

Canada Industrial Relations Board

Departmental Performance Report

for the period ending March 31, 2006

Approved by:

The Honourable Jean-Pierre Blackburn
Minister of Labour and Minister of the Economic Development
Agency of Canada for the Regions of Quebec

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SECTION I – OVERVIEW

1.1 Message from the Chairperson

I am pleased to present to Parliament and Canadians the eighth annual Performance Report of the Canada Industrial Relations Board (CIRB or the Board), for the period ending March 31, 2006.



The CIRB is 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*. This jurisdiction covers some 1,000,000 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.

During the last fiscal year, the number of applications/complaints received by the CIRB receded somewhat from the levels experienced in recent years, and the Board's disposition performance rebounded after having suffered a reduced adjudicative capacity in 2004-05. As a result, the number of backlog cases dropped to 650 on March 31, 2006, the lowest level since the CIRB was established in 1999. The growing incidence of complex matters, which require both more time and resources, and the disposition of an inordinate number of long-standing matters have however had a dampening effect on overall Board performance.

The CIRB has also completed a number of initiatives in 2005-06 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 certification applications and duty of fair representation complaints, were implemented. These initiatives have had a positive impact on the Board's performance, and more importantly, will continue to have a compound effect in upcoming years. Furthermore, the CIRB largely completed 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 continues to confer with its Client Consultation Committee, as part of the Board's strategic objective of strengthening linkages and obtaining feedback from its client community.

I am extremely proud and pleased with the accomplishments of the Board and its staff in 2005-06. We are, I believe, well positioned to improve on the fulfillment of our current mandate, with an emphasis on the reduction of both case processing times as well as the number of matters that are pending. Toward this end, I remain committed to finding new opportunities that will increase the productivity of the CIRB and gain greater efficiencies.

Warren R. Edmondson
Chairperson

1.2 Management Representation Statement

I submit for tabling in Parliament, the 2005-06 Departmental Performance Report for the Canada Industrial Relations Board.

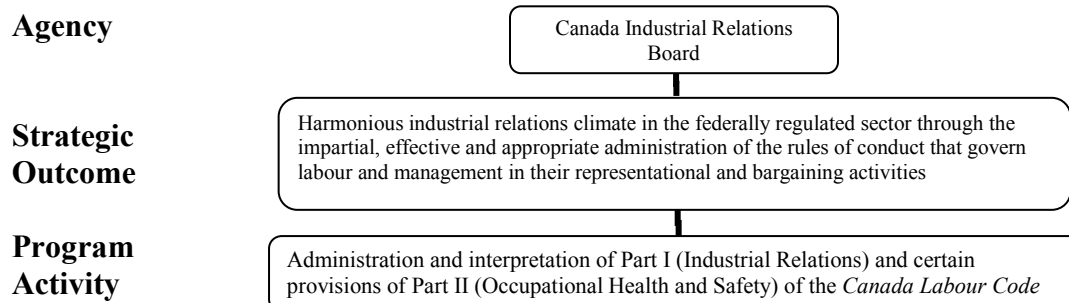
This document has been prepared based on the reporting principles contained in the *Guide for the Preparation of Part III of the 2005-2006 Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- 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 numbers from the Estimates and the Public Accounts of Canada in the DPR.

Warren R. Edmondson
Chairperson

1.3 Program Activity Architecture

Canada Industrial Relations Board – Program Activity Architecture (PAA)



1.4 Summary Information

Reason for Existence – *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.*

Financial Resources (000's)

| Planned Spending | Total Authorities | Actual Spending |
|------------------|-------------------|-----------------|
| \$11,896.0 | \$12,420.3 | \$12,286.9 |

Human Resources

| Planned | Actual | Difference |
|---------|--------|------------|
| 117 | 104 | -13 |

1.5 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, 2006, the adjudicative team of the Board was composed of the Chairperson, five full-time and three part-time Vice-Chairpersons, and two full-time and six part-time members, — all of which are Governor in Council (GIC) appointments. 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, 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
- Inter-provincial 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 1,000,000 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; and
- ensure continuous interaction with those utilizing Board services through meaningful communication and complaint processes.

1.6 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 in Canada.

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; and
- 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 in augmenting both its skill and resource levels to meet the needs of its clients.

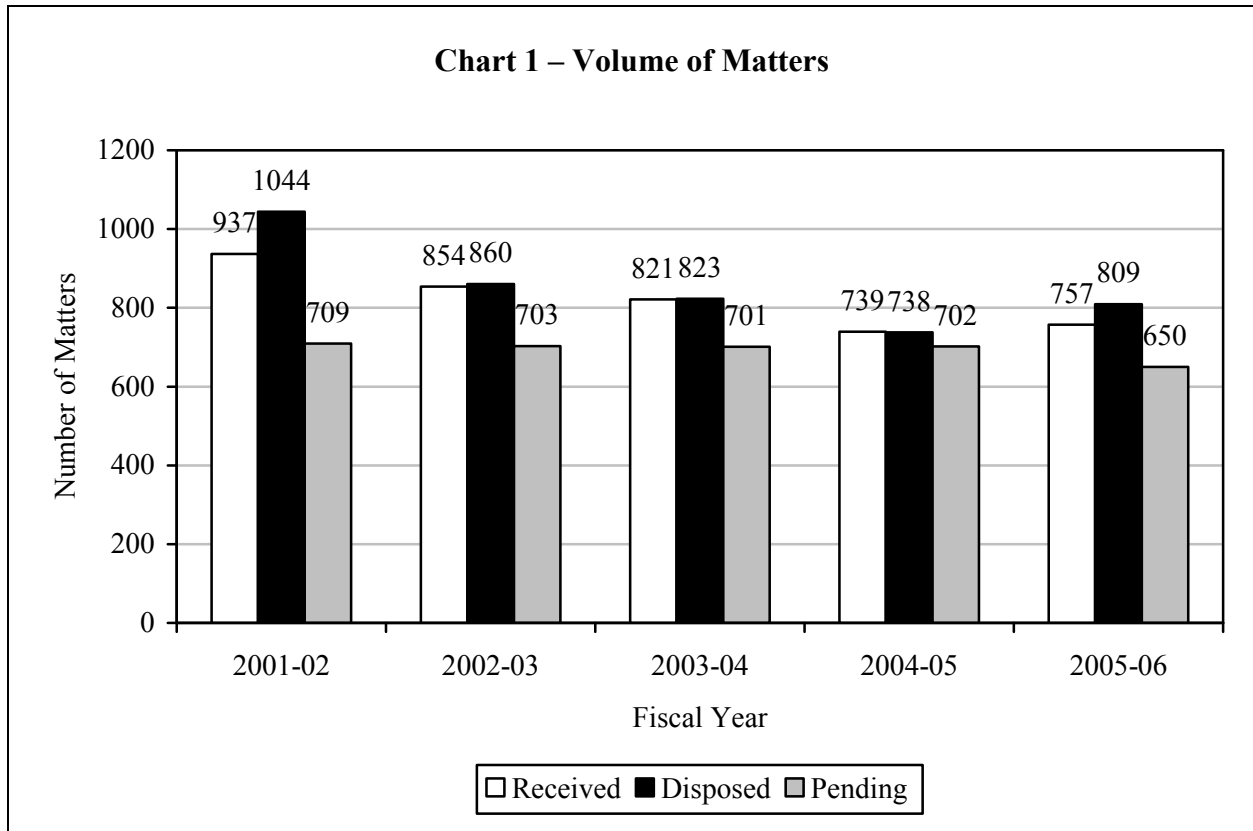
1.6.1 Volume of Matters

After an initial spike in caseload levels in the years following the 1999 amendments to the *Code*, which widened the scope of matters the CIRB could hear, the volume of matters handled by the Board appears to have levelled off (see Chart 1). This levelling-off can be largely traced to a reduction in unfair labour practice complaints, particularly in the last two fiscal years. This type of matter accounted for approximately 39% (294 complaints) of all matters received on average over the last two fiscal years, compared to almost 45% (414 complaints) on average in the previous five fiscal years.

With respect to the disposition of matters, the Board adopted a number of accommodating administrative measures in the years following the 1999 *Code* amendments, 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 generally augment its rate of matter disposition in the years following the 1999 *Code* amendments, as it disposed of 855 matters per year on average in the last five fiscal years, compared to only 715 matters on average in the five fiscal years preceding the *Code* amendments. However, the Board's rate of disposition declined somewhat in the last two fiscal years as a result of a diminished adjudicative capacity. Delays encountered in the appointment or re-appointment of Board Members in 2004-05 made it somewhat difficult to assign a Board panel to hear cases in many circumstances, and even though vacancies were filled for the following fiscal year, the effects of the reduced capacity rippled into the early part of 2005-06.

