. Illustrative Specific Board Decisions and Judicial Review

A. Illustrative Specific Board Decisions

Atomic Energy of Canada Limited [2001], CIRB no. 122

An application was filed by Atomic Energy of Canada Limited (AECL) against Chalk River Professional Employees Group/Professional Institute of the Public Service of Canada (CRPEG); Chalk River Technicians and Technologists (CRTT); and the Chalk River Nuclear Process Operators, Power Workers' Union of the Canadian Union of Public Employees, Local 1000 (PWU) for a determination by the Board of whether the production of medical isotopes is necessary to prevent an "*immediate and serious danger to the safety or health of the public*" pursuant to section 87.4(1) of the *Code*. After a comprehensive review of the production, supply, distribution and use of medical isotopes, and the importance of nuclear medicine to health care in Canada, the Board determined that a strike or lockout would pose an immediate and serious danger to the safety or health of the public, and provided the parties with an opportunity to agree upon the level of production that should be maintained.

The Board found that medical emergencies are an everyday occurrence. A shortage of medical isotopes will occur within 66 hours following the beginning of a strike. By the end of the tenth day nuclear medicine would shut down. Sixty-five thousand nuclear medicine procedures take place around the world every day, and 30% of these procedures are medical emergencies. As well, even the unavailability of non-emergency nuclear medicine procedures present a risk to the public in the form of undiagnosed disease, delayed medical procedures, and substitute medical treatments. The circumstances go beyond the mere existence of caution to protect against potential harm, but establish a certainty that the public requires nuclear medicine and will be at risk if it is withdrawn. The denial of services that depend on molybdenum would put members of the public in dire circumstances because the alternate support is not readily and quickly available. Patients will be affected almost immediately as treatments are advanced or postponed to allow the treatment of the most acute patients to take advantage of available product. There is no basis for a conclusion that "immediate" lies in an artificial notice of a few hours. The Board concluded that while the danger must not merely be an inconvenience, it need not appear very shortly.

An application for judicial review of this decision is pending before the Federal Court of Appeal (A-406-01).

Mireille Desrosiers (2001), as yet unreported CIRB decision no. 124

The Centre for Research-Action on Race Relations, an association promoting interracial harmony in Canadian and Quebec societies, filed a request to intervene in an unfair labour practice complaint filed by a visible minority person against her union. The Board finds that the association does not have the required interest in accordance with the criteria established in the case law. No express legal authority allows it to represent the complainant before the

courts. The association cannot be directly affected by this decision since it will affect mainly the complainant and the union. The association has no particular competence or expertise that would enable it to assist the Board in its interpretation of the *Code*. The Board is not convinced that the association's intervention would further the objectives of the *Code*. However, the Board has considerable latitude with regard to admissibility of evidence. In order to avoid the rejection of representations that might be relevant, the Board has decided to hear the association's representations under certain conditions. The application is granted under the terms set out in the decision.

St. John's Shipping Association Limited et al. (2001), as yet unreported CIRB decision no. 126

The Longshoremen's Protective Union, Local 1953 of the International Longshoremen's Association (ILA) filed an application for a geographic certification. Despite not having a geographic certification, the ILA had been operating in the Port of St. John's for many years. An issue involving the unloading of off-shore oil equipment using non-members of the ILA provoked the application.

In granting the certification, the Board considered the divergent approaches it had adopted in the past with respect to the preconditions that must exist before the Board will grant such an application. The Board stated that whether there exist "compelling reasons" or a "valid reason" to issue the certification, the tests used in previous Board jurisprudence, it will not exercise its discretion and grant a geographic certification unless it believes that doing so will further industrial peace in the circumstances of each particular case. The only opposition to the application came from a company who, at the time, did not have a facility in the Port of St. John's, but would establish in the Port if it could obtain competitive labour rates. The Board found that the issue of competitive rates for labour was not a proper consideration under section 34, the purpose of the section being industrial peace and stability, avoidance of conflicts, and productive collective bargaining. In this case, the Board found that the certification was necessary given the likelihood of rapid and significant changes in the level of activity on the horizon for the Port. In describing the geographic certification, the Board declined to consider the effect that the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA) would have on the application, which had sought to exclude Canadian fishing vessels from the description of the geographic certification. The Board decided to refrain from specifically excluding these vessels, saying that to do so was not necessary as the labour component of fisheries was outside of its jurisdiction; the Board does not normally identify each provincially regulated operation as excluded from a federal certification order. Labour relations matters falling under provincial jurisdiction are automatically excluded, regardless of the national origin of the operation.

