Canada Industrial Relations Board
Performance Report

for the period ending
March 31, 2005

Approved by:_____

The Honourable Joseph Frank Fontana
Minister of Labour and Housing

Table of Contents

Section I. Overview

1.1 Message from the Chairperson

I am pleased to present to Parliament and Canadians the seventh annual Performance Report of the Canada Industrial Relations Board (CIRB or the Board), for the period ending March 31, 2005.

While the demand for CIRB services has been historically high since the enactment of changes to the *Canada Labour Code* in 1999, a decrease in the Board's caseload has been noted in the last fiscal years and the volume of cases continues to decline. This represented an opportunity for the Board to reduce the number of backlog matters on hand. Unfortunately, however, the growing complexity of matters, which reflects the dynamic nature and driving forces underlying the Canadian industrial relations scene, and the reduced adjudicative complement of the Board have resulted in the CIRB disposing of significantly fewer matters in 2004-05 than in previous years.

The CIRB has undertaken a number of initiatives in 2004-05 in order to improve its rate of matter disposition and meet the Board's objective of reducing the level of pending matters. Enhancements to both general internal operational processes and to the processing of particular types of matters, such as certifications and duty of fair representation complaints, should positively impact the Board's performance in the upcoming years. Furthermore, the CIRB is close to completing the renewal of its information technology systems, which should also contribute to the Board's efficiency in dealing with matters in the future. Finally, the Board has established a Client Consultation Committee, as part of the Board's strategic objective of strengthening linkages and obtaining feedback from its client community. The Committee is comprised of equal number of representatives from the business and labour community served by the Board. The committee will present recommendations, in the fall of 2005, on ways in which the CIRB can best meet the needs of its clients.

I am extremely proud of the accomplishments of the Board and its staff, and we will continue in our unwavering commitment to contribute to and promote a harmonious industrial relations climate in the federally regulated sector as effectively and efficiently as possible.

Warren R. Edmondson
Chairperson

1.2 Management Representation Statement

I submit, for tabling in Parliament, the 2004-05 Departmental Performance Report (DPR) for the Canada Industrial Relations Board.

This report has been prepared based on the reporting principles contained in the Treasury Board of Canada Secretariat's *Guide for the Preparation of 2004-2005 Departmental Performance Reports*:

- It adheres to the specific reporting requirements;
- It uses an approved Business Lines structure;
- It represents consistent, comprehensive, balanced and accurate information;
- It provides a basis of accountability for the results pursued or achieved with the resources and authorities entrusted to it;
- It reports finances bases on approved numbers from the Estimates and the Public Accounts of Canada.

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Name: Warren R. Edmondson
Title: Chairperson

1.3 Summary Information

Raison d'être - The mandate of the Canada Industrial Relations Board is to contribute to and promote a harmonious industrial relations climate in the federally regulated sector through the impartial, effective and appropriate administration of the rules of conduct that govern labour and management in their representational and bargaining activities. In achieving this strategic outcome, the Board provides effective industrial relations solutions for the Canadian labour relations community in a fair and timely manner.

Total Financial Resources

Planned Spending	Total Authorities	Actual Spending
12,947.0	13,181.3	12,439.3

Total Human Resources

Planned	Actual	Difference
119	105	-14

1.4 High-level Logic Model

The Board has one strategic outcome with an actual spending of $11,098,931.

Strategic Outcome	Planned Results	Related Activities	Resources * (000)	(%)
harmonious industrial relations climate in the federally regulated sector through the impartial, effective and appropriate administration of the rules of conduct that govern labour and management in their representational and bargaining activities	decisions on applications and complaints provided in a fair, expeditious and economical manner	• intake and investigative services • case management activities • Board deliberations, public and in-camera hearings • 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	**7,852.7**	**71**
	successful resolution of applications and complaints through alternative dispute resolution mechanisms	• alternative dispute resolutions services	**1,327.7**	**12**
	an involved and well-informed labour relations community	• publication and distribution of *Reasons for decision*, newsletters, information circulars • direct consultations with clients • response to *ad-hoc* inquiries from the public • public access to a resource center on industrial relations and administrative law • enhancement of CIRB Web site • presentations by Board members and staff to the industrial relations community • research on industrial relations affecting CIRB's matters and procedures.	**926.3**	**8**

Strategic Outcome	Planned Results	Related Activities	Resources * (000)	(%)
	effective *Regulations* and practices, pursuant to the revised *Canada Labour Code* and the establishment of the CIRB	• client consultations, publications, and distribution of *Regulations* and practice notes	**140.6**	**1**
	successful ongoing, financial, material management and human resources services	• provision of financial, material management and human resources services	**851.6**	**8**
Total			**11,098.9**	**100**

* These amounts do not include contributions to employee benefit plans.

Section II. Strategic Context and Operating Environment

2.1 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* (the *Code*), Part I, Industrial Relations, and certain provisions of Part II, Occupational Health and Safety. It was established in January 1999, to replace the previous Canada Labour Relations Board (CLRB), through amendments to Part I of the *Code*.

As of March 31, 2005, the adjudicative team of the Board was composed of the Chairperson, five Vice-Chairpersons, four full-time members and six part-time members — all of which are Governor in Council (GIC) appointments. However, the Board operated with less than this complement for a good number of months in 2004-05. It may be of interest to note that the *Code* requires that the Chairperson and Vice-Chairpersons must have experience and expertise in industrial relations, and that members are to be appointed by the Minister of Labour and Housing, after consultation with the organizations' representative of employees or employers.

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 public and private sector activities in the Yukon, Nunavut and the Northwest Territories
- Band Councils and some undertakings of the First Nations on reserves
- Certain Crown corporations (including, among others, Atomic Energy of Canada Limited)

This jurisdiction covers some 1,300,000 employees and their employers, and includes enterprises that have an enormous economic, social, and cultural impact on Canadians from coast to coast. The variety of activities conducted by the federally regulated sector, as well as its geographical spread and 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, which include to:

- conduct all its processes in accordance with the standards of the *Code*;
- 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;
- conduct its activities in a timely, fair and consistent manner;
- consult its clients on its performance and on the development of policies and practices;
- promote an understanding of its role, processes and jurisprudence through continuous client contact and a variety of information dissemination methods (Web-based and conventional publishing, Board presentations at various forums, 1-800 information request line, etc.);
- conduct its business and 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 of government;
- ensure continuous interaction with those utilizing Board services through meaningful communication and complaint processes.

2.2 Operating Environment

The last few years have witnessed significant developments and challenges in the sphere of labour relations in Canada and thus for the CIRB. Heightened competition, resulting from the globalization of markets, technological change, the volatility of national and international economies, and corporate mergers have all had an effect on employers, employees and their mutual relationship.

This is particularly evident in the federally regulated sector where the degree and rate of change has been largely unprecedented. Many of the industries, such as telecommunications and air transport, to name but two, have gone from highly regulated monopolistic or semi-monopolistic structures to a form that is more unregulated and competitive. This has resulted, for example, in an essentially regional company like BCTel to become TELUS, one of Canada's leading telecommunication companies in a relatively few short years. Also, many services that were once provided by the federal government, such as security and boarding at airports, have been commercialized. These profound changes associated with a workforce that is largely unionized have led to a situation where the Board is being increasingly called upon to resolve high profile and complex issues between bargaining parties, with substantial economic and social implications for the broader Canadian public.

