

Copyright Board of Canada

For the period ending March 31, 2006

Departmental Performance Report

Maxime Bernier
Minister of Industry

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SECTION I

DEPARTMENTAL OVERVIEW

Minister's Message



The Canadian economy has adapted well to the changing circumstances of the global economy. Core inflation has remained low, unemployment remains near its lowest level in more than 30 years, and the employment rate is near its highest on record as Canadian companies continue to grow and create more jobs. Canadian industries have the skilled workers, the technological know-how, the innovative capacity and the drive to compete and prosper on the world stage.

My goal as Minister of Industry, and the goal of the Government of Canada, is to ensure that Canadian businesses can continue to grow and evolve in the best possible environment — one that encourages innovation and allows Canadians to reach their full potential. That means an efficient marketplace that supports competition, attracts investment, both from within Canada and from around the world, and encourages and rewards new ideas and inventions. It means minimizing barriers to trade and labour mobility, both within the economic union and with Canada's trading partners. And it means having the infrastructure in place to support sustainable growth.

In support of these goals, the Department and the Industry Portfolio have continued to make progress over the past year on a wide range of responsibilities, including small business financing, consumer protection, the continuing health of Canada's manufacturing sectors, competition law, basic and applied sciences, and practical research. Through these efforts, the Industry Portfolio plays an important role in supporting the economic health of this country — and of all Canadians.

The Industry Portfolio is composed of Industry Canada and 10 other agencies, Crown corporations and quasi-judicial bodies. These organizations collectively play a key role in advancing Canada's industrial, scientific and economic development, and help to ensure that we remain competitive in an increasingly global marketplace.

The Copyright Board of Canada *Departmental Performance Report* for the period ending March 31, 2006, describes the achievements and results of the Board, which include:

- four hearings in 2005-2006, all concerning performing and communication rights of music;
- a pre-hearing conference to deal with procedural matters pertaining to the private copying file;
- five decisions, dealing with either the reproduction or the communication of musical works and sound recordings, and on private copying;

Members of the Industry Portfolio:

- Business Development Bank of Canada
- Canadian Space Agency
- Canadian Tourism Commission
- Competition Tribunal
- Copyright Board of Canada
- Industry Canada
- National Research Council Canada
- Natural Sciences and Engineering Research Council of Canada
- Social Sciences and Humanities Research Council of Canada
- Standards Council of Canada
- Statistics Canada

- as for unlocatable copyright owners of works, a decision in Breakthrough Films and Television;
- procedures leading to four hearings in the Fall of 2006 and Spring of 2007.

We have accomplished much, but there is room for improvement. We will continue to work with companies and industries to make sure they are ready to capitalize on the opportunities presented by the changing global economy, while remaining mindful of the expectation of Canadians that we be fiscally responsible and results-focused.

I am pleased to present the Copyright Board of Canada *Departmental Performance Report* for 2005–2006.

Maxime Bernier
Minister of Industry

Management Representation Statement

I submit for tabling in Parliament, the 2005-2006 Departmental Performance Report (DPR) for the Copyright Board of Canada.

This document has been prepared based on the reporting principles contained in the *Guide for the Preparation of Part III of the 2005-2006 Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- It adheres to the specific reporting requirements outlined in the TBS guidance;
- It is based on the department's approved Program Activity Architecture structure as reflected in its MRRS;
- It presents consistent, comprehensive, balanced and reliable information;
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved spending numbers from the Treasury Board Secretariat in the RPP.



Stephen J. Callary
Vice-Chairman and Chief Executive Officer

Program Activity Architecture Crosswalk

The following table provides a crosswalk that indicates the changes in the reporting structure. The changes are relatively straightforward since the unique Program Activity of the Copyright Board corresponds to the unique Business Line that was used in the past.

(\$ thousands)

Crosswalk of changes in the reporting structure 2005-2006	
	Program Activity 1
2005-2006 Priorities/Commitments	Render decisions and issue licences
Related Financial Information:	\$
Copyright Royalty Decisions	
Main Estimates	2,514
Planned Spending	2,514
<i>Total Authorities</i>	2,515
Actual Spending	2,342

Summary Information

Raison d'être

The Copyright Board of Canada's program objective is to set royalties which are fair and equitable to both copyright owners and users of copyright-protected works. This includes setting fair and equitable terms and conditions so as to permit the use of works when the owner of the copyright cannot be located.

The Board is an independent administrative agency that has been conferred department status for purposes of the *Financial Administrative Act*. The mandate of the Board is set out in the *Copyright Act* (the "Act"). The Board is empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works when the administration of such works is entrusted to a collective administrative society.

The Copyright Board of Canada is an economic regulator. It deals with complex social, cultural, demographic, economic and technological issues (e.g., communications technology, use of music over the Internet, blank CDs, software management systems to protect music or administer rights). The Board's decisions are not appealable, but can be the subject of judicial review by the Federal Court of Appeal. The Board has existed in one form or another since the 1930s, but its jurisdiction was significantly expanded in 1989 and 1997.

The program objective of the Board underlies the achievement of strategic outcomes related to the treatment of copyrighted works in Canada. As noted in *Canada's Performance 2005* (http://www.tbs-sct.gc.ca/report/govrev/05/cp-rc03_e.asp), in order to build a globally competitive economy, the Government of Canada is dedicated to pursuing its commitment to invest in skilled knowledge workers, cutting-edge research, science, and innovation. Innovation through new knowledge has become the main source of competitive advantage in all sectors of economic activity and is closely associated with increased exports, productivity growth, and the creation of new firms. Recognizing this, the government committed to making significant strategic investments in building a world-class research environment in Canada in Budget 2005.

Our country's handling of intellectual property matters is a critical element in our long-term success in innovation, and by extension, to our long-term economic health. The terms and conditions by which intellectual property owners (such as owners of copyrighted works) are compensated will largely define the incentive structure for innovation in and creation of copyrighted materials. In addition, the design and implementation of regulations can have a significant impact on innovation and competitiveness, particularly in the areas of intellectual property rights.

Innovation through new knowledge has become a main source of competitive advantage in all areas of economic endeavour. The use and re-use of cultural and entertainment content (such as musical works) have become widespread with the advent of new media and on-line services, new playback and editing technologies and new uses in conventional media. These matters manifest themselves in some of society's most complex and contentious issues, including the downloading of musical content over the Internet using file-sharing software, the use of digital

decoders to receive scrambled TV signals and the sale of computers which have the capability to duplicate CDs and DVDs.

The Copyright Board of Canada recognizes the need to ensure an effective and efficient copyright regulatory regime in order to attain the maximum productivity in those sectors that create and use copyrighted works. Further, the strategic outcomes of a fair and competitive marketplace and reasonable opportunities for Canadian firms to export copyright protected goods and services in the music, content creation and programming areas, as well as the downstream broadcasting, publishing and entertainment industries will be impacted by the performance of the Copyright Board.