D.H.L. International Express Limited (2001), as yet unreported CIRB decision no. 129

Teamsters Local Union 91 filed a complaint against DHL alleging that it violated section 50(b) of the *Code*, which prohibits an employer from altering the terms and conditions of employment while collective bargaining is taking place. The Board found that the employer had indeed contravened the *Code* and interfered with the representation of the

employees by the union when it contracted out, contrary to its practices in existence at the time the certification application was filed, all available bargaining unit positions that had existed at the time of certification to outside contract or agency personnel. The Board also found anti-union animus.

In order to counterbalance the adverse consequences of DHL's actions, which the Board found had undermined and diminished the union's ability to properly represent its members in the attainment of a collective agreement, the Board ordered DHL to offer to the union binding arbitration to resolve outstanding items to settle the first collective agreement between the parties.

An application for judicial review of this decision was filed by the employer (A-592-01), but was subsequently discontinued. The decision was affirmed on reconsideration (decision no. 159).

Mackie Moving Systems Corporation (2002), as yet unreported CIRB decision no. 156

An application was brought before the Board by Teamsters Local Union 938 pursuant to section 24 of the *Code*. The employer, Mackie, is a trucking company. The application sought to certify all of Mackie's employees, including drivers who drove trucks owned by the company, owner-operators who owned and drove their own trucks, drivers who drove trucks owned by owner-operators (some of whom drove full time for Mackie), and drivers employed through an employment agency.

It was argued that drivers hired through a personnel agency were employees of the agency, and not of Mackie. The Board therefore had to determine whether Mackie or the agency was the employer of the agency drivers. The Board stated that the essential test for determining the identity of the employer lies in the determination of who has fundamental control and direction over the employees, and that this test must be applied by taking a balanced and comprehensive view of the issue while carefully weighing all relevant factors. By considering such factors as who paid wages and benefits, who controlled access to employment, who established working conditions, who controlled the performance of work, and by considering other relevant criteria such as the level of identification of these persons with the company, their degree of integration with the company, and the temporary or permanent nature of their employment, the Board determined that the employer exercising fundamental control with respect to the agency drivers was Mackie.

The inclusion in the bargaining unit of owner-operators and drivers who drove for owner-operators was challenged on the ground that these individuals were independent contractors, or were employed by independent contractors. It was argued by the employer, and by a number of intervening owner-operators, that owner-operators were economically independent of Mackie and therefore could not be considered dependent contractors under the *Code*. The Board pointed out that the definition of dependent contractor found in section 3 of the *Code* does not require a relationship of economic dependency to be proved, but rather presumes such a relationship to exist if the statutory criteria are met. In reviewing the relationship between Mackie and the owner-operators, a number of owner-operators who did

not meet the specified statutory criteria and who derived a significant portion of their business from sources other than Mackie were deemed not to share a community of interest with the remaining Mackie drivers, and were excluded from the bargaining unit.

Transport F. Boisvert and/or Transport Maybois Inc. [2002], CIRB no. 157

The Board had before it two applications for certification for the employees of Transport F. Boisvert Inc. and Transport Maybois Inc. After declaring that the two employers constituted a single employer, the Board ordered a vote to determine which of two unions, the Syndicat national du transport routier - CNTU or the Teamsters Quebec, Local 106 (QFL) (Teamsters), would represent the bargaining unit. A representation vote was held. Of the 60 members of the bargaining unit, 48 persons voted. Twenty-four votes were cast in favour of the CNTU and 19 were cast in favour of the Teamsters. Four persons voted for no union. One ballot was spoiled.