Typical issues of continuing concern to the Board include:

- the need for assistance to be provided to companies and unions in resolving the labour relations implications of corporate mergers and take-overs — including the determination of bargaining unit structures, representation rights and the merger of collective agreements and seniority rights — notably in the airline and telecommunications industries;
- the acquisition and exercise of free collective bargaining rights, and the promotion of sound labour-management relations in a fair and transparent manner;
- the need to assure that collective bargaining between employers and unions is conducted fairly and in good faith;
- the scope of the duty of fair representation in respect of minority groups of employees;
- 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, particularly in such enterprises as airports, atomic energy production, and the air navigation system;
- the prompt consideration of situations in which illegal work stoppages or lockouts are alleged.

The complexity and implication of the issues facing federally regulated employers and unions require the Board to apply judiciously a wide range of knowledge and skills in industrial relations and administrative law in diverse contexts. The demand for

adjudicative services has thus been historically high, although declining to a more sustainable level over the last two years. Furthermore, 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 unresolved issues as an alternative to litigation — entails increasing demands on the Board's resources. Accordingly, the Board continues to place considerable emphasis on augmenting both its skill and resource levels to meet the needs of its clients.

2.2.1 Volume of Matters

The number of applications/complaints received by the Board soared in the years following the 1999 amendments to the *Code*, which widened the scope of matters that could be heard by the CIRB. Over the last five fiscal years, the CIRB has received an average of 898 applications per year, compared to the average of 765 for the previous five fiscal years, representing a 17.4 percent increase.

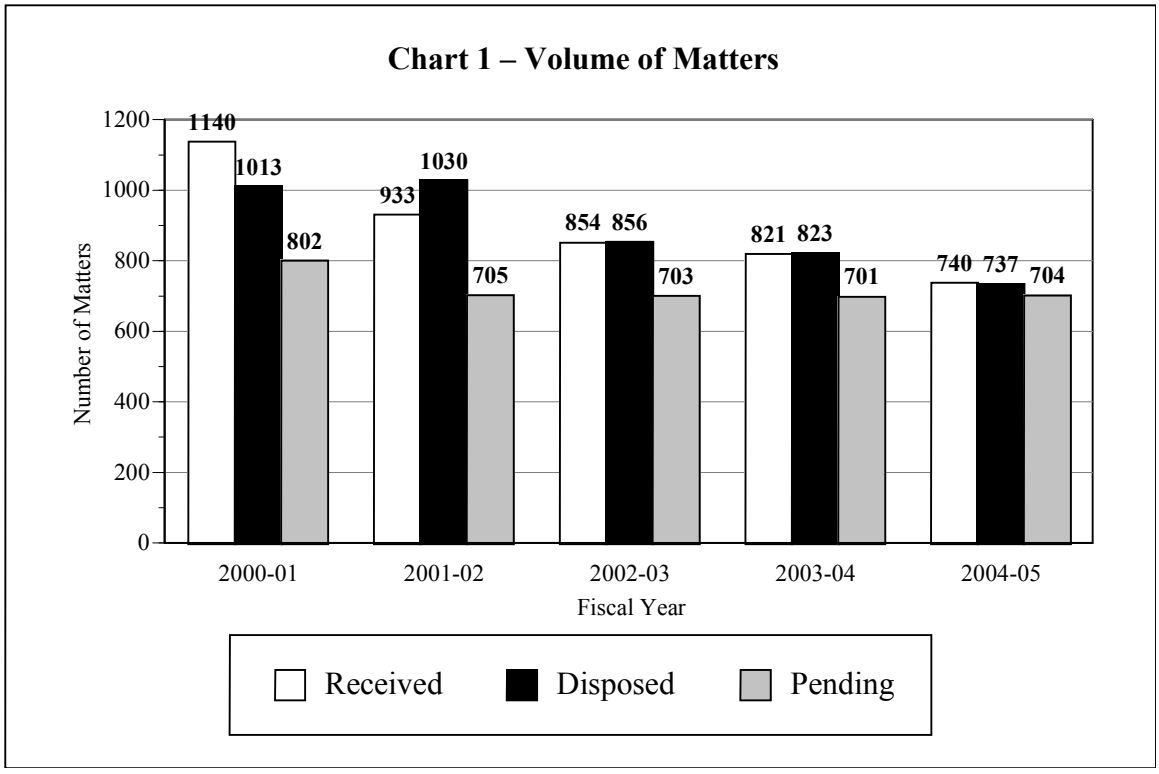
More recently, however, the volume of incoming matters has declined significantly. In 2004-05, the number of applications/complaints fell to 740 (see Chart 1), a drop of 81 matters when compared to 2003-04, and the lowest level since 1998-99. This also represents a volume that is considerably below the estimated core volume of approximately 820 to 850 applications/complaints per year.

The reduction in incoming matters recorded in 2004-05 is largely the result of a substantial decrease in unfair labour practice (ULP) complaints. The number of ULP complaints, which typically represent approximately 44 percent of all matters received in a given year, declined to 286 in 2004-05; 72 less than in 2003-04.

In order to deal with the relatively high volume of incoming matters in the years following the 1999 *Code* amendments, the Board adopted a number of administrative measures and increasingly took advantage of the statutory provisions of the *Code*, which allow a broader variety of CIRB matters to be decided without an oral hearing and the more frequent use of single member panels. As a result, the Board has gradually expanded its use of in-camera proceedings by issuing decisions based upon written materials and submissions, which reduces traveling time and allows a more focused hearing process. These measures, along with other case management improvements such as the use of pre-hearing conferences, have allowed the Board to expedite the disposition of many matters.

While the Board has generally augmented its rate of matter disposition in recent years — it disposed of 892 matters per year on average in the last five fiscal years compared to only 715 matters in the previous five years — its rate of disposition declined to 737 in 2004-05 (see Chart 1), the lowest level since 1998-99. This decline in Board output can be attributed to a diminished adjudicative capacity in 2004-05. A less than full complement of Board Members as well as the serious illness of another, made it somewhat difficult to assign a Board panel to hear cases in many circumstances. As a

result, the number of pending matters remained constant, standing at just over 700 for the last four years (see Chart 1).



2.2.2 More Complex Cases

In addition to the Board's reduced adjudicative capacity, the recent lower rate of matter disposition is also a consequence of the growing incidence of more complex matters before the CIRB, a situation that was expected and reported on in previous reports. Complex cases, which typically involve numerous sections of the *Code* as well as Charter issues, are both lengthier to process and require more of the Board's resources for their disposition. Table 1 indicates that complex cases have generally amounted to 90 matters or more a year over the last five fiscal years, and that their incidence as a proportion of the total number of disposed matters has increased from approximately 8 percent in 2000-01 to 13 percent in 2004-05. By comparison, complex cases accounted for less than 50 matters a year on average in the previous five fiscal years.

Similarly, the number of hearing days required to process these more complex matters has also increased, averaging 301 days a year over the last five fiscal years, compared to 112 days in the previous five fiscal years — a more than two and one-half time increase. Note that the substantial drop in the number of hearing days for more complex matters in 2004-05 is directly related to the reduced adjudicative capacity as noted above. This elevated incidence of complex matters obviously impacts on the volume of cases that can be disposed of with a given adjudicative capacity.