The Mandate of the Board
The Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society. The Board also has the right to supervise agreements between users and licensing bodies and issues licences when the copyright owner cannot be located. The Board may also determine the compensation to be paid by a copyright owner to a user when there is a risk that the coming into force of a new copyright might adversely affect the latter.

Total Financial Resources, 2005-2006

(\$ thousands)

Planned	Authorities	Actual
2,514	2,515	2,342

Total Human Resources, 2005-2006

(Full-time Equivalents (FTE))

Planned	Actual	Difference
17	15	2

Summary of Performance in Relationship to Departmental Strategic Outcomes, Priorities and Commitments

(\$ thousands)

Strategic Outcome	2005-2006 Priorities/ Commitments	Type	Planned Spending	Actual Spending	Expected Results and Current Status
Achieve fair decision-making to provide proper incentives for the creation and uses of copyrighted works.	Minimizing costs of participating in the hearings while ensuring a fair process and decision.	Ongoing	2,514	2,342	Lead to a more efficient process. Alternative procedural practices are being evaluated. Some specific hearings were combined.
	Facilitating the hearing process by providing appropriate guidance, information and analysis.	Ongoing			Lead to better-informed parties. Telephone advisories and case management meetings were conducted.
	Issuing timely, fair and consistent decisions.	Ongoing			Lead to decisions that take into account the ever-changing technological environment, global events and new business models.
	Increasing participant satisfaction in the hearing process.	Ongoing			Lead to a more efficient process. Informal information gathering from participants done.
	Demonstrating leadership in the domestic and international arenas to advance the analytical framework for decisions and the regulatory processes for tariff-setting.	Ongoing			To play a lead role in international activities such as sharing of procedures, data, analysis and other information. Organisation of next major international forum ongoing.
	Responding to the challenges of new technologies and their impact on the use of copyrighted works.	Ongoing			Ensures minimal impact of new technologies on relevant industries. The monitoring is ongoing.

Overall Departmental Performance

Summary

The report documents the Board's contribution to the protection of the interests of Canadians by setting royalties which are fair and equitable to both copyright owners and users of copyright-protected works.

The Board held four hearings in 2005-2006. All hearings concerned performing and communication rights. The first dealt with the royalties to be paid to the Neighbouring Rights Collective of Canada (NRCC) for the use and distribution of background music (Tariff 3). The second concerned the amount of royalties to be paid to the Society of Composers, Authors and Music Publishers of Canada (SOCAN) for hotel and motel in-room services (Tariff 23). The third was a major hearing in which the Board was required to determine whether ringtones are a communication to the public by telecommunication and if so, to determine the amount of royalties to be paid to SOCAN (Tariff 24). Finally, the Board held a hearing to determine the amount of royalties to be paid to SOCAN for background music (Tariff 15.A) and whether or not music stores should pay a discounted tariff. Decisions in all four matters will be rendered in the next fiscal year.

In February 2006, the Board held a pre-hearing conference to deal with procedural matters pertaining to the private copying file.

During the current fiscal year, the Board issued five decisions. Three of them established the royalties to be paid for the reproduction of musical works by commercial radio stations, by community radio stations and for works embodied in cinematographic works in view of their video-copy distribution. The fourth dealt with the amount of royalties to be paid by commercial radio stations for the communication to the public by telecommunications of works in SOCAN's and NRCC's repertoires. The last decision set the levy to be paid, on an interim basis, for the private copying of sound recordings of musical works for the year 2006.

All of the foregoing decisions are described in greater detail in the Copyright Board 2005-2006 Annual Report.

As for unlocatable copyright owners of works the Board rendered a decision in Breakthrough Film and Television in which the principles applicable to the grant of more exclusive licences for the use of published works for which rights holders cannot be found were considered in detail. During the fiscal year the Board issued 27 non-exclusive licences for the use of published works for which rights holders could not be found; the nature of works varied from architectural plans to literary to musical works. The Board also dismissed two licence applications, and reasons can be found in its 2005-2006 Annual Report.

The Board also initiated procedures which will lead to four hearings in the Fall of 2006 and Spring of 2007. The first concerns the amount of royalties payable to CMRRA/SODRAC Inc. (CSI) for the reproduction of musical works by online music services for the years 2005-2007. The second pertains to the private copying of sound recordings of musical works for the years 2005, 2006 and 2007. The third deals with royalties to be collected by Access Copyright for the

reproduction of literary works by educational institutions for the years 2005-2009. Finally, the fourth hearing pertains to royalties payable to SOCAN for the transmission of musical works on the Internet for the years 1996-2006 (Tariff 22).

Operating Environment

The mandate of the Copyright Board of Canada is set out in the *Act* as amended in 1997. The Board has powers of a substantive and procedural nature. Some powers are granted to the Board expressly in the *Act*, and some are implicitly recognized by the courts.

The *Act* requires that the Board certify tariffs in the following fields: the public performance or communication of musical works and of sound recordings of musical works, the retransmission of distant television and radio signals, the reproduction of television and radio programs by educational institutions and private copying. In other fields where rights are administered collectively, the Board can be asked by a collective society to set a tariff; if not, the Board can act as an arbitrator if the collective society and a user cannot agree on the terms and conditions of a licence.

The examination process is always the same. The collective society must file a statement of proposed royalties which the Board publishes in the *Canada Gazette*. Tariffs always come into effect on January 1. On or before the preceding 31st of March, the collective society must file a proposed statement of royalties. The users targeted by the proposal (or in the case of private copying, any interested person) or their representatives may object to the statement within sixty days of its publication. The collective society in question and the opponents will then have the opportunity to argue their case in a hearing before the Board. After deliberations, the Board certifies the tariff, publishes it in the *Canada Gazette*, and explains the reasons for its decision in writing.

As a rule, the Board holds hearings. No hearing will be held if proceeding in writing accommodates a small user that would otherwise incur large costs. The hearing may be dispensed with on certain preliminary or interim issues. No hearings have been held yet for a request to use a work whose owner cannot be located. The process has been kept simple. Information is obtained either in writing or through telephone calls.

The Board is responsible for tariffs that are estimated to be worth over \$300 million annually. In fact, copyright tariffs underpin several industries which together generated in 2004 an amount representing 4.5% of Canada's GDP, and grew between 1997 and 2004 at a rate exceeding that of the Canadian economy. The stakes are considerable both for copyright holders and for users of copyright. Consequently, interventions before the Board are thorough, sophisticated and often involving expert witnesses, litigation specialists and detailed econometric, business and financial studies, surveys and evidence.