Section 31 of the *Code* provides for representation votes and says that the Board shall determine the result of a representation vote on the basis of the "ballots cast" by the majority of employees voting. The issue was whether the spoiled ballot should be counted as a ballot cast in the vote. If so, then the CNTU did not obtain a majority of votes, achieving only 24 of 48 votes, and a second representation vote would be required. If not, then the CNTU achieved majority support on the first vote, achieving 24 of 47 votes, and it should be certified to represent the bargaining unit. The issue had never been decided by the Board or its predecessor, the Canada Labour Relations Board.

The Board analyzed the jurisprudence of the Ontario, British Columbia, and Alberta labour relations boards as well as the origins of section 31 of the *Code*, and concluded that a spoiled ballot should not count as a ballot cast for the purposes of calculating majority support or for the purposes of determining whether 35% of persons eligible to vote have voted. Otherwise, an individual who expresses no opinion would affect the result of the vote, as the spoiled ballot would count against the union.

Nav Canada (2002), as yet unreported CIRB decision no. 168

Nav Canada, the corporation charged with providing Air Navigation Service for Canadian airspace, filed an application pursuant to section 87.4(4) of the *Code* for the maintenance of services of the operational air traffic controllers. Nav Canada took the position that any reduction in their services would pose an immediate and serious danger to the safety and health of the public, as the air traffic controllers in the bargaining unit are the only persons who can provide air traffic control of Canadian and delegated airspace.

The Board had to determine whether and to what extent the employees in the bargaining unit should be required to continue the supply of services. In doing so, the Board made some important assertions about the application and interpretation of section 87.4(4). It concluded that the notion of "public" must not be a restricted one, that the words of the *Code* and its standards must be the primary standard to be applied, and that in determining the level of services that should continue to be required the Board must respect such safety standards as

are established within the industry. The Board observed that any restrictions on the right to strike must respect the importance of the right in the context of the *Code*, as free collective bargaining is seriously compromised if the right to strike may not be exercised by employees to counteract the employer's economic power. Any abridgment of the right to strike must be to the minimum level required to cautiously protect the health or safety of the public. Further, the obligation to continue the supply of services and operation of facilities is incumbent on both the employer and the trade union. The Board confirmed that the danger need not arise immediately, it is enough that the services or operation of facilities are necessary to prevent the immediate and serious danger. It is the danger that must be prevented and not the actual occurrence. Finally, the Board determined that if a partial or complete withdrawal of services can be accomplished without an immediate and serious danger to the health or safety of the public it may occur under the section.

In the case of the air traffic controllers, the Board found that the services in question are services primarily directed at the safety of the public, and their withdrawal or non-existence would quickly and seriously threaten the safety of the public. The Board found that while services to North Atlantic Oceanic, North American and International flights including overflights must not be reduced and that domestic commercial flights necessary in the interests of the health of Canadians or others must be continued, some reductions could be made on flights between major Canadian cities, and training services could be withdrawn. It stipulated, however, that no reduction in services should be conducted without a full safety assessment and that a risk assessment in accordance with the *Canadian Aviation Regulations* should also be considered, and ordered the parties to attempt to reach an agreement. The Board retained jurisdiction to impose appropriate measures for carrying out the requirements of the *Code* should an agreement not be reached.

Société Radio-Canada (2002), as yet unreported CIRB decision no. 169

The Syndicat des communications de Radio-Canada applied to the Board for an interim order declaring that the lockout commenced by Société Radio-Canada on March 22, 2002 was illegal.

The Board had to identify whether the *Code* permitted a 24-hour strike, whether the employer, by preventing the employees from returning to work at the end of the 24-hour strike period had lock out the employees, and if so, whether that lockout was legal or illegal in the circumstances.