Table 1 - Number of Hearing Days for More Complex Cases

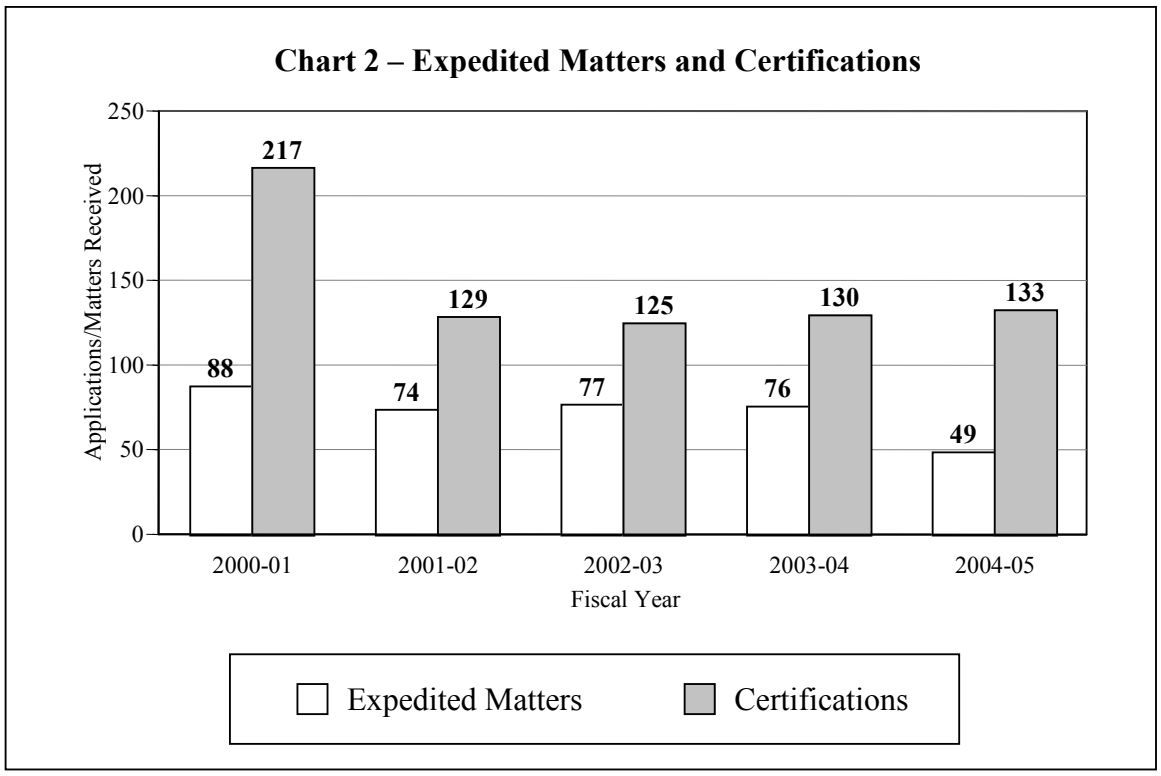
Matter	2000-01		2001-02		2002-03		2003-04		2004-05	
	Number of Cases	Hearing Days	Number of Cases	Hearing Days	Number of Cases	Hearing Days	Number of Cases	Hearing Days	Number of Cases	Hearing Days
Review of Bargaining Unit Structure	16	40	15	140	17	125	17	85	21	44
Single Employer	22	44	21	93	19	147	12	82	20	87
Sale of Business	29	40	49	75	34	108	33	79	34	73
Maintenance of Activities	15	25	21	43	28	55	28	119	19	1
Total	**82**	**149**	**106**	**351**	**98**	**435**	**90**	**365**	**94**	**205**

2.2.3 Expedited Matters

In addition to more complex cases, CIRB *Regulations* stipulate certain types of matters that require priority action. These cases include interim order/decision requests, requests to file Board orders in Court, referrals to the Board by the Minister of Labour and Housing relating to the maintenance of activities required during a legal work stoppage, applications for an invalid strike or lockout vote, applications for a declaration of unlawful strike or lockout, and unfair labour practice complaints respecting the use of replacement workers and dismissals for union activities. Such matters are scheduled, heard and decided in priority to other elements in the Board's caseload. Priority is also given to the processing and consideration of certification applications, and to any other matter where there appears to be a significant potential for industrial relations problems if there is a delay in its resolution, or where other identifiable factors require a matter to be promptly addressed.

The setting of priorities inevitably results in the deferral of less urgent matters. Scheduling pressures, consequent upon the volume and priority setting, can make very lengthy or complex matters — the kind of matters that are now typically scheduled for oral hearing at the Board — difficult to resolve expeditiously.

The number of matters requiring priority processing has also generally increased since the 1999 amendments to the *Code*, and now account on average for slightly more than 8 percent of all applications/complaints received over the last five fiscal years, as opposed to less than 3 percent in the five previous years. Chart 2 sets out the volume of expedited matters and certifications from 2000-01 to 2004-05.



2.2.4 Written Decisions

Another factor affecting the CIRB's workload has been the increased incidence of issuing more detailed written decisions. Uncertainties resulting from the new legislative provisions introduced in 1999, and the lack of jurisprudence in applying them have resulted in a situation where parties have been more prone to litigate many contentious matters. Furthermore, the disposition of more complex cases, which have recently increased as noted earlier, also frequently require more detailed decisions given their nature[1].

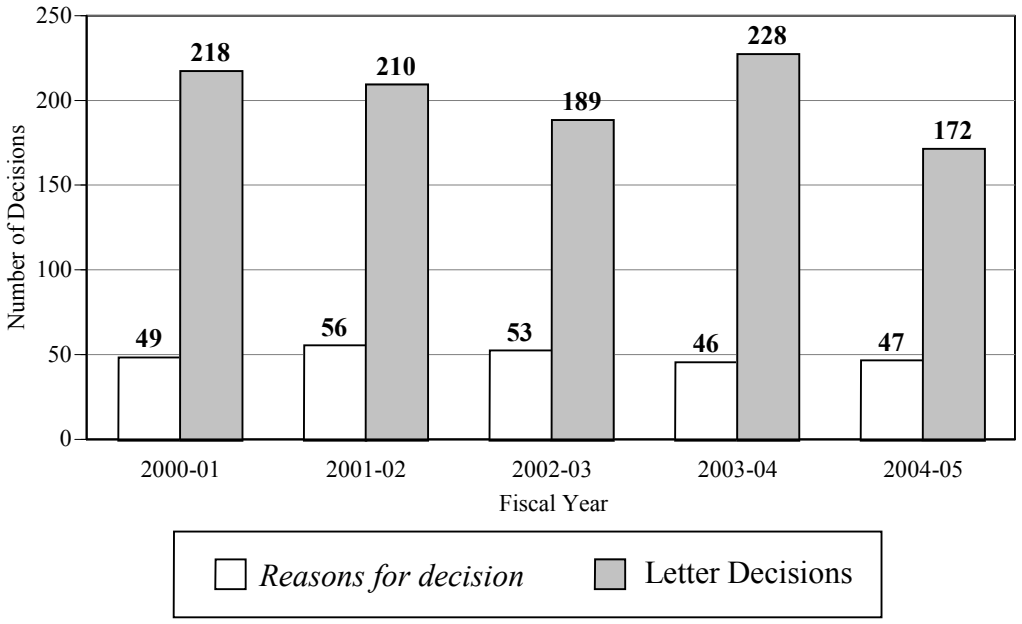
Together, these two factors have led to an increase in the need for the Board to interpret and apply the *Code* in matters involving provisions that were revised and/or added, which, in turn, is reflected in a significant increase in Board jurisprudence. These decisions serve both to resolve the issues relevant to complex circumstances and to clarify the way the *Code*, including the new *Code* provisions, will apply in evolving circumstances. In this respect, the Board strives to provide timely, good and legally sound decisions that are also consistent across similar matters in order to establish strong and clear jurisprudence, which in turn is expected to lessen applications to the Board for the reconsideration of prior decisions and reduce the likelihood of applications to the Federal Court of Appeal for a judicial review.