The Board must consider the underlying technologies (such as the Internet, digital radio, satellite communications), the economic issues and the interests of owners and users in order to contribute, with fair and equitable decisions, to the continued growth of this component of Canada's knowledge industries. Sound tariff decisions avoid serious disruption in affected sectors of the national economy and costly and time-consuming court challenges.

The decisions the Board makes are constrained in several respects. These constraints come from sources external to the Board: the law, regulations and judicial pronouncements. Others are self-imposed, in the form of guiding principles that can be found in the Board's decisions.

Court decisions also provide a large part of the framework within which the Board operates. Most decisions focus on issues of procedure, or apply the general principles of administrative decision-making to the peculiar circumstances of the Board. However, the courts have also set out several substantive principles for the Board to follow or that determine the ambit of the Board's mandate or discretion.

The Board also enjoys a fair amount of discretion, especially in areas of fact or policy. In making decisions, the Board itself has used various principles or concepts. Strictly speaking, these principles are not binding on the Board. They can be challenged by anyone at anytime. Indeed, the Board would illegally fetter its discretion if it considered itself bound by its previous decisions. However, these principles do offer guidance to both the Board and those who appear before it. In fact, they are essential to ensuring a desirable amount of consistency in decision-making.

Among those factors, the following seem to be the most prevalent: the coherence between the various elements of the public performance of music tariffs, the practicality aspects, the ease of administration to avoid, as much as possible, tariff structures that make it difficult to administer the tariff in a given market, the search for non-discriminatory practices, the relative use of protected works, the taking into account of Canadian circumstances, the stability in the setting of tariffs that minimizes disruption to users, as well as the comparisons with "proxy" markets and comparisons with similar prices in foreign markets.

Mandate, Roles and Responsibilities

The Copyright Board of Canada was established on February 1, 1989, as the successor of the Copyright Appeal Board. Its responsibilities under the *Act* are to:

- certify tariffs for the public performance or the communication to the public by telecommunication of musical works and sound recordings [sections 67 to 69];
- certify tariffs, at the option of a collective society referred to in section 70.1, for the doing of any protected act mentioned in sections 3, 15, 18 and 21 of the *Act* [sections 70.1 to 70.191];
- set royalties payable by a user to a collective society, when there is disagreement on the royalties or on the related terms and conditions [sections 70.2 to 70.4];
- certify tariffs for the retransmission of distant television and radio signals or the reproduction and public performance by educational institutions, of radio or television news or news commentary programs and all other programs, for educational or training purposes [sections 71 to 76];
- set levies for the private copying of recorded musical works [sections 79 to 88];

- rule on applications for non-exclusive licences to use published works, fixed performances, published sound recordings and fixed communication signals, when the copyright owner cannot be located [section 77];
- examine, at the request of the Commissioner of Competition appointed under the *Competition Act*, agreements made between a collective society and a user which have been filed with the Board, where the Commissioner considers that the agreement is contrary to the public interest [sections 70.5 and 70.6];
- set compensation, under certain circumstances, for formerly unprotected acts in countries that later join the Berne Convention, the Universal Convention or the Agreement establishing the World Trade Organization [section 78].

In addition, the Minister of Industry can direct the Board to conduct studies with respect to the exercise of its powers [section 66.8].

Finally, any party to an agreement on a licence with a collective society can file the agreement with the Board within 15 days of its conclusion, thereby avoiding certain provisions of the *Competition Act* [section 70.5].

Decisions and Licences

During 2005-2006, the Board held four hearings, one pre-hearing conference and issued five decisions. In addition, important decisions were issued by the Federal Court of Appeal and the Supreme Court of Canada. What follows is a brief summary of these activities. For further detail, please refer to the Board's 2005-2006 Annual Report that can be found at www.cb-cda.gc.ca.

1. Public Performance of Music

In 2005-2006, the Board held four hearings on the following tariff proposals:

- Tariff 3 of the Neighbouring Rights Collective of Canada (NRCC) for the use and distribution of background music for the years 2003-2009
Hearing dates: April 5 to 8, 12, 13 and 15, 2005
- Tariff 23 of the Society of Composers, Authors and Music Publishers of Canada (SOCAN) for hotel and motel in-room services for the years 2001 to 2006
Hearing date: June 13, 2005
- SOCAN Tariff 24 for ringtones for the years 2003 to 2005
Hearing dates: June 21 to 24 and June 29, 2005
- SOCAN Tariff 15.A for background music for the year 2005
Hearing date: November 1, 2005

Decisions on the above will be rendered in the next fiscal year.

The Board also issued one decision dealing with the SOCAN-NRCC tariffs applicable to commercial radio stations for the years 2003 to 2007.

2. Private Copying

A pre-hearing conference was held on February 22, 2006 to discuss various issues and procedural matters.

On December 14, 2004, the Board issued an interim decision extending indefinitely the application of the *Private Copying Tariff, 2003-2004*. When that decision was issued, the Board only had before it a proposed tariff for 2005. For that reason, CPCC asked that the Board issue for 2006 a further interim decision that would be identical in all but one respect. CPCC asked that any reference to non-removable memory permanently embedded in a digital audio recorder be deleted, since the Federal Court of Appeal ruled in December 2004 that such a device could not be subject to a levy. No one objected to CPCC's request. The Board granted CPCC's application and extended for 2006, on an interim basis, the application of the *Private Copying Tariff, 2003-2004*, except for the definition of "digital audio recorder", paragraph (a)(iv) of the definition of "blank audio recording medium" and paragraph 3(1)(d), which were deleted.

3. Collective Administration (General Regime)

In 2005-2006, the Board rendered three decisions certifying tariffs for the reproduction of musical works.

The first one, rendered June 24, 2005, certified the royalties to be collected by the Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC), for the reproduction, in Canada, of musical works embodied in cinematographic works in view of their video-copy distribution for the years 2004 to 2008. The second one, rendered March 25, 2006, certified the royalties to be collected by CSI for the reproduction, in Canada, of musical works by commercial radio stations for the years 2005 and 2006. And finally, the third one, also rendered on March 25, certified the royalties to be collected by SODRAC for the reproduction of musical works by community radio stations for the years 2006 to 2010.

4. Arbitration Proceedings

Pursuant to section 70.2 of the *Act*, the Board can set the royalties and other terms of a licence for the use of the repertoire of a collective society subject to section 70.1, when the society and a user are unable to agree on the terms of the licence, on application of the society or the user.

MusiSélect inc. filed such an application on July 4, 2005. The application asked the Board to fix the terms and conditions of a licence for the reproduction of sound recordings in the repertoire of the Audio-Video Licensing Agency (AVLA). At the end of this reporting period, the application was pending.