The Board found that the definition of the term "strike" in the *Code* was broad enough to permit a strike of limited duration, in this case a 24-hour strike. It further found that in not permitting the striking workers to return to work at the conclusion of their 24-hour strike, the employer had initiated a "lockout" as defined by the *Code*. The Board also found that the lockout commenced by the employer during the legal strike was a legal lockout.

B. Judicial Review

VIA Rail Canada Inc. v. *Cairns*, [2001] 4 C.F. 139 (C.A.), nos. A-369-00, A-749-99, A-747-99, May 2, 2001 (F.C.A.) [Leave to appeal to the S.C.C. denied on December 6, 2001]

In the present judicial review, the applicant, VIA (supported in part by the International Brotherhood of Locomotive Engineers (IBLE)) contested the original Board decision with regard to a violation of section 37 of the *Code*. The focus of the attack of the individual respondents was with respect to the Crew Consist Adjustment Agreement (the agreement) negotiated by the IBLE and VIA. The specific allegations relevant to the present application, as the Court determined, were with respect to (1) the requirement that conductors be selected for training as engineers, rather than being automatically eligible; (2) the loss of seniority rights due to the adoption of a "bottom-down" seniority list for retrained conductors; and (3) the agreement that conductors may be eligible to "flow back" to Canadian National Railways (CN) without any assurances that CN would accept such transfers.

Having determined that it had the jurisdiction to hear the case, the Board held the IBLE had failed to act objectively with respect to conductors' concerns and that it had failed in protecting its employees' job security and seniority rights. The Board therefore ordered that the IBLE and VIA reopen negotiations with respect to the above three enumerated concerns. The reconsideration panel affirmed the Vice-Chairperson's decision, and held that the remedy was not contrary to the principles of natural justice nor was it inconsistent with the policy objectives of the *Code*.

In reviewing decisions of the Board, the Court determined that it must decide whether the ultimate decision was one which Parliament intended to be left to the Board. The Court examined various factors, including the presence of a strong privative clause, according to section 22 of the *Code*, which insulates CIRB decisions from review with the exception of grounds of fraud, jurisdictional error or violation of the rules of natural justice. The Court must consider a second factor, the expertise of the Board in relation to that of the Court. The Court noted that "the CIRB has been entrusted by Parliament to administer a highly complex labour relations structure, which seeks to balance the interests of employers, unions and employees so as to maintain labour peace." (page 17). In contrast, the expertise of the judiciary with respect to issues in most labour disputes is more limited. The third set of factors the Court must consider is the purpose of the statute and the particular provision in question.

With respect to section 37, Parliament imposed upon the union a duty to represent its members fairly — in a manner that is not arbitrary, discriminatory or in bad faith. This duty is not unlimited. Thus, in keeping with the purposes and objectives of the *Code*, the duty is limited to that area where the union might most easily abuse its monopoly over bargaining with the employer. The Court concluded that, in interpreting section 37, the Board was required to take a broad and contextual approach. Thus, the appropriate standard of review is that of patent unreasonableness.

The question before the Court was whether the Board, in finding that section 50(b) of the *Code* gave conductors "rights under the collective agreement that was applicable to them," interpreted section 37 in a manner so patently unreasonable that its construction cannot be rationally supported by the *Code* and relevant legislation. The Court, in its analysis of whether the Board's decision was patently unreasonable, noted certain comments made by La Forest J. in *C.A.I.M.A.W., Local 14* v. *Paccar of Canada Ltd.*, [1989] 2 S.C.R. 983. He stated at page 1003 of the judgment that a tribunal does have some room to make errors, "provided it does not act in a manner 'so patently unreasonable that its construction cannot be rationally supported by the relevant legislation and demands intervention by the court upon review.' " La Forest J. further stated that "... Privative clauses are permissible exercises of legislative authority and, to the extent that they restrict the scope of curial review within their constitutional jurisdiction, the Court should respect that limitation and defer to the Board." (page 1004).