Nevertheless, since the Board's rate of disposition outpaced the rate of incoming matters for four of the last five fiscal years, the number of pending cases dropped from a high of 816 in 2000-01 to 650 at the end of March 2006 (see Chart 1).



1.6.2 More Complex Cases

Other than the absolute volume of applications, the CIRB’s workload has also been largely affected by the greater incidence of more complex matters as a result of the changes to the *Code*. 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 accounted for 90 or more matters a year over the last five fiscal years, representing more than 10% of matters disposed of in any given year on average (12.7% in 2004-05 and 11.9% in 2005-06). By comparison, complex cases accounted for 55 dispositions a year on average, in the previous five fiscal years.

Table 1 – Number of Complex Matters Disposed

| Matter | 2001-02 | 2002-03 | 2003-04 | 2004-05 | 2005-06 |
|-------------------------------------|------------|-----------|-----------|-----------|-----------|
| Review of Bargaining Unit Structure | 15 | 17 | 17 | 21 | 19 |
| Single Employer | 21 | 19 | 12 | 20 | 20 |
| Sale of Business | 49 | 34 | 33 | 34 | 34 |
| Maintenance of Activities | 21 | 28 | 28 | 19 | 23 |
| Total | 106 | 98 | 90 | 94 | 96 |

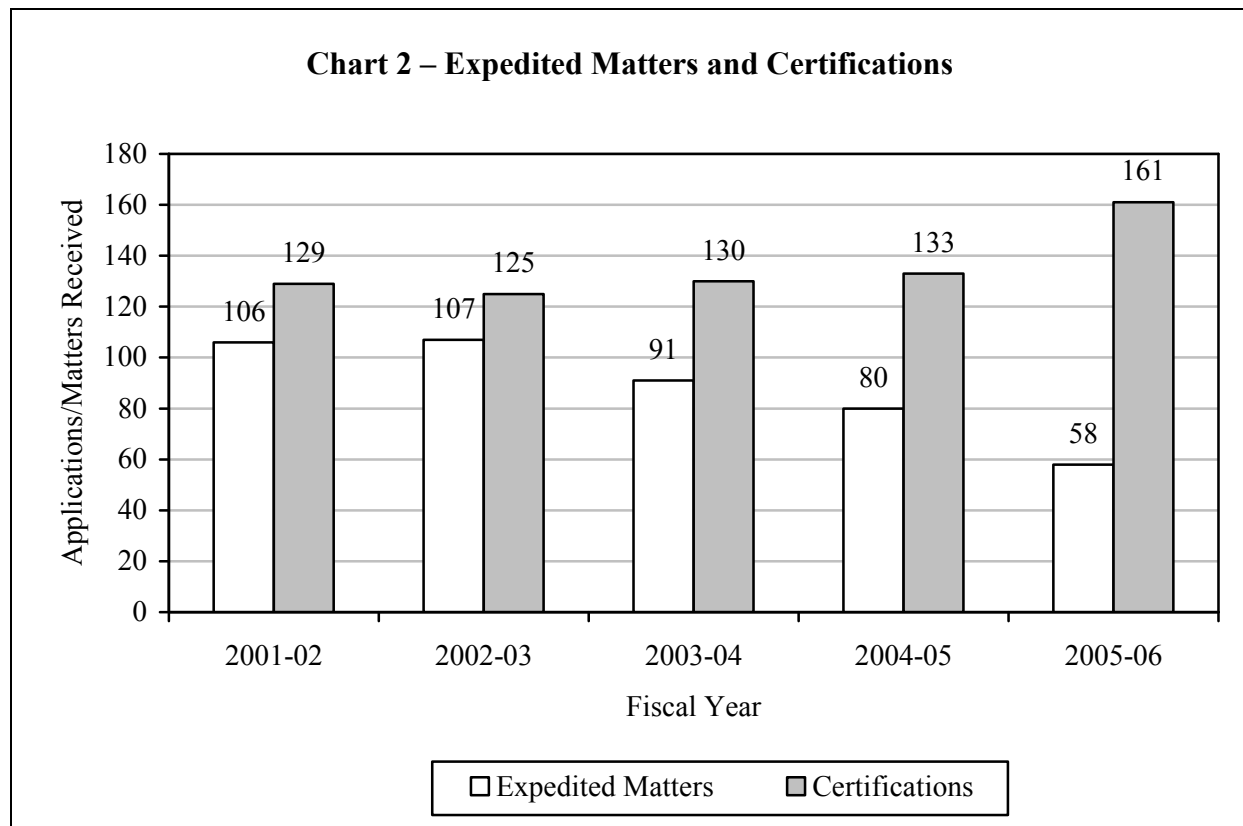
1.6.3 Expedited Matters

In addition to more complex cases, the *Canada Industrial Relations Board Regulations, 2001* (the *Regulations*) stipulate that certain types of matters 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 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 for almost 11% of all applications/complaints received over the last five fiscal years on average, as opposed to slightly more than 6% in the five years preceding the *Code* amendments. Chart 2 sets out the volume of expedited matters and certifications (including geographical certifications) from 2001-02 to 2005-06.



1.6.4 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 increased as noted earlier, also frequently require more detailed decisions given their nature¹.

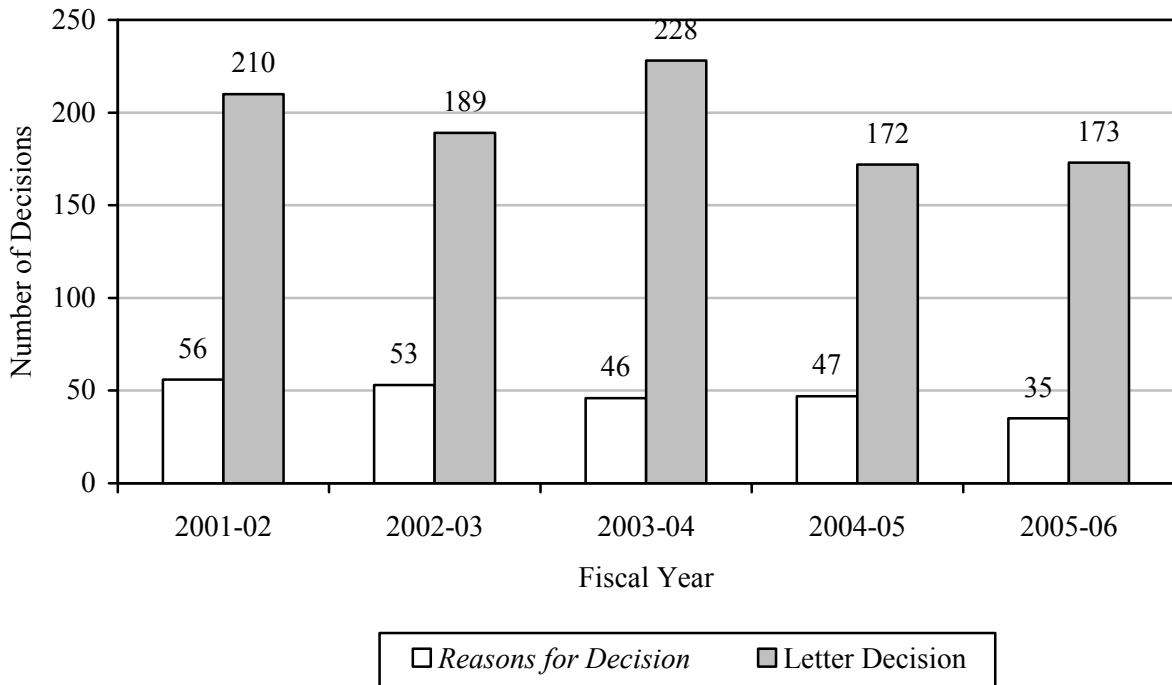
Together, these two factors have led to an increase in the need for the Board to interpret and apply the *Code* in matters involving provisions that were revised and/or added, which, in turn, is reflected in a significant increase in Board jurisprudence. These decisions serve both to resolve the issues 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 should reduce the likelihood of a demand for reconsideration, as well as reducing the likelihood of applications to the Federal Court of Appeal for a judicial review.

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 more than 47 of the more detailed *Reasons for decision* each year over the last five years, and close to 200 letter decisions. The balance of matters are either withdrawn or disposed of by orders. In the five fiscal years prior to the *Code* amendments, the Board issued an average of 37 *Reasons for decision* per year and 128 letter decisions.