5. Unlocatable Copyright Owners

During the fiscal year, 52 applications were filed with the Board and 27 non-exclusive licences were issued for the use of published works for which rights holders could not be found; the

nature of works varied from architectural plans to literary to musical works. The Board also dismissed two licence applications; reasons can be found in the appropriate section of its 2005-2006 Annual Report that can be found at www.cb-cda.gc.ca.

6. Agreements Filed with the Board

In 2005-2006, 114 agreements were filed with the Board.

Access Copyright, The Canadian Copyright Licensing Agency, which licenses reproduction rights, such as digital licensing and photocopy rights, on behalf of writers, publishers and other creators, filed 81 agreements granting various educational institutions, libraries, non-profit associations and copy shops a licence to photocopy works in its repertoire.

The *Société québécoise de gestion collective des droits de reproduction* (COPIBEC) filed 13 agreements. COPIBEC is the collective society which authorizes in Quebec the reproduction of works from Quebec, Canadian (through a bilateral agreement Access Copyright) and foreign rights holders. The agreements filed in 2005-2006 have been concluded with various organizations and educational institutions as well as with the *Musée de la civilisation du Québec* and two government departments, namely *Immigration et Communautés culturelles Québec* and *Éducation, Loisir et Sport Québec*.

Access Copyright and COPIBEC also filed two agreements they jointly entered into with the company Lundbeck Canada Ltd.

The Audio-Video Licensing Agency (AVLA), which is a copyright collective that administers the copyright for owners of master and music video recordings, filed, for its part, 14 agreements.

Finally, the Canadian Broadcasters Rights Agency (CBRA) filed four agreements it entered into with regard to media monitoring by non commercial services, namely Treasury Board Canada, the Government of Alberta, the Government of Ontario and the Government of British-Columbia. CBRA represents various Canadian private broadcasters who create and own radio and television news and current affairs programs and communication signals.

7. Court Decisions

On July 28, 2005, the Supreme Court of Canada dismissed the applications of the Canadian Private Copying Collective and the Retail Council of Canada for leave to appeal the December 14, 2004, decision of the Federal Court of Appeal that granted in part an application for judicial review of the December 12, 2003, decision of the Board certifying the *Private Copying Tariff, 2003-2004*.

On February 8, 2006, the Federal Court of Appeal dismissed an application for judicial review of a June 9, 2005 ruling of the Board dealing with a number of objections of Groupe Archambault Inc. to questions CMRRA/SODRAC Inc. (CSI) had addressed to Archambault in the context of the proceedings that will lead to the examination of CSI's proposed tariff for online music services.

On March 14, 2006, the Federal Court of appeal dismissed an application for judicial review of a July 15, 2005 ruling of the Board dealing with an interrogatory Access Copyright had addressed to objectors in the context of the proceedings that will lead to the examination of the proposed tariff for the reprographic reproduction of literary works by primary and secondary educational institutions.

As of March 31, 2006, two applications for judicial review of decisions of the Board were pending. The first, filed by the Canadian Recording Industry Association, challenge a ruling of the Board that ordered the association to communicate certain information to its members in the context of proceedings that will lead to the examination of CSI's proposed tariff for online music services. The second, filed by the Canadian Association of Broadcasters, challenges the Board's decision certifying the *SOCAN-NRCC Commercial Radio Tariff, 2003-2007*.

Modern Comptrollership

The Copyright Board of Canada continued to work in partnership with three other quasi-judicial agencies: the Canadian Artists and Producers Professional Relations Tribunal, the Registry of the Competition Tribunal and the Transportation Appeal Tribunal of Canada. The cluster group focused on implementing an action plan developed in response to the results of a compliance audit conducted in 2004-2005; implementing the new *Public Service Modernization Act*; preparing for the implementation of the new TBS Internal Audit Policy; participating on two Information Management Advisory Committee projects related to training and the implementation of the Records and Document Management Information System (RDIMS); and on common administrative and management practices.

SECTION II

ANALYSIS OF PROGRAM ACTIVITIES BY

STRATEGIC OUTCOME

Analysis by Strategic Outcome

The Board's strategic outcome is to ensure fair decision-making to provide proper incentives for the creation and uses of copyrighted works.

Program Activity

The following program activity contributes to this strategic outcome: Render decisions and issue licences

Priorities

There are six priorities associated with the Copyright Board's strategic outcome. These are:

1. Minimizing costs of participating in the hearings while ensuring a fair process and decision;
2. Facilitating the hearing process by providing appropriate guidance, information and analysis;
3. Issuing timely, fair and consistent decisions;
4. Increasing participant satisfaction in the hearing process;
5. Demonstrating leadership in the domestic and international arenas to advance the analytical framework for decisions and the regulatory processes for tariff-setting;
6. Responding to the challenges of new technologies and their impact on the use of copyrighted works.

Minimizing participation costs of the regulatory process results encourages the participation of appropriate parties, streamlines the process, provides more timely decisions and leading to the most satisfactory decisions. The monitoring of these planned results is achieved by initially surveying informally hearing participants, with follow-up examination and determination of alternative procedural practices to improve the efficiency of the regulatory process. The rationale for this priority is directly related to the federal government's program to improve regulatory efficiency. To the extent that this priority also leads to fairer decision-making, the overall innovation capability of parties affected by the copyright tariff process improves.

Each regulatory process involves differing degrees of complexity, different numbers of participants and different requirements for new or original research and data. However, the Board does gain greater efficiency in conducting hearings, particularly once a specific tariff has already been established and subsequent hearings can build on the legacy of the original hearing.

In 2005-2006, the Board took steps which resulted in a reduction of the regulatory burden. For instance, when appropriate, the Board combined hearings processes which have probably resulted in some cost savings for the participants.

Facilitation through guidance, information and analysis results in better informed parties and better quality of tariff decisions. The achievement of this result is directly monitored through timely conduct of hearing processes and the lack of interruption in proceedings due to administrative and technical delays. Initiatives designed to achieve this result include pre-hearing meetings with interested parties, telephone advisories, and case management meetings with legal representatives. In addition, the implementation of a pre-hearing joint statement of (non-contested) facts and handling of legal issues solely through written submissions can improve the efficiency of the process. The rationale underlying this priority is to minimize the administrative costs to Canadians from the setting of tariffs and to streamline the process in the face of increasing complexities in hearing subject matter. In 2005-2006, the Board's staff has held telephone advisories and case management meetings which resulted in better-informed parties and shorter processes.

The Board's priority of timely, fair and consistent decision-making is challenged by an ever-changing technological environment, global events and new business models. These challenges will continue to be met, and risk minimized, by engaging in pre-hearing consultations, information gathering and web site postings. These procedures will assist in conducting well-organized proceedings which address key issues facing copyright-related industries.