The Court concluded that the interpretation of section 37 adopted by the Board in this case was not patently unreasonable. The Board's order was rationally connected to the union's breach and to its consequences. The Board found that the IBLE had failed to represent conductors fairly with respect to three specific matters in the agreement. The Court found that the remedy ordered by the Board was an appropriate one given the situation. Further, the Court concluded that the Board's order was wholly consistent with the *Code*'s purpose of balancing the principle of free collective bargaining with the protection of employees who are represented by a bargaining agent.

Dwayne Brewer v. *Halifax Longshoremen's Association, Local 269 of I.L.A.*, judgment rendered from the bench, A-159-00, January 30, 2002 (F.C.A.)

This application for judicial review challenged the Board's exercise of jurisdiction under section 88 of the transitional provisions of Bill C-19, *An Act to Amend the Canada Labour Code (Part I),* R.S. 1998, c. 26.

In November 1998 a 3-member panel of the Canada Labour Relations Board (CLRB) held four days of an oral hearing regarding a complaint filed by the applicant Brewer against the respondent Halifax Employers Association Incorporated alleging that the respondent had breached its duty of fair referral under section 69 of the *Canada Labour Code*. On January 1, 1999, the amendments to the *Canada Labour Code (Part I - Industrial Relations)*, R.S.C. 1985, c. L-2 came into effect, and the Chairperson of the Board assigned a completely new 3-member panel of the Canada Industrial Relations Board (CIRB) to finish hearing the complaint. The Chairperson wrote to the parties in early March of 1999 and advised them of his intention to assign a new panel. He asked for written submissions from any party wishing to comment on his decision by March 19, 1999. On April 20, 1999, the applicant filed submissions 1 month after the deadline and only 7 days before hearings were scheduled to resume. At the outset of the hearings, the newly assigned panel heard submissions on the issue of the panel change, met, and decided to continue with the hearing. That panel heard the remaining 9 days of evidence and, relying in part on transcripts from the first 4 days of hearing, dismissed the applicant's complaint.

The issue before the Court was whether the Chairperson of the Board was required to ask the original CLRB panel to continue after the coming into force of the amendments to the *Code*. The applicant argued that pursuant to section 88(2) of the transitional provisions, because the hearings were in progress on January 1, 1999, the Chairperson was required to ask the original panel to continue to hear the matter, and that the natural justice principle of he who hears must decide was violated by the change of panel mid-way through the evidence.

The Court determined that the standard of judicial review of patent unreasonableness applies to the Board's interpretation of provisions falling within its core jurisdiction, and the standard of correctness applies if the issue falls outside that jurisdiction. The Court found that the transitional provisions supercede the common law principles of natural justice, and that section 88(2) is a permissive section that allows, but does not oblige, the Chairperson to request that a former CLRB member continue to deal with a matter that was before a panel prior to January 1, 1999.

The application was dismissed with costs.

Ronald Stuart Fabbrie v. *TSI Terminal Systems Inc.*, judgment rendered from the bench, A-567-00, September 26, 2001 (F.C.A.)

The applicant, Ronald Fabbrie, sought judicial review of the Board's decision dismissing his complaint filed pursuant to section 133(1) of the *Code*.

The applicant's complaint to the Board alleged that he was terminated from his employment contrary to section 147 of the *Code* as a result of exercising his right to refuse dangerous work in accordance with section 128 of the *Code.* The employer responded to the complaint, claiming that the applicant was terminated for his continuing unsatisfactory performance. The Board found that while the applicant's dismissal was not part of a progressive discipline process as the employer suggested, the employer had proved to the Board that the applicant's termination was in no way motivated by the applicant's work refusal. The Board made no finding on the presence or absence of just cause for dismissal.

As grounds for judicial review, the applicant stated that the Board made a patently unreasonable error when it made its decision without regard to the evidence before it.

The Court dismissed the application, with costs. The Court confirmed that the Board's refusal to accept the employer's position that the applicant's termination was due to his bad work history was not inconsistent with the Board's concurrent finding that the termination was not due to a work refusal. The Court concluded that it was not persuaded that "there was no evidence on which the Board could conclude that termination of the applicant was not motivated by a refusal to work on the part of the applicant," and found that the Board's decision was not patently unreasonable.