See Section 4.1 for examples of illustrative Board decisions in 2005-06.

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.

Chart 3 – Decisions



SECTION II – CIRB PERFORMANCE (Analysis of Program Activities by Strategic Outcome)

The key strategic outcome of the 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.

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.

2.1 Processing Time

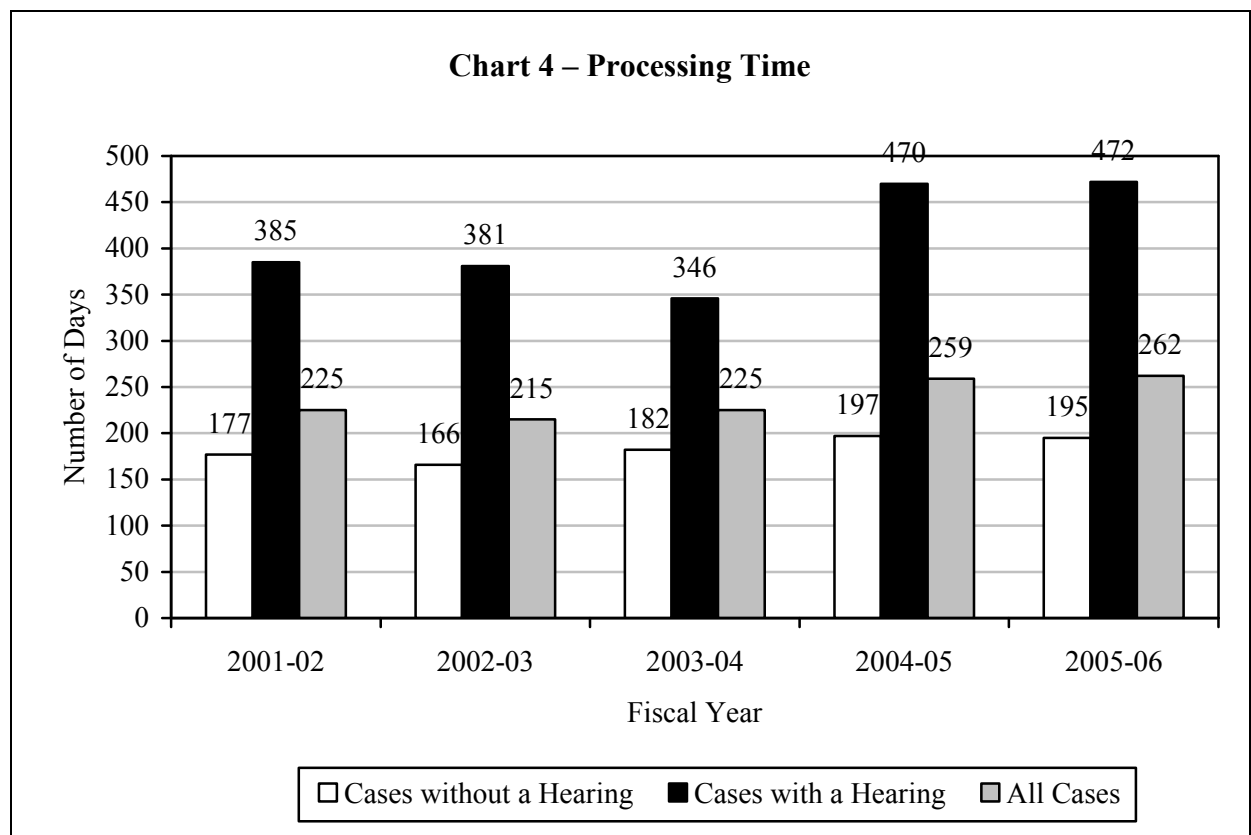
The time required by the Board to process a file — the time spent opening, investigating, mediating, hearing, where required, and deciding a case — has been relatively stable over the first five years of the CIRB (1999-00 to 2003-04), averaging 219 calendar days. In the last two fiscal years however, processing time has increased noticeably, particularly for matters requiring a hearing (see Chart 4).

There are three key reasons for this increase. First, the CIRB experienced a diminished adjudicative capacity in 2004-05, and even though vacancies were filled for the following fiscal year, the effects of the reduced capacity rippled into the early part of 2005-06. While this affected the processing of all matters, it made it particularly difficult to deal with cases that called for a full panel (Chairperson or Vice-Chairperson and two members). The second key reason is related to the increased incidence of complex matters mentioned previously. Since these matters, by their nature, typically take longer to process, the overall average processing time will increase if their proportion rises. And finally, the third reason, which is somewhat related to the first but far more important, is that there have been an inordinate number of long-standing matters which have been settled in the last two fiscal years.

Table 2 shows the distribution of matters disposed of by processing time for the first five years of the CIRB compared to the last two fiscal years. It indicates that whereas cases taking more than two years to dispose of represented 4.4% of matters on average in the period of 1999-00 to

2003-04, this proportion more than doubled to 8.9% in 2005-06. The bulk of these long-standing matters involve unfair labour practice complaints and certification applications, and many necessitated a hearing. Furthermore, many of the applications/complaints are related to the take-over of Canadian Airlines International Limited by Air Canada, the creation of TELUS and to several certification applications on First Nation reserves where the issue of jurisdiction was in question. It should also be noted that more than half of the long-standing matters disposed of in 2005-06 were withdrawn and another third were rejected. The impact of these long-standing matters on the average processing time is considerable. Had they represented the same proportion of matters disposed of in 2005-06 as in the first five years of the CIRB, the overall average processing time would have been 53 days less.

As for the processing time of other matters, Table 2 indicates that close to 60% of matters were disposed of in less than 6 months in 2005-06, which is essentially the same as in the first five years of the Board. However, the average processing time of matters disposed of in less than 6 months dropped to 78 days in 2004-05 and to 72 days in 2005-06, from an average of 84 days in the first five years of the CIRB. This would indicate that the measures that the Board has taken over the last couple of years to reduce processing time are starting to take effect.



2.2 Decision-making Time

One component of the overall processing time is the length of time required by a Board panel² 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 decisions³ for the last five fiscal years.

Similarly to processing time, and for many of the same reasons, the average decision-making time of matters disposed of has tended to increase, particularly in the last two fiscal years. However, while the average decision-making time remains higher in 2005-06 than in the earlier years of the Board, it has dropped by 10 days to 120 days when compared to 2004-05. Again, the inordinate disposition of long-standing matters in 2005-06 as well as the increased incidence of complex matters considerably restrained the decline in the average decision-making time last fiscal year.

Perhaps a better way to look at the Board's performance on decision-making time is to use section 14.2(2) of the *Code* as a benchmark. The section states: "The panel must render its decision and give notice of it to the parties no later than ninety days after the day on which it reserved its decision or within any further period that may be determined by the Chairperson." By this criterion, the Board has done quite well in 2005-06 when compared to previous years. Table 3 shows that close to 73% of decisions were rendered in 90 days or less in 2005-06, the highest level in the last five fiscal years.