The Board relies on evidence submitted by participants as well as on its own internal and contracted research and analysis resources to develop a strong understanding of the issues relevant to its decisions. Performance measures that are considered include the degree of horizontal and vertical consistency in decisions, timeliness of decisions, the granularity or precision of evidence requested or suggested by the Board and ultimately, the economic impact of the Board's decisions on the sectors that create or utilize copyrighted works.

The Board receives tariffs applications from collective societies on or before March 31 of a given year in which a tariff is scheduled to terminate. The Board has some latitude in the scheduling of hearings and tries to initiate the procedure leading to a hearing as efficiently as possible. The Board posts its upcoming hearing schedule on its website (www.cb-cda.gc.ca). There are no statutory deadlines for the release of the Board's decisions. However, the Board endeavors to deal with all applications as expeditiously as possible.

The priority of greater participant satisfaction is closely linked to the timeliness and orderly conduct of formal proceedings. The Board plans to continue to structure and sequence witnesses and hearing stages so as to eliminate duplication and maximize time spent on relevant issues.

Because the Board hearings involve adversarial parties, some of whom will likely experience direct economic gain or loss in association with an offsetting gain or loss to another party, the Board's decisions cannot be expected to be satisfactory to all parties at all times. However, the Board attempts to bring unbiased and rigorous reasoning to its decision-making. The Board also recognizes the need to provide clear and sufficiently detailed explanations in its decisions so as to assist parties in preparing for the next round of tariff-setting. The Board is considering various means for tracking or measuring constituent satisfaction with hearing processes.

In addition, the Board will continue to examine alternatives to current procedures based upon input from hearing participants as part of a plan to develop and implement a more active

involvement in pre-hearing information gathering aimed at reducing time and cost to participants while safeguarding the fairness of procedures. During the year, the Board held its annual retreat at Carling Lake and reviewed the ethical and professional standards to be met by members of federal administrative tribunals.

Leadership in copyright matters continued to build on the groundwork performed in the past, as noted in previous Departmental Planning Reports. The Board plans to continue its leadership role in the establishment and expansion of international activities such as sharing of procedures, data, analysis and other information. In this regard, the Board continues its work on the establishment of a formal international body of copyright tribunal administrators. During the year, the Board was pleased to host the visit of a delegation from the National Copyright Administration of China.

The international initiative is also a key tool in addressing the challenges of changing technology and the impact of global events. By comparing experiences across different countries, the Board can gain early warning of significant developments and their likely impacts on the Canadian situation.

Among the most significant risks which the Board faces in achieving its strategic outcomes is the potentially disruptive impact of new technologies (i.e., in terms of how copyright material is utilized, distributed and monitored). The Board's approach to managing the technology risk is to systematically monitor relevant journals, other publications and web sites, and to attend industry seminars and conferences (such as the international fora noted earlier). The rationale for the Board's "screening" activities is to identify and assess industry trends before they undermine existing copyright regimes.

SECTION III
SUPPLEMENTARY INFORMATION

Organizational Information

Role

The Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a copyright collective society. Moreover, the Board supervises agreements between users and licensing bodies, issues licences when the copyright owner cannot be located, and may determine the compensation to be paid by a copyright owner to a user when there is a risk that the coming into force of a new copyright might adversely affect the latter.

The Board has powers of a substantive and procedural nature. Some powers are granted to the Board expressly in the *Act*, and some are implicitly recognized by the courts. The Board is a court of record and has powers to hold hearings and issue subpoenas.

Responsibilities and Organization

Board members are appointed by the Governor in Council to hold office during good behaviour for a term not exceeding five years. They may be reappointed once.

The *Act* requires that the Chairman must be a judge, either sitting or retired, of a superior, county or district court. The Chairman directs the work of the Board and apportions its caseload among the members.

The *Act* also designates the Vice-Chairman as Chief Executive Officer of the Board. He or she exercises direction over the Board and supervises its staff.

The organizational structure of the Board follows the requirements set out in section 66 and following sections of the *Act*.