Maritime-Ontario Freight Lines Limited v. *Teamsters Local Union 938*, judgment rendered from the bench, A-574-00, August 29, 2001 (F.C.A.)

While the judicial review application was ultimately withdrawn by the employer, while it was active, it resulted in an important order of the Court protecting the Board's right to object to the disclosure of confidential membership evidence in its possession pursuant to section 25 of the *Canada Industrial Relations Board Regulations, 1992* [now section 35 of the *Canada Industrial Relations Board Regulations, 2001*].

The employer, Maritime-Ontario Freight Lines Ltd., brought an application for judicial review challenging the Board's order certifying the Teamsters as the bargaining agent for a group of employees of the employer. Among the grounds that were alleged were that the Board failed to determine whether a majority of the employees in the bargaining unit wished to have the union represent them as their bargaining agent as it must do under the *Code*. During cross-examinations of the union on the affidavit filed in support of the judicial review application, the employer asked the union to produce the evidence that it filed with the Board to establish that it had majority support. When the union refused to do so, the employer brought a motion to the Court to compel the union to produce the documents. By order dated June 1, 2001, the Federal Court of Appeal denied the employer's motion and, in doing so, suggested that the most appropriate way to obtain the evidence was to request it from the Board under Rule 317 of the *Federal Court Rules, 1998*.

Pursuant to the Court's order and Rule 317 of the *Rules*, the employer requested that the Board provide it with the membership evidence filed by the union. The Board objected to the employer's request under Rule 318(2), basing its objection on the confidentiality provisions of section 25 of the *Canada Industrial Relations Board Regulations, 1992* (which were in effect at the relevant time) and on labour relations and public policy grounds. The employer then asked the Federal Court of Appeal for an opportunity to argue orally the merits of the Board's objection. Its request for a hearing was granted by order dated July 12, 2001, and the hearing was held on August 22, 2001.

By order dated August 29, 2001, the Federal Court of Appeal maintained the objection of the Board to the production of the membership evidence sought by the employer. In reasons issued the same day, the Court said that the employer's request must be considered against the background of the scope of the Board's privative clause and the public policy concerning the confidentiality of membership information in labour relations matters. The Court acknowledged that section 25 of the *Regulations* was not an absolute prohibition on the disclosure of membership evidence since it provides for its disclosure where the Board determines that such disclosure would be in furtherance of the objectives of the *Code*. It confirmed, however, that confidential information such as that being sought by the employer should only be disclosed in very rare circumstances. Parliament has made it clear in section 28 of the *Code* that it is for the Board to determine whether a majority of the employees in the unit wish to have the trade union represent them as their bargaining agent. Sections 22 and 28 of the *Code* and section 25 of the *Regulations* clearly provide that it is up to the Board to determine membership support, and that it would be inconsistent with the legislation and the established practice for the Court to embark upon such a determination.

Canadian Council of Railway Operating Unions v. *Robert Adams et al.*, judgment rendered from the bench, A-719-00, February 13, 2002 (F.C.A.)

This was an application for judicial review of a Board decision finding that the Canadian Council or Railway Operating Unions (the CCROU or the union) had breached its statutory duty of fair representation under section 37 of the *Canada Labour Code* (the *Code*).

On June 22, 1998, the complainant, Robert Adams (Adams or the complainant), filed a complaint with the Board alleging that the CCROU had breached its duty of fair representation under the *Code,* and sought an order requiring the union to proceed with his grievance. In August 1998, the complainant withdrew his complaint after learning that the union was taking his grievance to the next step of the process. On March 11, 1999, Adams renewed his section 37 complaint with the Board when he again had concerns about the representation he was receiving from his union. Despite the fact that the union was still pursuing his grievance, the complainant felt that the union was being unresponsive and not taking his concerns seriously. The grievance was referred to arbitration in September 1999 and the complainant lost.