Table 2 – Distribution of Matters Disposed of by Processing Time

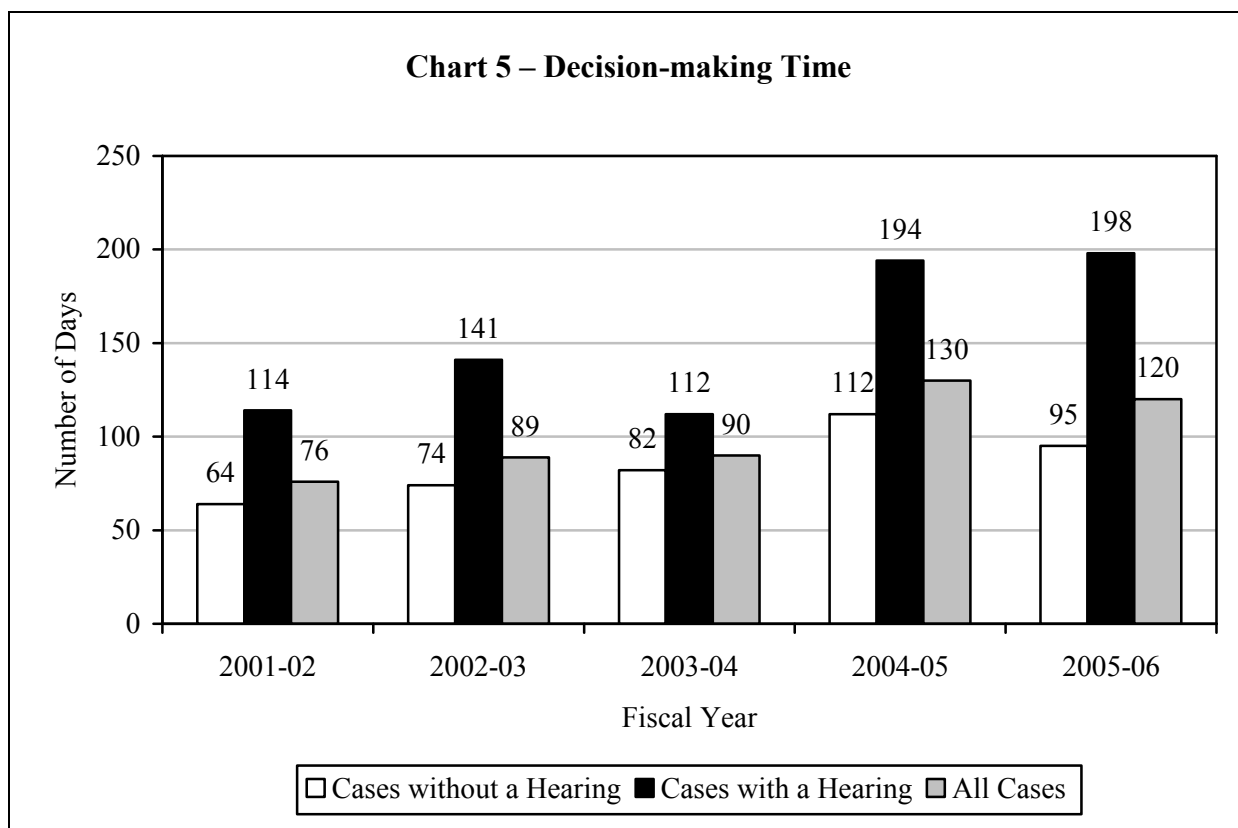
| Disposed of in | 1999-00 to 2003-04 | 2004-05 | 2005-06 |
|------------------------|-----------------------------------|----------------|----------------|
| Less than Six Months | 60.4% | 55.0% | 59.7% |
| Six Months to One Year | 22.2% | 21.1% | 18.7% |
| One to Two Years | 13.0% | 17.5% | 12.7% |
| More than Two Years | 4.4% | 6.4% | 8.9% |

Table 3 – Distribution of Matters Disposed of by Decision-making Time

| Decisions rendered in | 2001-02 | 2002-03 | 2003-04 | 2004-05 | 2005-06 |
|------------------------------|----------------|----------------|----------------|----------------|----------------|
| 90 Days or Less | 71.0% | 67.8% | 69.6% | 61.5% | 72.7% |
| More than 90 Days | 29.0% | 32.2% | 30.4% | 38.0% | 27.4% |

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.



2.3 Mediation Services

Unfair labour practice complaints continue to comprise a significant percentage of the CIRB’s caseload. The Board disposed of 301 such complaints in 2005-06, representing 37% of all matters disposed of. This proportion is somewhat lower than usual since unfair labour practice complaints comprised 43% of matters disposed of on average in the last five fiscal years. The CIRB continues to endeavour to assist the parties in reaching mediated solutions to these matters, and last year, more than two thirds of the cases were resolved without the need for Board adjudication, the highest level in the last five years. The Board places great emphasis on maintaining settlement levels above 50% as a performance measure.

2.4 Judicial Reviews

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

Table 4 shows the pattern of judicial reviews over the last five fiscal years, and indicates that 25 judicial reviews were filed in 2005-06, representing 3.1% of all matters disposed of by the Board in that year. This percentage is typical, notwithstanding annual fluctuations, as judicial reviews have represented 3.3% of matters disposed of on average over the last five fiscal years. With

respect to the outcome of the reviews before the Federal Court, the Board's decisions have been upheld in more than 96% of cases, even attaining 100% in three of the last five fiscal years.

See Section 4.2 for examples of illustrative judicial reviews in 2005-06.

Table 4 – Applications for Judicial Review

| | 2001-02 | 2002-03 | 2003-04 | 2004-05 | 2005-06 |
|-----------------------------|---------|---------|---------|---------|---------|
| Matters Disposed of by CIRB | 1044 | 860 | 823 | 738 | 809 |
| Judicial Reviews Filed | 29 | 22 | 33 | 32 | 25 |
| Percent Reviewed (%) | 2.8 | 2.6 | 4.0 | 4.3 | 3.1 |
| Reviews Disposed of | 25 | 26 | 27 | 31 | 37 |
| Reviews Granted | 0 | 1 | 1 | 0 | 0 |
| Reviews Dismissed | 11 | 11 | 12 | 18 | 20 |
| Reviews Withdrawn | 14 | 14 | 14 | 13 | 17 |
| Board Success Rate (%) | 100.0 | 96.2 | 96.3 | 100.0 | 100.0 |

2.5 Change Management Performance

In its 2005-06 Report on Plans and Priorities, tabled in Parliament in early spring of 2005, the CIRB identified four main priorities on which it would set its attention. These were the review of the certification application process and disposition, the review of the duty of fair representation complaint process and disposition, stakeholder consultations, and improvement in business planning. The progress on each of these priorities is provided below.

2.5.1 New Procedures for the Processing of Certification Applications

Following consultations with major client groups and stakeholders, the CIRB established a committee in 2004-05 to review its case processing practices with respect to certification applications and to recommend ways in which the Board could expedite the disposition of these matters. New procedures were developed and tested in 2004-05, and the new procedures were refined and adopted as of April 1, 2005. The main objective of the new procedures is to process and dispose of standard certification applications — those that do not include abnormal situations involving complex issues of law or jurisdiction and that do not require a vote — in 50 days or less. This is an ambitious goal even for standard applications, and while the CIRB recognized from the outset that it would not be met for non-standard applications, it nevertheless expected the new procedures to reduce their average processing time.

There were a total of 161 applications for certification received by the Board in 2005-06 and processed under the new measures. Of these, 111 were disposed of and 50 remained pending at the end of the year. Twenty-two of these pending applications had been pending for less than 50 days (6 days on average).

With respect to the 111 certification applications that were disposed of, Table 5 shows that their processing time demonstrated a phenomenal improvement over previous years. The processing time for these applications averaged 63 days (57 days without a vote, 110 days with vote) compared to an average processing time of 179 days (165 days without a vote, 301 days with

vote) for certification applications in the five fiscal years preceding 2005-06. This represents a reduction of almost two-thirds. Also, almost two-thirds of the no vote dispositions in 2005-06 were processed in less than the 50-day target.

In view of these results, it is fair to state that the new certification procedures have met their declared objective.

Table 5 – Processing Time, Certification Applications Received before and after April 1, 2005

| | 2000-01 to 2004-05 | | 2005-06 | |
|--------------|--------------------------|------------------------|---|------------------------|
| | Applications Disposed of | Processing Time (Days) | Applications Received on or after April 1, 2005 | |
| | | | Applications Disposed of | Processing Time (Days) |
| Total | 779 | 179 | 111 | 63 |
| With Vote | 81 | 301 | 13 | 110 |
| Without Vote | 698 | 165 | 98 | 57 |

2.5.2 New Procedures for the Processing of Duty of Fair Representation Complaints

As was the case for the treatment of certification applications, following consultations with stakeholders, the CIRB established a committee in 2005-06 to review its case processing practices with respect to duty of fair representation complaints (DFR) and to recommend ways in which the Board could expedite their disposition. Although DFRs are not usually the type of matter that require priority attention — they are often deferred in favour of other more important matters — their relative number is significant and they thus have an important impact on the Board’s overall processing performance and backlog of cases. Indeed, DFRs represent more than 21% of all applications/complaints received in the last five fiscal years, and since they are more likely to be deferred, they only represent less than 18% of matters disposed of. As a result, the number of DFR complaints has grown from 148 in 2001-02 to 270 in 2005-06, which represents more than 41% of all pending matters.

The new procedures, which were put into place starting on January 1, 2006, contain two new main measures. By far, the most important of these measures is the addition of a new process, whereby the complaint is quickly referred to a panel of the Board to assess whether there are sufficient grounds for the complaint to proceed. If there is no basis for the complaint, a summary decision is issued and the file closed. If, however, the complaint warrants further consideration, then the process essentially follows the course it would have under the old procedures. The second main measure of the new procedures concerns the response times of the concerned parties at various stages, and the consequences of not meeting them.