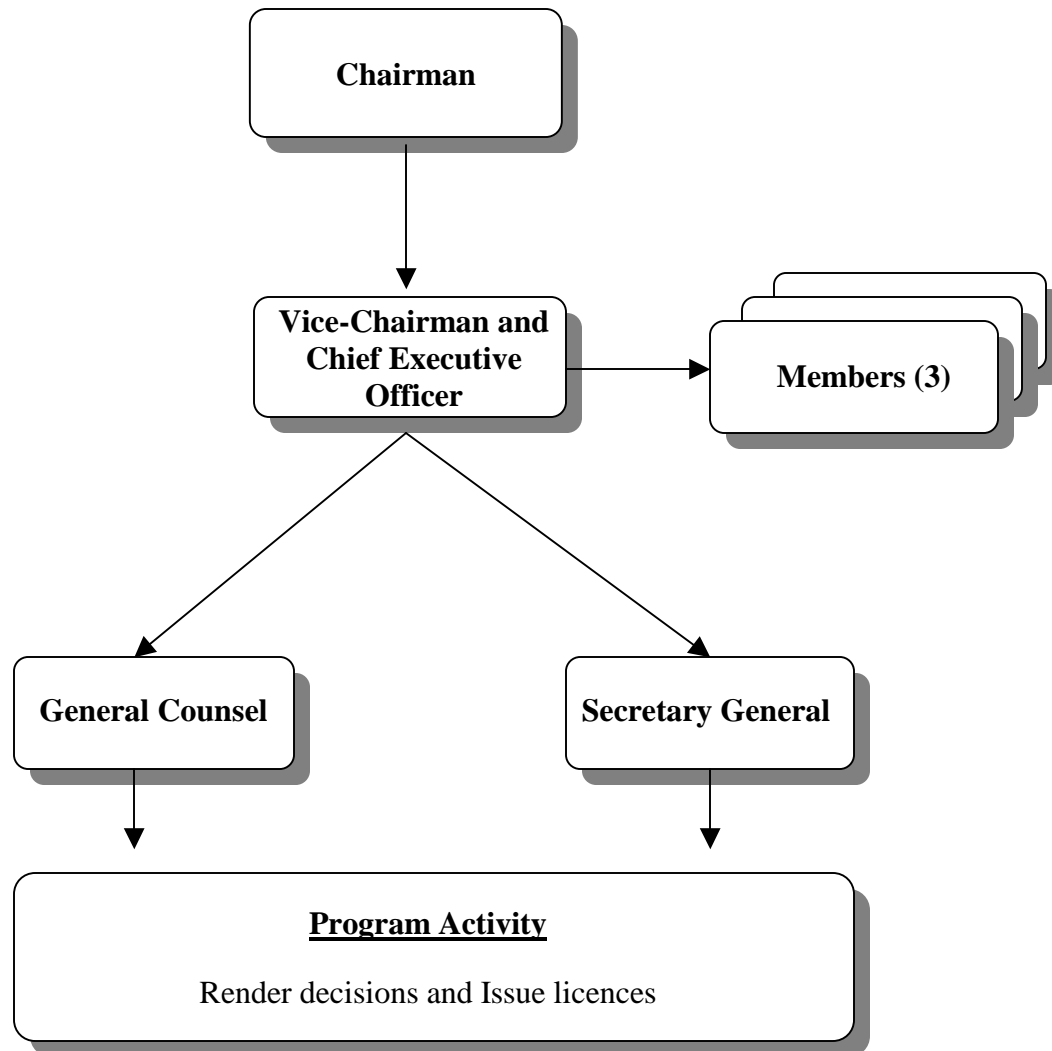
The Board's Staff

The Board has a staff of twelve employees, two of whom report to the Chief Executive Officer: the Secretary General and the General Counsel.

The Secretary General plans the Board's operations, serves as its Registrar, represents the Board in its relations with members of parliament, provincial governments, the media and the public and directs the preparation of the Board's reports to Parliament and to the federal government's central agencies. The Secretary General is also responsible for managing and directing the economic research, analysis and planning functions as well as the registry and administrative and financial support functions.

The General Counsel provides legal advice on tariff and licence applications before the Board. The General Counsel also represents the Board before the Courts in matters involving its jurisdiction.

Organizational Structure of the Board



The Board has 17 full time equivalents (5 Governor in Council appointees and 12 employees).

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

(\$ thousands)

	2003–2004 Actual	2004-2005 Actual	2005-2006			
			Main Estimates	Planned Spending	Total Authorities	Actual
Render Decisions and Issue Licences	2,440	2,268	2,514	2,514	2,515	2,342
Total	2,440	2,268	2,514	2,514	2,515	2,342

Total	2,440	2,268	2,514	2,514	2,515	2,342
Less: Non-respendable revenue	-	-	-	-	-	-
Plus: Cost of services received without charge	275	341	348	348	348	348
Net cost of Department	2,715	2,609	2,862	2,862	2,863	2,690

Full Time Equivalents *	16	15				15
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* This total includes four Governor in Council appointees

Table 2: Use of Resources by Program Activities

(\$ thousands)

2005-2006								
Program Activity – PA	Budgetary						Plus: Non-Budgetary	Total
	Operating	Capital	Grants and Contributions	Total: Gross Budgetary Expenditures	Less: Respendable Revenue	Total: Net Budgetary Expenditures	Loans, Investments and Advances	
Render decisions and Issue Licences								
Main Estimates	2,514	-	-	2,514	-	2,514	-	2,514
<i>Planned Spending</i>	2,514	-	-	2,514	-	2,514	-	2,514
Total Authorities	2,515	-	-	2,515	-	2,515	-	2,515
<i>Actual Spending</i>	2,342	-	-	2,342	-	2,342	-	2,342

Table 3: Voted and Statutory Items

(\$ thousands)

Vote or Statutory Item	Truncated Vote or Statutory Wording	2005-2006			
		Main Estimates	Planned Spending	Total Authorities	Actual
50	Program expenditures	2,206	2,206	2,267*	2,095
(S)	Contributions to employee benefit plans	308	308	248	247
	Total	2,514	2,514	2,515	2,342

* This amount includes \$61,000 for collective bargaining agreements.

Table 4: Services Received Without Charge

(\$ thousands)

	Actual 2005-2006
Accommodation provided by Public Works and Government Services Canada (PWGSC)	225
Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS (excluding revolving funds)	123
Salary and associated expenditures of legal services provided by The Department of Justice Canada	-
Total 2005-2006 Services received without charge	348

ANNEX A
2005-2006 FINANCIAL STATEMENTS (Unaudited)

Statement of Management Responsibility

Responsibility for the integrity and objectivity of the accompanying financial statements for the year ended March 31, 2006 and all information contained in these statements rests with departmental management. These financial statements have been prepared by management in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector.

Management is responsible for the integrity and objectivity of the information in these financial statements. Some of the information in the financial statements is based on management's best estimates and judgment and gives due consideration to materiality. To fulfil its accounting and reporting responsibilities, management maintains a set of accounts that provides a centralized record of the department's financial transactions. Financial information submitted to the Public Accounts of Canada and included in the department's Departmental Performance Report is consistent with these financial statements.

Management maintains a system of financial management and internal control designed to provide reasonable assurance that financial information is reliable, that assets are safeguarded and that transactions are in accordance with the *Financial Administration Act*, are executed in accordance with prescribed regulations, within Parliamentary authorities, and are properly recorded to maintain accountability of Government funds. Management also seeks to ensure the objectivity and integrity of data in its financial statements by careful selection, training and development of qualified staff, by organizational arrangements that provide appropriate divisions of responsibility, and by communication programs aimed at ensuring that regulations, policies, standards and managerial authorities are understood throughout the department.

The financial statements of the department have not been audited.



Stephen J. Callary
Deputy Head



Claude Majeau
Senior Financial Officer

Copyright Board of Canada

Statement of Operations (unaudited)

For the year ended March 31

(in dollars)

	2006	2005
Expenses (Note 4)		
Hold pre-hearing conferences and conduct hearings	\$ 1,010,293	\$ 879,257
Render decisions	938,007	851,414
Improving the efficiency of the regulatory process	338,244	307,019
Issue licences	247,470	224,624
Consultations with key stakeholders	207,485	188,331
Total expenses	\$ 2,741,499	\$ 2,450,645
Revenues (Note 5)		
Hold pre-hearing conferences and conduct hearings	376	10
Total revenues	\$ 376	\$ 10
Net cost of operations	\$ 2,741,123	\$ 2,450,635

The accompanying notes form an integral part of these financial statements

Copyright Board of Canada

Statement of Financial Position (unaudited)

At March 31

(in dollars)

ASSETS	2006	2005
Financial assets		
Accounts receivable (Note 10)	\$ 90,353	\$ 105,260
Total financial assets	\$ 90,353	\$ 105,260
Non-financial assets		
Tangible capital assets (Note 7)	97,231	108,270
Total non-financial assets	\$ 97,231	\$ 108,270
TOTAL	\$ 187,584	\$ 213,530
Liabilities		
Employee future benefits (Note 8)	180,080	149,208
Vacation pay and compensatory leave	124,119	113,561
Accounts payable and accrued liabilities (Note 6)	122,444	230,533
Total liabilities	\$ 426,643	\$ 493,302
Equity of Canada	\$ (239,059)	\$ (279,772)
TOTAL	\$ 187,584	\$ 213,530