On the first day of the hearing before the Board, the complainant indicated that he would be relying on issues he had with the union's representation of him at the arbitration as additional grounds for his complaint. The union objected, stating that Adams should not be permitted to rely upon events which happened subsequent to the filing of his complaint, particularly without giving notice to the union. The Board allowed the complaint to proceed on the alleged new grounds. The union asked for an adjournment to prepare its defence, however, the request was denied by the Board. The Board found that the union knew or should have known that the complainant intended to rely upon the additional grounds raised in relation to the union's conduct at the arbitration because they were set out in the Board's investigating officer's report dated December 30, 1999, which had been forwarded to the parties in advance of the hearing. The Board stated that had the union intended to object to these additional grounds being the subject of the hearing, it should have given notice of its objection. The Board's decision, issued on October 20, 2000, found for the complainant, and awarded him compensation of $5,000 along with his legal fees and expenses.

The union brought an application for judicial review alleging that the Board had exceeded its jurisdiction by allowing the complainant to argue matters that occurred after the filing of the original complaint and exceeded its jurisdiction and breached the rules of natural justice by refusing the union's request for an adjournment. It also alleged that the Board's determination that there was a breach of the duty of fair representation was patently unreasonable, and that the Board exceeded its jurisdiction in making its remedial order.

In dismissing the union's application, with costs, the Federal Court of Appeal found that the only argument that merited attention was that the Board had exceeded its jurisdiction in issuing its remedial order. However it quickly found that the Board's jurisdiction on this issue had previously been considered by the Federal Court of Appeal in a judicial review of a Canada Labour Relations Board decision, *Canadian Air Line Pilots Association* v. *Brian L. Eamor et al.,* [1997] F.C.J. No. 859 (QL), and that, in accordance with that decision, the

remedial order made by the Board was within its jurisdiction under section 99(2) of the *Code* and was not patently unreasonable.

Appendix C. Departmental Overview

A. Mandate, Role and Responsibilities

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 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 Health and Safety
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 Health and Safety, of the *Canada Labour Code*.

The Canada Industrial Relations Board's ***mandate*** *is to contribute to and to 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 cases 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, open 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 and provisions of 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 industrial relations community across Canada in all aspects of delivering its program.

B. Departmental Organization

The Board, functioning at an appropriate level, is comprised of the Chairperson, five full-time Vice-Chairpersons, six full-time Members (three representing employers and three representing employees) and six part-time Members (representing, in equal numbers, employees and employers). The Board lost a full-time Member and a part-time Member during 2001-02, and several Members' terms expired in February and March 2002. Three full-time Members' and three part-time Members' terms were renewed, still leaving a need for appointments in the remaining positions. All are appointed by the Governor in Council: the Chairperson and the Vice-Chairpersons for terms not to exceed five years, the Members for terms not to exceed three years. (Information on Board members can be found at www.cirb-ccri.gc.ca/about/members/index_e.html.)

The Chairperson is the Chief Executive Officer of the Board. The provisions of the *Canada Labour Code* assign to the Chairperson supervision over and direction of the work of the Board, including:

- the assignment and reassignment to panels of matters that the Board is seized of;
- the composition of panels and the assignment of Vice-Chairpersons to preside over panels;
- the determination of the date, time and place of hearing;
- the conduct of the Board's work;
- the management of the Board's internal affairs; and

- the duties of the staff of the Board.

The Board's headquarters are located in the National Capital Region. Support to the Board is provided by the Executive Director and the Director General, Case Processes, reporting directly to the Chairperson. The Executive Director is responsible for regional operations, case management, client and corporate services, financial services and human resources, and the Director General, Case Processes, is responsible for the provision of strategic advice and support in respect of case management and workflow as well as for the direction of Legal Services.

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.

C. To Contact the Board

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Further information on how to contact the regional offices can be found at www.cirb-ccri.gc.ca/contact/index_e.html.