Unfortunately, since the new procedures only came into effect on January 1, 2006, there is an insufficient number of DFR complaints that have been disposed under the new regime to properly assess its impact and effectiveness. However, the little information the CIRB has suggests that the improvement in processing time will be as spectacular as it has been for the new certification applications. If this is the case, the new DFR procedures will also have a significant effect on the backlog of pending matters.

2.5.3 Stakeholder Consultations

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 Client Consultation Committee has been quite active since its establishment and has been instrumental in guiding the CIRB in the development of its change management agenda. As mentioned earlier, the review process for certification applications and DFRs are two of the major initiatives developed by the CIRB in consultation with the committee.

2.5.4 Improvement in Business Planning

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.

One important area that was identified as requiring improvement was business planning. The Board consequently carried out a full review of its business-planning framework, and began work on revamping its operational planning processes as well as updating its strategic plan. Tools have been developed to assist managers better identify their resource requirements, and to tie these requirements to business activities and to change management initiatives, as well as to line item expenditures. Work has also progressed on updating the Board's strategic plan, which is expected to be finalized and approved in the fall of 2006.

2.5.5 Cumulative Effects of Change Management Initiatives

Since taking office in January of 2004, the CIRB's Chairperson, Mr. Warren R. Edmondson, has made it a priority to ensure that the Board's mandate be achieved as effectively and efficiently as possible, and to improve the CIRB's performance with respect to processing and decision-making times with a goal of ultimately reducing the number of backlog cases that had persisted over the previous years. Other than the major initiatives mentioned in this report, many other administrative and operational measures were undertaken under his stewardship to reach this goal.

It would therefore be interesting to gauge what cumulative effect, if any, these measures have had on the Board's performance. Table 6 shows the average processing and decision-making times of matters disposed of in the period 1999-00 to 2003-04 compared with the disposition of matters received after January 1, 2004. The difference is striking. The number of days to process matters fell from an average of 220 days in the five fiscal-year period of 1999-00 to 2003-04 to 137 days in 2004-05 and 2005-06, a reduction of 60%. Similarly, average decision-making time

dropped from 76 days over the 1999-00 to 2003-04 period to 51 days in 2004-05 and 2005-06, a close to 50% reduction.

Unfortunately, given the higher incidence of long-standing matters in the last two fiscal years, as mentioned earlier, the performance improvements resulting from the various measures taken during that time have been cloaked in the general numbers.

Table 6 – Processing and Decision-making Times, Applications Received before and after January 1, 2004

| 1999-00 to 2003-04 | | | 2004-05 and 2005-06 | | |
|--------------------------|------------------------|-----------------------------|---|------------------------|-----------------------------|
| Applications Disposed of | Processing Time (Days) | Decision-making Time (Days) | Applications Received on or after January 1, 2004 | | |
| | | | Applications Disposed of | Processing Time (Days) | Decision-making Time (Days) |
| 4566 | 220 | 76 | 1146 | 137 | 51 |

2.6 Other Results

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

- The CIRB has completed a multi-year migration to its new case management system (CMS) in replacement of its old obsolete system. The CMS is the Board’s main business system and is extremely complex. Migrating to a new system is never easy, but the CIRB believes that this new technology will ultimately help improve its operations. Its greatest advantage may be less of a technical nature however, and lies more in the review of business rules and processes that such an exercise necessitates, as well as the thorough audit and examination of information held on the system. The Board also continued to implement enhancements to, or improve, its document management system and integrating it to the CMS; its videoconferencing capabilities; a comprehensive and dynamic CIRB intranet; a secure remote access to its databases for Board members and staff; and an examination of the potential for electronic filing of applications and documents.
- Through its 1-800 information hotline, the CIRB received close to 6,900 various information requests in 2005-06. Almost 37% 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 Social Development Canada) and were easily redirected. This still leaves more than 4,300 inquiries that needed a more involved response from the Board, which is considerably higher than the 3,100 inquiries received in 2004-05. Requests for information generally pertain to case hearing dates, documents or decisions on file, Board statistics and other various matters.
- 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.

- The CIRB continued to revise and update its Web site in order to make more information about the Board — including its decisions — more widely available and accessible to the Canadian public.
- CIRB members and staff have made presentations and addresses at a number of industrial relations conferences and seminars across Canada. This has been directed at improving ongoing contact with and feedback from the Board's stakeholder communities.

SECTION III – SUPPLEMENTARY INFORMATION

3.1 Organizational Information

3.1.1 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 *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.

3.1.2 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 *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.

3.1.3 To Contact the Board

Toll-free: 1-800-575-9696

People who use TTY should place calls with the assistance of a Bell Relay Service operator at:
1-800-267-6511

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.

3.2 Financial Performance Summary and Summary Tables

Financial Summary Tables

The following tables are applicable to the Board:

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

Table 2 – Resources by Program Activity

Table 3 – Voted and Statutory Items

Table 4 – Services Received Without Charge

Table 5 – Financial Statements

Table 6 – Response to Parliamentary Committees, and Audits and Evaluations for Fiscal
Year 2005-06

Table 7 – Travel Policies

Table 1 – Comparison of Planned to Actual Spending (including 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. The Total Authorities granted to the Board were approximately \$524,000 more than originally planned. The additional authorities consisted mainly of:

- \$296,000 carried over from previous fiscal years;
- \$404,000 to offset employee salary increases as a result of collective bargaining;
- A reduction of \$176,000 in the allowance for the contribution to employee benefits.

Actual spending represented 99% of authorized amounts.

| (\$ thousands) | 2003-04 Actual | 2004-05 Actual | 2005-06 | | | |
|--|-------------------|-------------------|-------------------|---------------------|----------------------|------------------|
| | | | Main Estimates | Planned Spending | Total Authorities | Total Actuals |
| Administration and interpretation of Part I (Industrial Relations) and certain provisions of Part II (Occupational Health and Safety) of the <i>Canada Labour Code</i> | 12,934.4 | 12,439.3 | 11,906.0 | 11,896.0 | 12,420.3 | 12,286.9 |
| Total | 12,934.4 | 12,439.3 | 11,906.0 | 11,896.0 | 12,420.3 | 12,286.9 |
| Less: Non-respendable revenue* | -1.2 | -0.9 | N/A | 0.0 | N/A | -1.1 |
| Plus: Cost of services received without charge | 2,868.7 | 2,462.4 | N/A | 2,871.0 | N/A | 2,785.9 |
| Total for the Board Spending | 15,801.8 | 14,900.9 | N/A | 14,767.0 | N/A | 15,071.7 |
| Full-time Equivalents | 120 | 105 | N/A | 117 | N/A | 104 |

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

Table 2 – Resources by Program Activity

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

| 2005-2006 | | | | |
|--|-----------|-------------------------------------|---------------------------|-----------------------------------|
| (\$ 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 <i>Canada Labour Code</i> | | | | |
| Main Estimates | 11,906.0 | 11,906.0 | 0.0 | 11,906.0 |
| Planned Spending | 11,896.0 | 11,896.0 | 0.0 | 11,896.0 |
| Total Authorities | 12,420.3 | 12,420.3 | 0.6 | 12,419.7 |
| Actual Spending | 12,286.9 | 12,286.9 | 0.0 | 12,286.9 |

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 votes funding and the statutory information is provided for information purposes.

| (\$ thousands) | | 2005-06 | | | |
|------------------------|---|-----------------|------------------|-------------------|-----------------|
| Vote or Statutory Item | Truncated Vote or Statutory Wording | Main Estimates | Planned Spending | Total Authorities | Total Actuals |
| 10 | Operating Expenditures | 10,344.0 | 10,334.0 | 11,034.0 | 10,901.2 |
| (S) | Contributions to Employee Benefit Plans | 1,562.0 | 1,562.0 | 1,385.7 | 1,385.7 |
| (S) | Crown Assets Surplus | 0.0 | 0.0 | 0.6 | 0.0 |
| | Total | 11,906.0 | 11,896.0 | 12,420.3 | 12,286.9 |

Table 4 – Services Received Without Charge

| (\$ thousands) | 2005-2006 |
|--|----------------|
| Accommodation provided by Public Works and Government Services Canada | 2,167.5 |
| Contributions covering employers' share of employees' insurance premiums and expenditures paid by Treasury Board of Canada Secretariat (excluding revolving funds). Employer's contribution to employees' insured benefits plans and associated expenditures paid by TBS | 618.4 |
| Salary and associated expenditures of legal services provided by the Department of Justice Canada | 0.0 |
| Total 2005-2006 Services Received Without Charge | 2,785.9 |

Table 5 – Financial Statements

**Canada Industrial Relations Board
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 the Board's 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 Board's financial transactions. Financial information submitted to the Public Accounts of Canada and included in the Board'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 Board.