[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.

The Board's experience of issuing *Reasons for decision* and letter decisions in the last five fiscal years is reflected in Chart 3. On average, the CIRB has issued approximately 50 of the more detailed *Reasons for decision* each year over the last five years, and generally more than 200 letter decisions, with a notable exception in 2004-05 given its reduced adjudicative capacity. The balance of matters are either withdrawn or disposed of by orders. In the previous five fiscal years, the Board issued an average of 38 *Reasons for decision* per year and 133 letter decisions.

See Section 4.3.1 for examples of illustrative specific Board decisions in 2004-05.

Chart 3 – Decisions



Section III. CIRB Performance and Achieved Outcomes

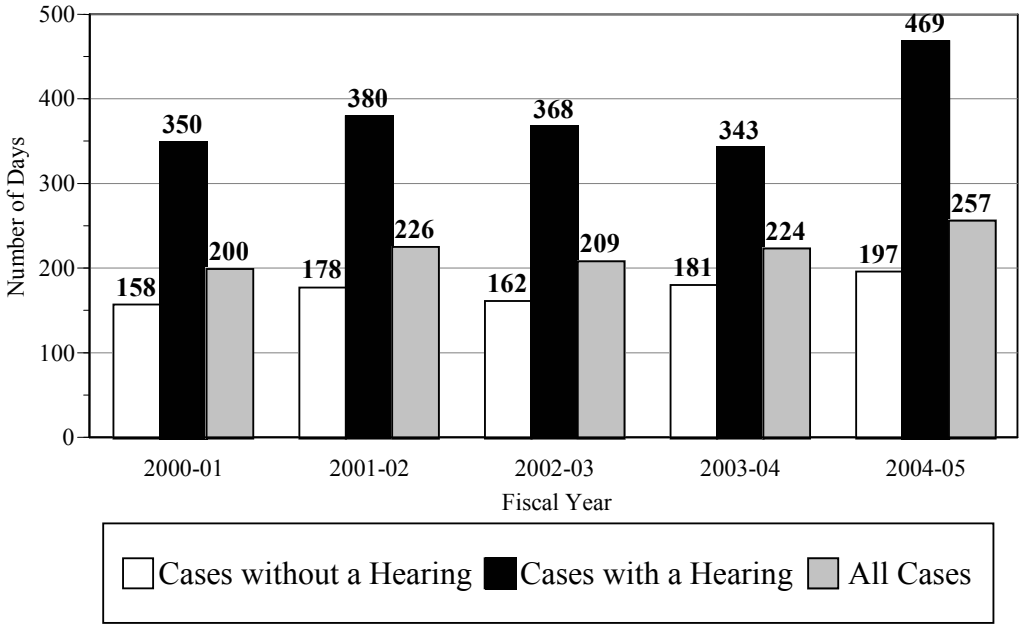
3.1 CIRB Performance

3.1.1 Processing Time

Despite the relatively high volume of matters in the years following the 1999 *Code* amendments and the increasing complexity of matters before the Board, the processing time required to complete a file — the time spent opening, investigating, mediating, hearing, where required, and deciding a case — has been rather stable on average over the last five fiscal years, notwithstanding the annual fluctuations. A notable exception is evident in 2004-05, however, where processing time increased noticeably, particularly for matters requiring a hearing (see Chart 4). This increase, as repeatedly mentioned previously, is directly the result of the Board's reduced adjudicative capacity in 2004-05, and relates to the decision-making time component of the total processing time (see below). On a positive note, the time required to prepare a file for the adjudicative process — including the investigation and, where applicable, mediation phases — has fallen to 81 days in 2004-05 from 117 days in 2000-01.

Overall, the Board's performance with respect to processing time has been relatively good, when viewed against the higher incidence of more complex matters, the general volume of incoming matters, the CIRB's adjudicative capacity and the level of expedited matters which invariably have the effect of lengthening the processing time of less urgent matters as the latter are deferred.

Chart 4 – Processing Time



3.1.2 Decision-making Time

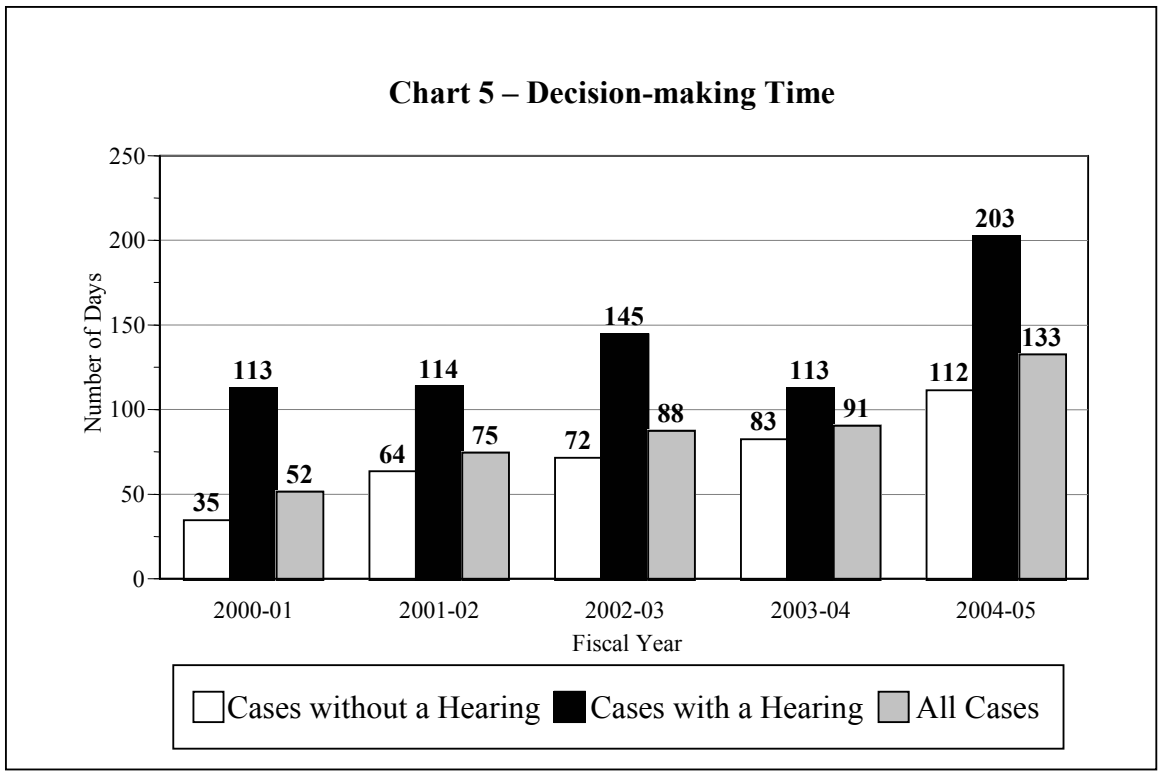
One component of the overall processing time is the length of time required by a Board panel[2] to prepare and issue a decision, following the completion of the investigation and/or hearing of a matter. A panel may decide a case without a hearing on the basis of written and documentary evidence, such as investigation reports and written submissions, or may defer the decision until further evidence and information is gathered via a public hearing. Chart 5 presents the decision-making time for both types of decisions[3] for the last five fiscal years. The average decision-making time has seen a gradual increase since 2000-01 (note that the average of 52 days for 2000-01 was rather low when compared to the previous five-year average of 63 days).