Contractual obligations (Note 9)

The accompanying notes form an integral part of these financial statements

Copyright Board of Canada

Statement of Equity of Canada (unaudited)

For the year ended March 31

(in dollars)

	2006	2005
Equity of Canada, beginning of year	\$ (279,772)	\$ (381,589)
Net cost of operations	(2,741,123)	(2,450,635)
Current year appropriations used (Note 3)	2,342,224	2,268,279
Change in net position in the Consolidated Revenue Fund (Note 3)	92,506	(57,207)
Services provided without charge (Note 10)	347,106	341,380
Equity of Canada, end of year	\$ (239,059)	\$ (279,772)

The accompanying notes form an integral part of these financial statements

Copyright Board of Canada

Statement of Cash Flow (unaudited)

For the year ended March 31

(in dollars)

	2006	2005
Operating activities		
Net cost of operations	\$ 2,741,123	\$ 2,450,635
Non cash items:		
Services provided without charge (Note 10)	(347,106)	(341,380)
Amortization of tangible capital assets (Note 7)	(11,039)	(4,097)
Gain on disposal of non-capital assets (Note 5)	376	10
Variation in Statement of Financial Position:		
Decrease (increase) in liabilities	66,659	(19,912)
Increase (decrease) receivables	(14,907)	26,025
Cash used by operating activities	\$ 2,435,106	\$ 2,111,281
Capital investment activities		
Acquisition of tangible capital assets	-	99,801
Proceeds from disposal of non-capital assets (Note 5)	(376)	(10)
Cash used by capital investing activities	\$ (376)	\$ 99,791
Financing activities		
Net cash provided by Government of Canada	\$ 2,434,730	\$ 2,211,072

The accompanying notes form an integral part of these financial statements

Copyright Board of Canada

Notes to the Financial Statements (unaudited)

1 - Authority and Objectives

The Copyright Board of Canada is an independent administrative agency which has been conferred department status for purposes of the *Financial Administration Act*. Its mandate stems from the *Copyright Act*.

The Copyright Board of Canada plays a major role in the collective administration of copyright, particularly where the public performance and the communication to the public, by telecommunication, of musical works, as well as the retransmission of distant radio and television signals are concerned. The Board plays a surveillance role in three ways with respect to collective societies which administer very large repertoires of work created by a multitude of originators both in Canada and in other countries: as an economic regulatory body, by approving tariff proposals by the various copyright collective societies; as an arbitrator in private disputes; and as an arbitrator of the public interest.

The Board's principal mandate is to set royalties which are fair and reasonable for both copyright owners and the users of copyright-protected works, as well as issuing non-exclusive licences authorizing the fully legal use of works when the copyright owner cannot be located.

The Board reports annually to Parliament through the Minister of Industry.

The Board was established on February 1, 1989, as the successor of the Copyright Appeal Board. The funding base of the Copyright Board of Canada for fiscal year 2005-2006 was \$2,514,000.

2 - Summary of Significant Accounting Policies

The financial statements have been prepared in accordance with accounting standards issued by the Treasury Board of Canada Secretariat which are consistent with Canadian generally accepted accounting principles for the public sector.

Significant accounting policies are as follows:

(a) Parliamentary appropriations – the Department is financed by the Government of Canada through Parliamentary appropriations. Appropriations provided to the department do not parallel financial reporting according to generally accepted accounting principles since appropriations are primarily based on cash flow requirements. Consequently, items recognized in the statement of operations and the statement of financial position are not necessarily the same as those provided through appropriations from Parliament. Note 3 provides a high-level reconciliation between the two bases of reporting.

(b) Net Cash Provided by Government – The department operates within the Consolidated Revenue Fund (CRF). The CRF is administered by the Receiver General for Canada. All cash received by the department is deposited to the CRF and all cash disbursements made by the department are paid from the CRF. The net cash provided by Government is the difference between all cash receipts and all cash disbursements including transactions between departments of the federal government.

(c) Change in net position in the Consolidated Revenue Fund is the difference between the net cash provided by the Government and appropriations used in the year, excluding the amount of non-responsible revenue recorded by the department. It results from timing between when a transaction affects appropriations and when it is processed through the CRF.

(d) Revenues – Revenues are accounted for in the period in which the underlying transaction or event occurred that gave rise to the revenues.

(e) Expenses – Expenses are recorded on the accrual basis:

- Vacation pay and compensatory leave are expensed as the benefits accrue to employees under their respective terms of employment.
- Services provided without charge by other government departments for accommodation, the employer's contribution to the health and dental insurance plans and legal services are recorded as operating expenses at their estimated cost.

(f) Employee future benefits

- I. Pension benefits: Eligible employees participate in the Public Service Pension Plan, a multiemployer plan administered by the Government of Canada. The department's contributions to the Plan are charged to expenses in the year incurred and represent the total departmental obligation to the Plan. Current legislation does not require the department to make contributions for any actuarial deficiencies of the Plan.
- II. Severance benefits: Employees are entitled to severance benefits under labour contracts or conditions of employment. These benefits are accrued as employees render the services necessary to earn them. The obligation relating to the benefits earned by employees is calculated using information derived from the results of the actuarially determined liability for employee severance benefits for the Government as a whole.

(g) Account receivables are stated at amounts expected to be ultimately realized; a provision is made for receivables where recovery is considered uncertain.

(h) Foreign currency transactions – Transactions involving foreign currencies are translated into Canadian dollar equivalents using rates of exchange in effect at the time of those transactions. Monetary assets and liabilities denominated in a foreign currency are translated into Canadian dollars using the rate of exchange in effect on 31 March.

(i) Tangible capital assets – All tangible capital assets and leasehold improvements having an initial cost of \$10,000 or more are recorded at their acquisition cost. The department does not capitalize intangibles, works of art and historical treasures that have cultural, aesthetic or historical value, assets located on Indian Reserves and museum collections.

Amortization of tangible capital assets is done on a straight-line basis over the estimated useful life of the assets as follows:

<u>Asset</u>	<u>Amortization period</u>
Machinery and Equipment	10 years

(j) Measurement uncertainty — The preparation of these financial statements in accordance with accounting standards issued by the Treasury Board of Canada Secretariat which are consistent with Canadian generally accepted accounting principles for the public sector requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses reported in the financial statements. At the time of preparation of these statements, management believes the estimates and assumptions to be reasonable. The most significant items where estimates are used are the liability for employee severance benefits and the useful life of tangible capital assets. Actual results could differ from those estimated. Management's estimates are reviewed periodically and, as

adjustments become necessary, they are recorded in the financial statements in the year they become known.