The financial statements of the Board have not been audited.

**Canada Industrial Relations Board
Statement of Operations (unaudited)**

| For the Year Ended March 31 | 2006 | 2005 |
|------------------------------------|-------------------|-------------------|
| (in dollars) | | |
| Expenses | | |
| Salaries and employee benefits | 9,504,892 | 9,397,481 |
| Accommodation | 2,167,453 | 1,855,032 |
| Professional and special services | 957,776 | 1,093,248 |
| Travel and relocation | 609,273 | 497,550 |
| Communication | 381,670 | 434,966 |
| Equipment | 293,863 | 611,302 |
| Equipment rentals | 172,830 | 168,821 |
| Amortization | 155,982 | 175,318 |
| Repairs and maintenance | 125,252 | 167,114 |
| Utilities, materials and supplies | 141,762 | 137,261 |
| Information | 15,462 | 30,850 |
| Court awards | 0 | 20,000 |
| Miscellaneous | 433 | 761 |
| Total Expenses | 14,526,648 | 14,589,704 |
| Revenues | | |
| Miscellaneous revenues | 1,066 | 1,255 |
| Total Revenues | 1,066 | 1,255 |
| Net Cost of Operations | 14,525,582 | 14,588,449 |

The accompanying notes form an integral part of these financial statements.

**Canada Industrial Relations Board
Statement of Financial Position (unaudited)**

| At March 31 | 2006 | 2005 |
|---|------------------|------------------|
| (in dollars) | | |
| Assets | | |
| Financial Assets | | |
| Accounts receivable (Note 2) | 247,994 | 461,420 |
| Advances | 6,900 | 6,900 |
| Total Financial Assets | 254,894 | 468,320 |
| Non-financial Assets | | |
| Tangible capital assets (Note 4) | 3,024,205 | 2,611,938 |
| Total | 3,279,099 | 3,080,258 |
| Liabilities and Equity of Canada | | |
| Liabilities | | |
| Accounts payable and accrued liabilities | 1,057,618 | 1,905,577 |
| Vacation pay and compensatory leave | 428,880 | 436,044 |
| Lease obligation for tangible capital assets (Note 5) | 2,036 | 4,674 |
| Employee severance benefits (Note 6) | 1,484,295 | 1,459,246 |
| | 2,972,829 | 3,805,541 |
| Equity of Canada | 306,270 | (725,283) |
| Total | 3,279,099 | 3,080,258 |

The accompanying notes form an integral part of these financial statements.

**Canada Industrial Relations Board
Statement of Equity of Canada (unaudited)**

| At March 31 | 2006 | 2005 |
|--|----------------|------------------|
| (in dollars) | | |
| Equity of Canada, beginning of year | (725,283) | (568,165) |
| Net cost of operation | (14,525,582) | (14,588,449) |
| Current year appropriations used (Note 3) | 12,286,944 | 12,439,253 |
| Revenue not available for spending | (1,066) | (1,058) |
| Change in net position in the Consolidated Revenue Fund (Note 3) | 485,414 | (469,335) |
| Services provided without charge from other government departments (Note 7) | 2,785,843 | 2,462,471 |
| Equity of Canada, end of year | 306,270 | (725,283) |

The accompanying notes form an integral part of these financial statements.

**Canada Industrial Relations Board
Statement of Cash Flow (unaudited)**

| For the Year Ended March 31 | 2006 | 2005 |
|---|--------------|--------------|
| (in dollars) | | |
| Operating Activities | | |
| Net cost of operations | 14,525,582 | 14,588,449 |
| Non-cash items: | | |
| Amortization of tangible capital assets | (155,982) | (175,318) |
| Services received without charge | (2,785,843) | (2,462,471) |
| Variations in Statement of Financial Position | | |
| Decrease (increase) in liabilities | 832,712 | (824,598) |
| Increase (decrease) in accounts receivable and advances | (213,426) | 238,561 |
| Cash used by operating activities | 12,203,043 | 11,364,623 |
| Capital Investment Activities | | |
| Acquisitions of tangible capital assets (Note 3) | 568,249 | 590,701 |
| Adjustments to capital assets | 0 | 13,536 |
| Cash used by capital investment activities | 568,249 | 604,237 |
| Financing Activities | | |
| Net cash provided by Government of Canada | (12,771,292) | (11,968,860) |
| Cash used by financing activities | (12,771,292) | (11,968,860) |
| Net Cash Used | 0 | 0 |

The accompanying notes form an integral part of these financial statements.

**Canada Industrial Relations Board
Notes to the Financial Statements (unaudited)**

1. Authority and Objectives

The Canada Industrial Relations Board (CIRB) is an independent, representational, quasi-judicial tribunal responsible for the interpretation and application of the *Canada Labour Code*, Part I, Industrial Relations, and certain provisions of Part II, Occupational Health and Safety. It was established in January 1999 through amendments to Part I of the *Canada Labour Code*. The objective of the Board 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.

2. Significant Accounting Policies

The financial statements have been prepared in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector.

Significant accounting policies are as follows:

(a) Parliamentary appropriations

The Board is financed by the Government of Canada through Parliamentary appropriations. Appropriations provided to the Board 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 bases of reporting.

(b) Net cash provided by Government

The Board operates within the Consolidated Revenue Fund (CRF), which is administered by the Receiver General for Canada. All cash received by the Board is deposited to the CRF and all cash disbursements made by the Board 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

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

(d) 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.

(e) Employee future benefits

- Pension benefits: Eligible employees participate in the Public Service Pension Plan, a multi-employer plan administered by the Government of Canada. The Board's contributions to the Plan are charged to expenses in the year incurred and represent the total obligation to the Plan for the Board. Current legislation does not require the Board to make contributions for any actuarial deficiencies of the Plan.
- 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.

(f) Accounts receivable

Most receivables recorded by the Board are from other government departments. Recovery is considered certain and a provision has not been made.

(g) Tangible capital assets

All tangible capital assets and leasehold improvements having an initial cost of \$7,000 or more are recorded at their acquisition cost.

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

| Asset Class | Amortization Period |
|---|--|
| Informatics hardware | 3 years |
| Informatics software | 3-10 years |
| Furniture and equipment | 10 years |
| Machinery and equipment | 5 years |
| Leasehold improvements | Lesser of the remaining term of the lease or useful life of the improvement |
| Leased tangible capital assets (machinery and equipment) | 5 years |

(h) Measurement uncertainty

The preparation of these financial statements in accordance with Treasury Board accounting policies 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 significantly 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

(a) Reconciliation of net cost of operations to current year appropriations used

| | 2006 | 2005 |
|--|-------------------|-------------------|
| (in dollars) | | |
| Net Cost of Operations | 14,525,582 | 14,588,449 |
| Adjustments for items affecting net cost of operations but not affecting appropriations: | | |
| Add (Less): | | |
| Services provided without charge | (2,785,843) | (2,462,471) |
| Refund/reversal of previous year's expenditures | 167,092 | 2,683 |
| Amortization of tangible capital assets | (155,982) | (175,318) |
| Employee severance benefits | (25,049) | 0 |
| Adjustments to capital assets | (17,957) | 13,536 |
| Vacation pay | 7,164 | 11,902 |
| Revenue not available for spending | 1,066 | 1,255 |
| GST refundable | (15) | (20) |
| Reversal of expenditures related to Justice Canada | 0 | (134,016) |
| | (2,809,524) | (2,742,449) |
| Adjustments for items not affecting net cost of operations but affecting appropriations: | | |
| Add (Less): | | |
| Acquisitions of tangible capital assets | 568,249 | 590,701 |
| Reduction of capital lease obligation | 2,637 | 2,552 |
| | 570,886 | 593,253 |
| Current Year Appropriations Used | 12,286,944 | 12,439,253 |

(b) Appropriations provided and used

| | Appropriations provided | |
|---|-------------------------|-------------------|
| | 2006 | 2005 |
| (in dollars) | | |
| Operating expenditures – Vote 10 | 10,344,000 | 10,547,000 |
| Supplementary – Vote - 10a | 0 | 1,225,596 |
| Governor General's special warrants | 690,000 | 0 |
| Transfer from TB – Vote 15 | 0 | 68,000 |
| | 11,034,000 | 11,840,596 |
| Less: | | |
| Lapsed appropriations | (132,790) | (741,665) |
| | 10,901,210 | 11,098,931 |
| Add: | | |
| Contributions to employee benefits plan | 1,385,734 | 1,340,322 |
| Current Year Appropriations Used | 12,286,944 | 12,439,253 |