The increase in decision-making time over the last five years can be largely traced to unfair labour practice (ULP) complaints, which comprise a significant proportion of the Board's matters. Average decision-making time for ULP complaints rose from 65 days in 2000-01 to 104 days in 2003-04 and then to 176 days in 2004-05. This increase reflects the fact that ULP matters usually represent less of a priority, and are thus often deferred in favour of other matters, which are considered to hold a more significant industrial relations importance. However, deferring these matters does not stop the clock on processing or decision-making time unless the deferral is not of the Board's making.

The average decision-making time for matters other than ULP complaints has been far more stable, notwithstanding annual variations, rising only slightly over the last five years, reflecting the increased complexity of matters before the Board.

[2] A panel is comprised of the Chairperson or a Vice-Chairperson for single member panels, or the Chairperson or a Vice-Chairperson and two members in a full panel.

[3] 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.



3.1.3 Mediation Services

Unfair labour practice (ULP) complaints continue to comprise a significant percentage of the CIRB's caseload. The Board disposed of 274 such complaints in 2004-05, representing 37 percent of all disposed matters. As noted earlier, this proportion is somewhat lower than usual since ULP complaints comprised about 45 percent of disposed matters on average in the previous four fiscal years. The CIRB continues to endeavour to assist the parties in reaching mediated solutions to these matters; last year, almost 54 percent of the cases were resolved without the need for Board adjudication.

3.1.4 Judicial Reviews

Another measure of the CIRB's performance, as well as a mesure of the quality of its decisions, is the frequency of applications for judicial reviews of Board decisions to the Federal Court, and the percentage of decisions upheld by the court. In this respect, the CIRB has performed exceptionally well over the last five years.

Table 2 indicates that 32 judicial reviews were filed in 2004-05, representing 4.3 percent of all matters disposed by the Board in that year. This is the highest incidence of judicial reviews in the last five fiscal years, just above the previous high of 4 percent recorded in 2003-04. From 2000-01 to 2002-03, less than 3 percent of matters were subject to a judicial review as shown in Table 2. With respect to the outcome of the reviews before the Federal Court, other than in 2000-01, a year when new *Code* provisions were being

applied, the Board's decisions have been upheld by the Federal Court in more than 96 percent of cases, even attaining 100 percent in 2001-02 and 2004-05.

Table 2 - Applications for Judicial Review

	2000-01	2001-02	2002-03	2003-04	2004-05
Matters Disposed by CIRB	1003	1044	860	823	737
Judicial Reviews Filed	29	29	22	33	32
Percent Reviewed (%)	2.9	2.8	2.6	4.0	4.3
Reviews Disposed	29	25	26	27	31
Reviews Granted	3	0	1	1	0
Reviews Dismissed	10	11	11	12	18
Reviews Withdrawn	16	14	14	14	13
Decisions Upheld (%)	89.7	100	96.2	96.3	100

See Section 4.3.1 for examples of illustrative judicial reviews in 2004-05.

3.2 Achieved Outcomes

The key strategic outcome of the Board is to contribute to and promote effective industrial relations in any work, undertaking or business that falls under the federal jurisdiction, by interpreting and applying 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.

That being said, it is clear that when the Board receives an application or complaint, it is usually because there is some form of unresolved conflict or problem that the involved parties have been incapable of resolving on their own. By resolving the matter, through mediation or by issuing a decision, the Board effectively and directly contributes to its strategic outcome. It is important in this respect to emphasize that the impact of the work of the CIRB can be both broad-ranging and significant. The Board's decisions and mediation efforts often affect in very tangible ways the working lives of thousands of Canadians, the economic position of leading Canadian corporations, and the general well-being of the Canadian public.

The Board also contributes, in an indirect but no less effective manner, to effective industrial relations in the federal jurisdiction. Each time it issues a decision, the Board adds to its growing and diverse jurisprudence, which is widely disseminated to the industrial relations community. Clear and consistent jurisprudence provides an environment where potential litigants are more likely to resolve matters on their own than to bring the matter before the Board. It is, however, difficult to ascribe a quantitative measure to this.

In support of meeting its strategic outcome, the CIRB has undertaken and/or achieved the following:

- The CIRB has issued more than 219 written decisions, providing guidance and jurisprudence, not only to the parties involved in specific applications but also to the broader industrial relations community. (A summary of some CIRB key decisions rendered in 2004-05 is provided at Section 4.3.1).

- At the same time, the CIRB has continued to focus on its mediation and alternative dispute resolution services to employers, unions and employees. This, as mentioned above, has resulted in the resolution of 54 percent of complaints received by the Board without the need for a costly hearing or a written decision. The CIRB is presently looking at ways to bring mediation at every stage of the process as provided for in section 15.1(1) of the *Code*, in order to facilitate and further accelerate the processing of matters.

- The CIRB continued to revise and update its Web site[4] in order to make more information about the Board — including its decisions — more widely available and accessible to the Canadian public.

- Through its 1-800 information hotline, the CIRB received more than 6,300 various information requests. Although slightly more than 51 percent of the requests concerned a matter relating to another jurisdiction (either a provincial ministry of labour, a provincial labour relations board or Human Resources and Skills Development Canada), which are easily redirected, this still leaves close to 3,100 inquiries that needed a more involved response. Requests for information generally pertain to case hearing dates, documents or decisions on file, Board statistics and other various matters.

- CIRB members and staff have made presentations and addresses at a number of industrial relations conferences and seminars across Canada. These have been directed at improving ongoing contact with and feedback from the Board's stakeholder communities.

- Following Treasury Board approval for temporary resources aimed at improving the Board's technological capabilities, the CIRB is well on its way to complete and implement its Information Technology Renewal plan, which will provide: a much needed enhancement to its electronic case management system to replace the current obsolete system; an integrated document and information management system; videoconferencing capabilities; a comprehensive and dynamic 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.

- The CIRB undertook a review of its general internal case processing practices with a view of gaining workflow efficiencies and reducing total processing time of cases. A number of measures were investigated, and a pilot project has since been put into place, which will assess the possible impact of shifting some responsibilities and distributing the workload differently.

- Over the last year, the CIRB established a Certification Process Review Committee, which examined the particularities of the Board's certification process and recommended concrete actions in order to meet the goal of reducing processing time for this type of matter. The suggested measures have been tested on pilot cases, and were fully implemented on April 1, 2005. Under the new measures, the timeframe for processing regular standard certification applications — those that appear to clearly meet the requirements of the *Code* and that are not associated with another matter — should be significantly reduced.