3 - Parliamentary Appropriations

The Department receives most of its funding through annual Parliamentary appropriations. Items recognized in the statement of operations and the statement of financial position in one year may be funded through Parliamentary appropriations in prior, current or future years. Accordingly, the Department has different net results of operations for the year on a government funding basis than on an accrual accounting basis. The differences between net results of operations and appropriations are reconciled in the following tables.

3a) Reconciliation of net cost of appropriations

to current year appropriations used

(in dollars)

	2006	2005
Net cost of operations	\$ 2,741,123	\$ 2,450,635
Adjustments for items affecting net cost of operations but not affecting appropriations:		
Add (Less):		
Services provided without charge (Note 10)	(347,106)	(341,380)
Employee severance benefits (Note 8)	(30,872)	60,080
Amortization of tangible capital assets (Note 7)	(11,039)	(4,097)
Vacation pay and compensatory leave	(10,558)	2,691
Gain on disposal of non-capital assets (Note 5)	376	10
Other	300	539
	\$ (398,899)	\$ (282,157)
Adjustments for items not affecting net cost of operations but affecting appropriations:		
Add (Less):		
Acquisitions of tangible capital assets	-	99,801
Current year appropriations used	\$ 2,342,224	\$ 2,268,279

3b) Appropriations provided and used

(in dollars)

	2006	2005
Vote 50 - Operating expenditures	\$ 2,267,000	\$ 2,338,500
Statutory Amounts	247,970	237,121
Less:		
Appropriations available for future years	(376)	(10)
Lapsed appropriations: Operating	(172,370)	(307,332)
Current year appropriations used	\$ 2,342,224	\$ 2,268,279

**3c) Reconciliation of net cash provided by Government
to current year appropriations used**

(in dollars)

	2006	2005
Net cash provided by Government of Canada	\$ 2,434,730	\$ 2,211,072
Change in net position in the Consolidated Revenue Fund		
Variation in accounts payable and accrued liabilities	(66,659)	19,912
Variation in accounts receivables	14,907	(26,025)
Other adjustments	(40,754)	63,320
Current year appropriations used	\$ 2,342,224	\$ 2,268,279

4. Expenses

(in dollars)

	2006	2005
Operating		
Salaries and employee benefits	\$ 1,649,007	\$ 1,497,388
Services provided without charge	347,106	341,380
Professional and special services	320,534	246,973
Travel	122,586	107,659
Telecommunication Services	68,136	53,276
Rental	67,517	60,629
Information Services	62,005	41,554
Utilities, materials and supplies	37,446	36,022
Repair and Maintenance	18,545	14,917
Amortization	11,039	4,097
Other	37,578	46,750
Total Expenses	\$ 2,741,499	\$ 2,450,645

5. Revenues

(in dollars)

	2006	2005
Gains on disposal of non-capital assets	\$ 376	\$ 10
Total revenue	\$ 376	\$ 10

6. Accounts payable and Accrued liabilities

(in dollars)

	2006	2005
External		
Accrued liabilities	79,790	201,296
Accrued salaries and wages	\$ 31,521	\$ 27,921
Total External	\$ 111,311	\$ 229,217
Other Federal Government departments	11,133	1,316
Total Accounts payable and accrued liabilities	\$ 122,444	\$ 230,533

7. Tangible Capital Assets

(in dollars)

	Cost		Accumulated amortization			2006	2005
Capital asset class	Opening balance	Closing balance	Opening Balance	Amortization	Closing Balance	Net book value	Net book value
Machinery and equipment	\$ 158,827	158,827	50,557	11,039	61,596	97,231	\$ 108,270
Total	\$ 158,827	158,827	50,557	11,039	61,596	97,231	\$ 108,270

Amortization expense for the year ended March 31, 2006 is \$11,039 (2005 - \$4,097)

8. Employee Benefits

a) Pension benefits: The department's employees participate in the Public Service Pension Plan, which is sponsored and administered by the Government of Canada. Pension benefits accrue up to a maximum period of 35 years at a rate of 2 percent per year of pensionable service, times the average of the best five consecutive years of earnings. The benefits are integrated with Canada/Québec Pension Plans benefits and they are indexed to inflation.

Both the employees and the department contribute to the cost of the Plan. The 2005-06 expense amounts to \$222,825.83 (\$215,296.89 in 2004-05), which represents approximately 2.6 time the contributions by employees.

The department's responsibility with regard to the Plan is limited to its contributions. Actuarial surpluses or deficiencies are recognized in the financial statements of the Government of Canada, as the Plan's sponsor.

(b) Severance benefits: The department provides severance benefits to its employees based on eligibility,

years of service and final salary. These severance benefits are not pre-funded. Benefits will be paid from future appropriations. Information about the severance benefits, measured as at March 31, is as follows:

<i>(in dollars)</i>	2006	2005
Accrued benefit obligation, beginning of year	\$ 149,208	\$ 209,288
Expense for the year	30,872	(37,023)
Benefits paid during the year	-	23,057
Accrued benefit obligation, end of year	\$ 180,080	\$ 149,208

9. Contractual Obligations

The nature of the department's activities can result in some large multi-year contracts and obligations whereby the department will be obligated to make future payments when the services/goods are received. Significant contractual obligations that can be reasonably estimated are summarized as follows:

<i>(in dollars)</i>	2007	2008	2009	2010	2011 and thereafter	Total
Acquisition of goods and services	\$ 413,412	6,213	1,605	4,293	669	\$ 426,192
Employer contributions	332,133	-	-	-	-	332,133
Total	\$ 745,545	6,213	1,605	4,293	669	\$ 758,325

10. Related party transactions

The department is related as a result of common ownership to all Government of Canada departments, agencies, and Crown corporations. The department enters into transactions with these entities in the normal course of business and on normal trade terms. Also, during the year, the department received services, which were obtained without charge from other Government departments as presented in part (a).

(a) Services provided without charge:

During the year the department received without charge from other departments, accommodation, legal fees and the employer's contribution to the health and dental insurance plans. These services without charge have been recognized in the department's Statement of Operations as follows:

<i>(in dollars)</i>	2006	2005
Accommodation	\$ 224,500	\$ 216,260
Employer's contribution to the insurance plans	122,606	125,120
Total	\$ 347,106	\$ 341,380

The Government has structured some of its administrative activities for efficiency and cost-effectiveness purposes so that one department performs these on behalf of all without charge. The costs of these services, which include payroll and cheque issuance services provided by Public Works and Government Services Canada and audit services provided by the Office of the Auditor General, are not included as an expense in the department's Statement of Operations.

(b) Receivables outstanding at year-end with related parties:

<i>(in dollars)</i>	2006	2005
Receivables from other Federal Government departments	\$ 90 353	\$ 105 260
Total	\$ 90 353	\$ 105 260