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

| | 2006 | 2005 |
|---|-------------------|-------------------|
| (in dollars) | | |
| Net cash provided by Government | 12,771,292 | 11,968,860 |
| Revenue not available for spending | 1,066 | 1,058 |
| Change in net position in the Consolidated Revenue Fund | | |
| Refund/reversal of previous year's expenditures | 167,092 | 2,683 |
| Reversal of expenditures related to Justice Canada | 0 | (134,016) |
| Variation in accounts receivable | 213,411 | (197,621) |
| Variation in accounts payable and accrued liabilities | (847,959) | 798,289 |
| Other adjustments | (17,958) | 0 |
| | (485,414) | 469,335 |
| Current Year Appropriations Used | 12,286,944 | 12,439,253 |

4. Tangible Capital Assets and Accumulated Amortization

| Cost | Opening Balance | Acquisitions | Transfers | Closing Balance |
|---------------------------------|------------------------|---------------------|------------------|------------------------|
| (in dollars) | | | | |
| Leasehold improvements | 37,773 | 225,560 | 0 | 263,333 |
| Informatics hardware | 492,561 | 0 | 0 | 492,561 |
| Informatics software | 635,995 | 0 | 2,145,496 | 2,781,491 |
| Furniture and equipment | 103,284 | 60,000 | 0 | 163,284 |
| Machinery and equipment | 27,885 | 0 | 0 | 27,885 |
| Assets under constructions | 1,862,807 | 282,689 | (2,145,496) | 0 |
| | 3,160,305 | 568,249 | 0 | 3,728,554 |
| Accumulated Amortization | Opening Balance | Acquisitions | Transfers | Closing Balance |
| (in dollars) | | | | |
| Leasehold improvements | 37,772 | 0 | 0 | 37,772 |
| Informatics hardware | 391,824 | 40,719 | 0 | 432,543 |
| Informatics software | 74,718 | 99,334 | 0 | 174,052 |
| Furniture and equipment | 35,964 | 10,328 | 0 | 46,292 |
| Machinery and equipment | 8,089 | 5,601 | 0 | 13,690 |
| | 548,397 | 155,982 | 0 | 704,349 |
| Net Book Value | 2,611,938 | | | 3,024,205 |

5. Lease Obligation for Tangible Capital Assets

The Board has entered into agreements to rent machinery under capital lease with a cost of \$12,772 and accumulated amortization of \$10,643 as at March 31, 2006 (\$12,772 and \$8,089 respectively as at March 31, 2005). The obligation for the upcoming years include the following:

| | 2006 | 2005 |
|--|-------|-------|
| (in dollars) | | |
| Future lease payments | 2,070 | 4,830 |
| Less: imputed interest | 34 | 156 |
| Balance of obligation under leased tangible capital assets | 2,036 | 4,674 |

6. Employee Benefits

(a) Pension benefits

The Board'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% 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 Board contribute to the cost of the Plan. The expense presented below represents approximately 2.6 times the contributions by employees.

| | 2006 | 2005 |
|----------------------|-----------|---------|
| (in dollars) | | |
| Expense for the year | 1,025,244 | 982,456 |

(b) Severance benefits

The Board 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:

| | 2006 | 2005 |
|---|-----------|-----------|
| (in dollars) | | |
| Accrued benefit obligation, beginning of year | 1,459,246 | 1,479,147 |
| Expense for the year | 60,887 | 23,060 |
| Benefits paid during the year | (35,838) | (42,961) |
| Accrued benefit obligation, end of year | 1,484,295 | 1,459,246 |

7. Related Party Transactions

The Board is related as a result of common ownership to all Government of Canada departments, agencies, and Crown corporations. The Board enters into transactions with these entities in the normal course of business and on normal trade terms. Also, during the year, the Board 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 Board received without charge from other departments, accommodation and the employer’s contribution to the health and dental insurance plans. These services without charge have been recognized in the Board’s Statement of Operations as follows:

| | 2006 | 2005 |
|--|------------------|------------------|
| (in dollars) | | |
| Accommodation | 2,167,453 | 1,855,032 |
| Employer’s contribution to the health and dental insurance plans | 618,390 | 606,257 |
| Legal services | 0 | 1,182 |
| Total | 2,785,843 | 2,462,471 |

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, are not included as an expense in the Board’s Statement of Operations.

(b) Payables and receivables outstanding at year-end with related parties

| | 2006 | 2005 |
|--|-------------|-------------|
| (in dollars) | | |
| Accounts receivable with other government departments and agencies | 185,672 | 372,669 |
| Accounts payable to other government departments and agencies | 37,951 | 119,147 |

8. Comparative Figures

Comparative figures have been reclassified to conform to the current year’s presentation.

Table 6 – Response to Parliamentary Committees, and Audits and Evaluations for Fiscal Year 2005-06

| |
|---|
| Response to Parliamentary Committees |
| No recommendations were received. |
| Response to the Auditor General including to the Commissioner of the Environment and Sustainable Development (CESD) |
| No recommendations were received. |
| External Audits (Note: These refer to other external audits conducted by the Public Service Commission of Canada or the Office of the Commissioner of Official Languages.) |
| No external audits or evaluations were conducted. |
| Internal Audits or Evaluations |
| No internal audits or evaluation were conducted. |

Table 7 – Travel Policies

| |
|---|
| <p>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 GIC's, 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.</p> |
|---|

SECTION IV – ILLUSTRATIVE SPECIFIC BOARD DECISIONS AND JUDICIAL REVIEWS

4.1 Illustrative Specific Board Decisions

Canadian National Railway Company, [2005] CIRB no. 322

CN filed an application for a declaration of unlawful strike by the Teamsters Canada Rail Conference (TCRC) pursuant to section 91 of the *Code*. The Board concluded that section 91 did not apply in the circumstances.

The TCRC issued its 72-hour strike notice within the 60-day period, as extended by agreement of the parties, within which the union must hold a strike vote prior to going on strike. However, the date the strike was to commence fell outside that period. The employer therefore applied under section 91 for a declaration of an illegal strike. The Board was of the view that as long as the strike notice was given during the required period, the union had complied with the *Code*.

The Board carefully considered sections 87.2, 87.3, 89(1) and 91 of the *Code*. The Board stated that section 87.3(1) creates an obligation for a union to hold a secret ballot strike vote prior to declaring or authorizing a strike. It does not state that the strike must occur within the 60-day period. The Board was not prepared to conclude that the intent of section 87.3(1) was to encourage unions to go out on strike during the 60-day period. According to the Board, the purpose of section 87.3(1) was to provide employees in the bargaining unit with a fair voice in the decision to go out on strike.

Anne-Marie S. Tapin – Visa Centre, [2005] CIRB no. 324

In this matter, the Board dismissed an application for reconsideration of a decision that granted an application for revocation of the bargaining agent's certification, filed pursuant to section 38 of the *Code*.

The majority of the original panel found that support for and against revocation were equal and that the fact that the employer was aware of the revocation process did not influence the employees' freedom to sign or not to sign the petition that initiated the application for revocation. The reconsideration panel concluded that, since this finding was an assessment of the facts, it would be inappropriate for it to substitute its opinion for that of the original panel that heard the matter.

The reconsideration panel arrived at two other conclusions. Firstly, it decided that it was too late for the union, in the context of the application for reconsideration, to raise a preliminary objection to the filing of the application that was not raised before the original panel. Secondly, the reconsideration panel noted that it was not necessary to carry out an exhaustive review of the evidence and case law to explain the findings of an administrative tribunal. The fact that the original panel rendered a letter decision rather than reasons for decision does not lessen the importance of its decision.

Alex Robertson et al. (2006), as yet unreported CIRB decision no. 343

This decision reviewed the Board's original decision not to grant standing to a group of former Canadian Regional Airlines pilots to reconsider the Keller arbitral award, which determined the seniority ranking of all affected pilots in the single bargaining unit created at Air Canada.

The reconsideration panel upheld the original decision not to grant standing to the pilots. In doing so, the reconsideration panel clarified the approach to be taken by the Board when considering applications for standing in the future. The Board confirmed that it would only grant standing to individuals or employee groups within the section 18.1 process at its own discretion on an exceptional basis. Each decision on standing must be determined on a case-by-case basis. The panel stated that "no single set of criteria will be or should be applicable to govern or restrict the Board's exercise of discretion on the issue of standing."