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

- The CIRB also created a Duty of Fair Representation (DFR) Process Review Committee in 2004-05. DFR complaints, which are the largest component of ULP complaints, are complaints filed by union members against their union, or their representatives, for neglecting to properly represent them with respect to their rights under the collective agreement. These complaints comprise a significant percentage of the CIRB's caseload, representing slightly more than 20 percent of incoming matters on average over the last five fiscal years.

The CIRB is currently looking at various best practices used by provincial labour tribunals as well as other measures that could simplify and greatly shorten the disposition of DFR complaints. Final recommendations are expected in 2005-06.

- In the fall of 2004, the Chairperson of the CIRB established a Client Consultation Committee, as part of the Board's strategic objective of strengthening linkages and obtaining feedback from its client communities. Mr. Michael McDermott, former Senior Assistant Deputy Minister of the Labour Program at Human Resources Development Canada, chairs the committee, and membership is composed of representatives selected by the CIRB's major client communities, including the Federally Regulated Employers - Transportation and Communication (FETCO), the Canadian Labour Congress (CLC), the Confédération des syndicats nationaux (CSN), the Canadian Association of Labour Lawyers (CALL) (representing labour side counsel) and the Canadian Association of Counsel to Employers (CACE) (representing employer side counsel). The committee is expected to present recommendations to the CIRB's Chairperson on ways in which the CIRB can best meet the needs of its clients.

- The CIRB has continued the development of information circulars and practice notes to provide clear and concise summaries of Board practices to its clients and the general public. In essence, information circulars and practice notes are meant to increase the accessibility and transparency of Board processes by providing common-language instructions respecting the interpretation and application of the *Code* and *Regulations*. The information circulars, it is expected, will make the Board's processes easier for clients to understand and manage, and ensure that the substance of matters can be more easily and quickly addressed. They are also expected to allow pre-hearing procedures to continue to reduce the actual time required in the hearing process by ensuring that pre-hearing information disclosure processes are as effective as possible and that preparation for all matters scheduled for hearing is as complete as possible.

- To ensure the best possible management and governance of the CIRB, the Board has actively embarked on the various modern management initiatives sponsored by the Treasury Board. A number of assessment activities were undertaken, and action plans for each initiative were developed or will be finalized. The Board hopes that these initiatives will ultimately further help it in improving its processes and in better managing its resources.

Section IV. Supplementary Information

4.1 Organizational Information

4.1.1 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. 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 state 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.

4.1.2 Departmental Organization

The Board, as provided for in the *Code*, is comprised of the Chairperson, two or more full-time Vice-Chairpersons, not more than six full-time Members (of which not more than three represent employers and not more than three represent employees) and any other part-time Members (representing, in equal numbers, employees and employers) necessary to discharge the responsibilities of the Board. All are appointed by the GIC: 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;
- 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, reporting directly to the Chairperson. The Executive Director is responsible for regional operations, case management, client and corporate services, financial services and human resources. The Legal Services Branch provides legal assistance as required by the Board and its units and the General Counsel also reports directly to the Chairperson of the Board.

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.

4.1.3 To Contact the Board

Toll-free: 1-800-575-9696
TTY: 1-800-855-0511
E-mail: info@cirb-ccri.gc.ca
Web site: www.cirb-ccri.gc.ca

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

4.2 Financial Performance Summary and Summary Tables

4.2.1 Financial Performance Summary

The total authorities granted to the Board were approximately $234,000 more than originally planned. The additional authorities consisted mainly of:

- $540,000 carried over from previous fiscal years;
- $68,000 to offset employee salary increases as a result of collective bargaining;
- A reduction of $372,000 in the allowance for the contribution to employee benefits.

Actual spending represented 95% of authorized amounts. The surplus was due mainly to a decrease in the volume of cases (which resulted in lower travel costs, reduced use of the services of part-time Members, and a decrease in other expenses inherent to the conduct of work, etc.) and GIC appointees and employees positions left vacant.

4.2.2 Financial Summary Tables

The following tables are applicable to the Board:
Table 1 – Comparison of Planned to Actual Spending (incl. FTEs)
Table 2 – Program by Activity
Table 3 – Voted and Statutory Items
Table 4 – Net Cost of CIRB
Consolidated Report – Special Travel Policy

Table 1 – Comparison of Planned to Actual Spending (incl. FTEs)

This table offers a comparison of the Main Estimates, Planned Spending, Total Authorities, and Actual Spending for the most recently completed fiscal year, as well as historical figures for Actual Spending.

($ thousands)	2002-2003 Actual Spending	2003-2004 Actual Spending	2004-2005			
			Main Estimates	Planned Spending	Total Authorities	Actual Spending
Administration and interpretation of Part I (Industrial Relations) and certain provisions of Part II (Occupational Health and Safety) of the *Canada Labour Code*	13,351.2	12,934.4	12,220.0	12,947.0	13,181.3	12,439.3
Total	**13,351.2**	**12,934.4**	**12,220.0**	**12,947.0**	**13,181.3**	**12,439.3**

Total	**13,351.2**	**12,934.4**	**12,220.0**	**12,947.0**	**13,181.3**	**12,439.3**
Less: Non-respendable Revenue*	-2.5	-1.2	0.0	-4.0	-	-0.9
Plus: Cost of services received without charge	2,390.2	2,868.7	2,240.9	2,240.9	2,462.5	2,462.5
Net Cost of the CIRB	**15,738.9**	**15,801.8**	**14,460.9**	**15,183.9**	**15,643.8**	**14,900.9**

Full-Time Equivalents	**114**	**120**		**119**		**105**

* The non-respendable revenue consists essentially of fees collected for access to information requests and parking fee reimbursements.

Table 2 – Program by Activity

The following table provides information on how resources are used for the most recently completed fiscal year.

2004-2005				
($ thousands)	Budgetary			
Program Activity	**Operating**	**Total: Gross Budgetary Expenditures**	**Less: Respendable Revenue**	**Total: Net Budgetary Expenditures**
Administration and interpretation of Part I (Industrial Relations) and certain provisions of Part II (Occupational Health and Safety) of the *Canada Labour Code*				
Main Estimates	12,220.0	12,220.0	0.0	**12,220.0**
Planned Spending	*12,947.0*	*12,947.0*	*0.0*	***12,947.0***
Total Authorities	13,181.3	13,181.3	0.4	**13,180.9**
Actual Spending	*12,439.3*	*12,439.3*	*0.0*	***12,439.3***

Table 3 – Voted and Statutory Items

This table explains the way Parliament votes resources to the CIRB and basically replicates the summary table listed in the Main Estimates. Resources are presented to Parliament in this format. Parliament approves the voted funding and the statutory information is provided for information purposes.

($ thousands)		2004-2005			
Vote or Statutory Item	**Truncated Vote or Statutory Wording**	**Main Estimates**	**Planned Spending**	**Total Authorities**	**Actual Spending**
10	Program Expenditures	10,547.0	11,233.0	11,840.6	11,098.9
(S)	Contribution to Employee Benefit Plans	1,673.0	1,714.0	1,340.3	1,340.3
(S)	Crown Assets Surplus	0.0	0.0	0.4	0.0
	Total	**12,220.0**	**12,947.0**	**13,181.3**	**12,439.3**

Table 4 – Net Cost of the CIRB

This table is designed to show the net cost of the CIRB. It begins with the actual spending and adds services received without charge, and then adds or subtracts respendable and non-respendable revenue to arrive at the net cost of the CIRB.

($ thousands)	**2004-2005**
Total Actual Spending	12,439.3
Plus: Services Received without Charge	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	1,855.0
Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS (excluding revolving funds)	606.3
Salary and associated expenditures of legal services provided by Justice Canada	1.2
Less: Non-respendable Revenue	-0.9
2004-2005 Net Cost of the CIRB	**14,900.9**

Consolidated Report – Special Travel Policy

The CIRB's Travel Policy complies with the Treasury Board Travel Directive with respect to its application to all Board staff and GIC appointees. In the case of GIC appointees, the CIRB generally adheres to the Special Travel Authorities applicable to GICs, as set out in the Treasury Board Travel Directive, with certain restrictions with respect to meal allowances and accommodation and the directives on business class air travel.

4.3 Illustrative Specific Board Decisions and Judicial Reviews

4.3.1 Illustrative Specific Board Decisions

Transport Besner Inc. et autres (2004), as yet unreported CIRB decision no. 285

The Syndicat des travailleuses et travailleurs de Transport Besner (CSN) was the certified union to represent all drivers working for Transport Besner. The CSN entered into a collective agreement with Transport Besner, which expired on May 31, 2002. The "Besner Group" owned Transport Besner, Besner Network and two sister companies, Besner Central and Besner Atlantic.

The CSN filed an application for a declaration of single employer pursuant to section 35 of the *Code*. In the alternative, the union sought a declaration of sale of business pursuant to section 44 of the *Code* between Transport Besner and the two sister companies, Besner Central and Besner Atlantic. On December 20, 2002, the negotiations to enter into a new collective agreement between Transport Besner and the CSN failed. On December 23, 2002, Transport Besner permanently closed its doors.

The Board concluded that the partial transfer of Transport Besner's activities to Besner Atlantic and Besner Central from the fall of 2002 until the closure of Transport Besner on December 23, 2002 constituted a sale of business pursuant to section 44 of the *Code*. The Board mentioned that the union's bargaining rights associated with Transport Besner's still current activities must be maintained despite the closure of December 23, 2002. The Board also declared that Besner Central, Besner Atlantic and Besner Network constituted a single employer within the meaning of section 35 of the *Code*.

An application for judicial review is pending before the Federal Court of Appeal.

Virginia McRaeJackson et al., [2004] CIRB no. 290

The Board, in addressing two section 37 complaints, decided to issue a decision that would serve as a reference for the labour relations community in dealing with future duty of fair representation complaints.

The Board set out a very comprehensive review of the Board's jurisprudence regarding the duty of fair representation complaints alleging violation of section 37 of the *Code*. The decision clarifies the duty of fair representation, the duties and responsibilities of the complainants and unions under the *Code*, the role of the employer in section 37 complaints, the role of the Board in considering complaints of a breach of the duty of fair representation, the available remedies, as well as the issue of the right to a hearing.

Relying on that analysis, the Board, in the first complaint, found no basis for a finding of discriminatory conduct by the union such that the refusal of the union to file the grievances was reasonable in the circumstances. In the second complaint, the Board

found that the complainant failed to establish a *prima facie* case of union conduct that violated the *Code.* Both complaints were dismissed.

Grace Bingley (2004), as yet unreported CIRB decision no. 291

The complainant, Ms. Grace Bingley, filed a complaint pursuant to section 37 of the *Code* following her union's (Teamsters Local Union 91) refusal to refer her grievance to arbitration. In 1999, she was diagnosed with an illness, which, according to repeatedly issued opinions of her doctor, would require temporary accommodation in her work hours in order for her to safely function in her job. No accommodation was reached and the employer in turn dismissed Ms. Bingley. After some consideration, the union opted not to file a grievance in the matter. The case then centered around the standard required of a union where it is alleged that the duty to accommodate a disabled employee has been breached.

The Board stated that the duty of fair representation gives the union a wide berth to work out an accommodation arrangement with the employer but unions are required to take an extra measure of care and assertiveness in representing employees alleging human rights violations and discrimination. The Board found that the union's actions in discrediting the request for accommodation were discriminatory and in bad faith and violated the duty of fair representation.

The Board set out non-exclusive criteria as guidelines in evaluating the union's conduct in such cases. The Board ordered that the union pay $5,000 as reimbursement for costs incurred by the complainant and ordered the parties to come to a settlement on an appropriate redress, failing which the Board would reopen the matter.

Hudson Bay Port Company (2004), as yet unreported CIRB decision no. 296

The Public Service Alliance of Canada (PSAC) asked the Board to issue an order imposing a binding method of resolution, pursuant to section 87.7(3) of the *Code* or any other section deemed suitable by the Board, upon the PSAC and the Hudson Bay Port Company (HBPC), in order to determine all outstanding issues at the bargaining table. The HBPC operates a licensed grain terminal and transfer elevator on the Hudson Bay in Churchill, Manitoba. The PSAC argued that if the employees are effectively denied the right to strike pursuant to section 87.7(1), they should be provided access to a dispute resolution mechanism pursuant to section 87.7(3).

The Board declined to issue an order imposing a binding method of dispute resolution on the parties, pursuant to section 87.7(3) of the *Code*, as the Board was unable, on the information before it, to determine whether the HBPC was, for the purposes of section 87.7(1), an employer in the longshoring and/or navigation and shipping industries. The Board was not satisfied it had jurisdiction under section 87.7(3) to issue a binding arbitration order. The Board was not able to find other sections of the *Code* that would

authorize the issuance of such an order. The Board also found there were no exceptional or compelling facts that would have justified such an intrusive order, even if the *Code* had authorized its imposition.

PCL Constructors Northern Inc. (2005), as yet unreported CIRB decision no. 306

This was an application for reconsideration filed by PCL Constructors Northern Inc. (PCL) requesting the reconsideration of the Board's decision in *PCL Constructors Northern Inc.* (2004), as yet unreported CIRB decision no. 294. In the matter before the original panel, PCL requested that the Board rescind the union's certification order on the basis that the union had abandoned its bargaining rights. The original panel did not grant PCL's request, but rather issued a revised certification order reflecting the sale of business.

In the reconsideration application, PCL alleged that the Board made an error of law and policy in finding that the Board did not have the power to consider bargaining rights to have ceased due to abandonment. The reconsideration panel reviewed the jurisprudence on the doctrine of abandonment and also discussed the policy considerations with respect to abandonment. In light of its analysis, the Board determined that there were ample policy considerations to support the recognition of abandonment. It stated that it should maintain its course and leave the door open to allow abandonment as a means under the *Code* by which a trade union may lose its bargaining rights. Accordingly, the Board stated that it can use its discretionary power under section 18 to rescind or vary a trade union's bargaining rights. The Board granted the reconsideration application and remitted the matter back to the original panel for redetermination on the merits.