Elizabeth Buchanan (2006), as yet unreported CIRB decision no. 348

In this matter, the complainant filed a duty of fair representation complaint against her union, pursuant to section 37 of the *Code*. She alleged that a comprehensive settlement negotiated by Bell Canada and her union, in regard to a pay equity case before the Canadian Human Rights Commission (CHRC) (systemic discrimination), was against her best interests. She argued that the settlement was prejudicial to her individual pay equity complaint, which she had filed with the CHRC. She felt that the union should have helped her with that complaint.

The complainant argued that the Supreme Court of Canada's decision in *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, [2003] 2 S.C.R. 157, effectively incorporated the right to pay equity, set out in the *Canadian Human Rights Act*, into the collective agreement. Accordingly, in her view, the duty of fair representation found in the *Code* applied to the pay equity complaints that were filed before the CHRC.

The Board reviewed, in detail, the arguments for and against extending the application of section 37 to labour-related complaints filed before other tribunals. Considering the particular and unusual circumstances of that case, the Board thought it preferable to consider the merits of the complaint without placing any limitations on the scope of section 37 of the *Code* in a definitive manner.

The Board nevertheless stated that "[i]t is possible that this issue will resurface in the near future. At such time, the Board will need to consider a broader range of questions in light of the specifics of the case at issue. A comprehensive analysis by the Board in this regard should be conducted with a view to finding a balance of consistency between all the applicable legislation and the collective labour relations system established by the *Code*."

Air Canada (2006), as yet unreported CIRB decision no. 349

(Judicial review to the Federal Court of Appeal is pending: A-144-06)

In this case, the Air Line Pilots Association (ALPA) and some individual pilots asked the Board to find that the seniority list at Air Canada determined by an arbitration panel chaired by Mr. M.B. Keller was final and binding. On the other hand, the Air Canada Pilots Association (ACPA) and Air Canada, the parties to the pilots' collective agreement, asked the Board to approve modifications to the list, pursuant to section 16(p) of the *Code*, that had subsequently been recommended by a mediator (Teplitsky).

The fundamental issue in this matter was whether the seniority list was etched in stone or whether it could be changed by the parties to the pilots' collective agreement.

One of the applications in this matter was an attempt by ALPA to have the seniority list implemented through a Board order under section 18.1(2)(b) of the *Code*, as a way to protect the list from further modifications by the parties. The Board concluded that the seniority list had already been implemented and therefore, an order to that effect was found to be inappropriate. The application was dismissed.

A duty of fair representation complaint was also filed by a group of pilots against ACPA, alleging that it had "abused its powers as bargaining agent in exclusive support of the seniority interests of its so-called 'original' Air Canada pilot majority constituency — to the exclusive detriment of the former Canadian Airlines pilot minority." This section 37 complaint was dismissed on the basis that the recommendations of the mediator Teplitsky did not become part of the collective agreement and did not change the seniority rights of any members of the bargaining unit.

With regard to the request pursuant to section 16(p) of the *Code*, the Board stated that it did not have the jurisdiction to consider the matter. The fact that the request did not arise out of the proceedings, but constituted a "fresh application" and was yet another attempt to partially undo the seniority list, formed the basis of the Board's decision not to hear the request.

Finally, the Board reiterated that the seniority list was now final and binding and that ACPA and Air Canada, acting alone, could not change that list because some pilots in the bargaining unit were dissatisfied with it. It stated however that the seniority list was not etched in stone and that "[w]ere a significant corporate initiative or event to occur, that necessitated making changes to the pilots' seniority list, then ACPA and Air Canada, the parties to the pilots' collective agreement, would be responsible for negotiating the required modifications."

4.2 Judicial Reviews

TELUS Communications Inc. v. T.W.U., [2005] 257 D.L.R. (4th) 19; 338 N.R. 129; and 27 Admin L.R. (4th) 13 (F.C.A., nos. A-84-04 (A-85-04, A-242-04, A-473-04, A-65-05, A-99-05, A-185-05, A-187-05)

The Federal Court of Appeal dismissed eight applications for judicial review by both TELUS and the Telecommunications Workers Union (TWU), in the context of a consolidated proceeding to overturn the CIRB's findings and orders contained in its letter decision no. 1128 and its reconsideration decision no. 317.

The case before the Federal Court of Appeal involved three issues. The first issue was a judicial review application by the TWU to quash an order of the CIRB, dismissing an allegation of bias against the Chairperson and the Board (recusal issue). The second issue dealt with a judicial review application by the TWU, attempting to reinstate a binding arbitration order the Board had imposed as a remedy for an unfair labour practice committed by TELUS, which had been annulled upon reconsideration (binding arbitration issue). The third issue involved a judicial review application by TELUS to quash the final Board order imposing a communications ban for the purpose of preventing TELUS from interfering with the TWU's representation of its employees (communications ban issue).

Recusal Issue

The Court concluded that the application for judicial review of the recusal decision involving the Chairperson should be dismissed for mootness, since the Chairperson did not end up sitting on the panel that rendered the reconsideration decision.

Binding Arbitration

The Court confirmed that binding arbitration should be an exception rather than the rule because it runs counter to free collective bargaining as expressed in *Royal Oak Mines v. Canada (Labour Relations Board)*, [1996] 1 S.C.R. 369. The Court held that given the complexity and length of the matter, the factual findings that had been made by the Board, and the extraordinariness of a binding arbitration order, combined with the deference Parliament intended the Board to have, and the importance of free collective bargaining, it should not interfere. The Board's reasons were logical and involved use of its expertise in labour matters. Therefore, the Board's reconsideration decision annulling the binding arbitration order was not patently unreasonable.

Reimposition of the Communications Ban

The Court first determined that, although the Board limited the employer's freedom of expression by imposing a communications ban, it was acting pursuant to its statutory authority (section 94(1)(a) of the *Code*) and, therefore, the limitation was demonstrably justified. The Board's application of the *Charter* was thus correct. The Court then found that the ban was broad, but not a "total" ban and was significantly less than that which was originally imposed. In light of the difficult and complex nature of the collective bargaining, the Court did not find the Board's reasons on this issue to be "clearly irrational" and therefore, no intervention was necessary.

Transport Besner Atlantic Ltées v. Syndicat des travailleuses & travailleurs de Transport Besner (CSN), 2006 CAF 146 (nos. A-475-04, A-11-05, A-107-05, A-392-05)

The Federal Court of Appeal dismissed the four applications for judicial review in this matter.

The three Transport Besner Board decisions with respect to a declaration of sale of business and a single employer declaration were upheld by the Court: reasons for decision nos. 285, 303, and 329.

The Court concluded that the Board's decision to issue a sale of business declaration and a single employer declaration was not patently unreasonable.

The Court explained the scope of section 44 of the *Code*. It made some important distinctions between our *Code* and the Quebec *Labour Code*'s provisions on sale of business and analyzed the relevant case law from the Supreme Court of Canada. The Court stated that a legal relationship is not necessary in order to determine whether a sale of business has taken place.

The Court also concluded that the Board's decision to allow 98 truckers laid off by Transport Besner to participate in the representation vote following the sale of business and single employer declarations was not patently unreasonable.

J.D. Irving Ltd. v. I.L.A., Local 273, 2006 FCA 193 (no. A-399-05)

The Board, in an earlier ruling (reasons for decision no. 153), found that since J.D. Irving had extended its operations in the Port of Saint John (New Brunswick) to conduct longshoring work, such operations were covered by an existing geographic certification order.

When the Board proceeded to deal with unresolved issues following this earlier ruling, the employer once again challenged the Board's jurisdiction and argued that the particular operations which included the longshoring work fell under provincial, not federal, jurisdiction. It claimed that the standard of patent unreasonableness only applied to the Board's interpretation of its own statute such as section 34 of the *Code*. It asserted that the test of correctness must be applied where there is a constitutional issue, such as a division of powers question or *Charter* ground.

The application for judicial review was dismissed. The Court reaffirmed that the question of whether work is or is not longshoring is within the Board's expertise and that the standard of review in that regard is patent unreasonableness. The Court concluded that the employer could not now challenge the Board's earlier finding that J.D. Irving is engaged in longshoring at the Port of Saint John by means of a collateral attack on the Board's reaffirmation of that finding. Having made and reaffirmed those findings, the Court found that the Board was entitled to conclude that such activity came within the legislative power of Parliament under the heading of navigation and shipping and was therefore a federal work.