Canadian Broadcasting Corporation (2005), as yet unreported CIRB decision no. 307

The Canadian Broadcasting Corporation, French network (SRC) filed an application under section 18.1 of the *Code* for a review of the structure of the bargaining units at the French network. The SRC alleged that changes to the corporation had rendered the four bargaining units outdated, and thus no longer appropriate for collective bargaining. The SRC sought the creation of a single bargaining unit as in the English network of the Canadian Broadcasting Corporation.

The majority of the Board panel dismissed the employer's application and concluded that the existing structure was functional. The Board, in considering the abundant evidence, was not persuaded that the combination of technological changes, competition, budget cuts and the complexity arising from the need to deal with four bargaining units have had such an impact on the French network's labour relations to warrant a review of the bargaining unit structure. It concluded that in the presence of the clearly expressed wishes of all the employees, the employer has the right to require a structure of bargaining units that is functional, but not the structure that it finds most convenient. The majority also

mentioned that the labour relations circumstances at the French network were not identical to those at the English network.

The dissenting member would have granted the SRC's application. The member concluded that the employer had in fact presented a substantial amount of evidence that supported the need to review the structure of the four units and established that the SRC is having the same problems in the French network as it had in the English network. The dissenting member concluded that the bargaining unit structure was no longer appropriate for collective bargaining as it impacted greatly on the SRC's ability to be effective, competitive, productive and economical.

An application for judicial review is pending before the Federal Court of Appeal.

Coastal Shipping Limited (2005), as yet unreported CIRB decision no. 309

The decision stems from an application by the Seafarers' International Union of Canada (SIU) under section 24 of the *Code* to be certified as the bargaining agent for a unit of unlicensed seafarers employed on vessels owned and operated by Coastal Shipping Limited, which was granted by the Board. The Board held that while it felt that the granting of this certification order in this case was standard, it would issue this decision to restate to the labour relations community at large the Board's general practices and procedures upon receiving certification applications pursuant to section 24 of the *Code.*

The Board reiterated its longstanding practices of not conducting oral hearings in certification applications and of communicating its reasons for decision in the body of the certification order in the vast majority of cases. It also discussed its statutory duty to certify where all statutory requirements for certification are satisfied. The Board was of the view that there were no unusual circumstances in the present case to justify or obligate the Board to provide additional reasons for its decision. However, to assist the parties, it briefly explained its reasoning for each determination made in reaching its decision to certify.

4.3.2 Judicial Reviews

Canadian Auto Workers, Local 2213 v. *National Automobile, Aerospace Transportation and General Workers' Union of Canada (CAW-Canada)*, nos. A-261-03 and A-36-04, judgment delivered, October 22, 2004 (F.C.A.)

A reconsideration panel of the Board confirmed an original Board order incorporating the arbitration award of Arbitrator Jolliffe into a Board order, as a resolution to the seniority integration of the former CAIL and Air Canada customer sales and services employees, following the merger of the two airlines.

The Court was asked to quash both the reconsideration decision *(Air Canada* (2004), as yet unreported CIRB decision no. 289) and the order itself. The Jolliffe Award directed that the seniority lists be dovetailed on the basis of the seniority dates employees brought with them to the merger of the two airlines. The Court stated that while there is no "silver bullet" and no "magic formula" when deciding upon the integration of seniority, a fair, equitable and flexible approach that considers the particular circumstances of each case appears to be accepted as a "principle." After confirming the Board's reasoning on the impact of dovetailing and the date of integration, the Court concluded that the Board's finding was not irrational. As the appropriate standard of review to apply in the circumstances was patent unreasonableness, the Court was not convinced that the Board's decision was patently unreasonable and dismissed the application.

Télé-Mobile Company / Société Télé-Mobile, TM Mobile Inc. et al. v. *Telecommunications Workers Union et al.*, A-327-04, December 16, 2004 (F.C.A.)

In the context of a corporate acquisition and restructuring, the Board determined that a single bargaining unit comprising both landline and mobility employees remained appropriate. As a result of this determination, certain employees were automatically (without assessing their wishes) included within the existing unit.

The Court considered whether the Board erred in including the employees of the acquired companies in the bargaining unit to which the employees of the acquiring company belong without ascertaining the wishes of the employees to be included. The Court concluded that the Board did not exceed its jurisdiction in doing so. The inclusion of the new employees did not constitute a radical change nor did it affect the nature of the existing bargaining unit. The criterion of employee wishes was complied with because the number of new employees to be included would not be sufficient to erode the union's majority support within the existing single unit. Furthermore, the new employees were not deprived of the freedom of association under the *Charter*, as employees were not required to join the union beyond mere inclusion in the bargaining unit and the payment of dues.

An application for leave to appeal to the Supreme Court of Canada was dismissed with costs on June 30, 2005.

Marine Atlantic Inc. v. *Canadian Marine Officers' Union (CMOU)*, judgment rendered from the bench, A-302-03, November 30, 2004 (F.C.A.)

This decision concerned an application filed pursuant to section 87.4(4) of the *Code* involving a question respecting the application of section 87.4(1) of the *Code* with respect to the maintenance of activities. The union requested that the Board determine the level of ferry service to be maintained in the event of a strike or lockout. A preliminary constitutional question arose out of an alleged conflict between the provisions of the *Code* and the *Terms of Union*. The Board found that the two statutory provisions did not

come into direct conflict. It therefore dismissed the preliminary question and indicated that it would proceed to hear the parties on the merits of the application (*Marine Atlantic Inc.*, [2003] CIRB no. 232; 103 CLRBR (2d) 186; and 2003 CLLC 220-068). Upon hearing the parties, the Board ordered, on November 23, 2003, that there was to be no reduction in the ferry service at any time of the year if a strike or lockout occurred on the basis that any reduction or interruption of the service would cause hardship to the people of Newfoundland.

The Federal Court of Appeal indicated that the Board's November 2003 decision rendered moot the application for judicial review with respect to the preliminary constitutional question. Consequently, it stated that it would not exercise its judicial discretion to decide such a moot matter with respect to an important question of constitutional law, despite the fact that it may arise in subsequent proceedings. The Court therefore dismissed with costs the application for judicial review.

Air Canada Pilots Association v. *Air Line Pilots Association and Air Canada*, A-106-04, judgment delivered, February 14, 2005 (F.C.A.)

The Federal Court of Appeal dismissed the application for judicial review of the Board's decision in *Air Canada,* [2004] CIRB no. 263 concerning the pilots' seniority integration list, in which the Board had deferred to arbitrator Keller's conclusions.

The applicant raised two grounds for judicial review, first claiming that the Board ignored the legitimate expectations of the parties with respect to conducting a review of the substance of the Keller award and second, alleging that the Board erred in its decision because it considered the applicant's motives, as well as the length of the dispute between the parties and the probability of judicial review. The Court stated that the parties had agreed to have the seniority issue arbitrated by arbitrator Keller and that a protocol was established setting out the conditions and terms of the arbitration. Such terms included that the parties would be bound by the seniority list established by the arbitrator, as his award would be final and binding, and that they would not be able to have the award reviewed or reconsidered. The parties also agreed that they could not be called upon to make submissions on the review even if the Board took it upon itself to review the award. Only judicial review rights were reserved by the parties.

The Court concluded that there was no merit in the applicant's first ground for judicial review claiming that the Board ignored the legitimate expectations of the parties with respect to conducting a review of the substance of the Keller award. As for the second ground, the Court agreed with the Board's decision that its intervention was not necessary or justified.