

Canada Industrial Relations Board

Departmental Performance Report

for the period ending March 31, 2008

Approved by:

The Honourable Rona Ambrose
Minister of Labour

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SECTION I—OVERVIEW

1.1 Message from the Chairperson

I am pleased to present to Parliament and Canadians the tenth annual Performance Report of the Canada Industrial Relations Board (the CIRB or the Board), my first as Chairperson, for the period ending March 31, 2008.



The number of applications/complaints received by the Board decreased slightly in 2007–08 compared to the previous year, and remains significantly lower than the levels that prevailed in the 2000–01 to 2005–06 period. Alternatively, the number of matters disposed of by the Board also increased somewhat in 2007–08 over 2006–07 and, as a result, the number of backlog cases dropped to 584 as of March 31, 2008, the lowest level since 1997–98. Concerted efforts will be made during 2008–09 to further reduce this backlog.

The CIRB continued to refine the implementation of a number of initiatives in 2007–08 in order to improve its rate of matter disposition and meet the Board’s objective of reducing the level of pending matters and average processing time. However, the effect of these initiatives on the Board’s performance is somewhat concealed by the increased incidence of complex matters, that typically take much longer to process, and of long-standing duty of fair representation complaints which were resolved in 2007–08. Nevertheless, closer examination of case disposition trends show that these initiatives have had a positive impact on the Board’s underlying performance and, more importantly, should continue to have a positive effect in future years.

I am extremely pleased and proud of the accomplishments of the Board and its staff. We are, I believe, well positioned to improve on the fulfillment of our current mandate, and will continue to emphasize the reduction of both case processing time and the volume of pending matters. I would like to take this opportunity to thank the Board’s Vice-Chairpersons, Members and staff for their determination, and the dedication and support that they have provided me since my appointment.

Elizabeth E. MacPherson
Chairperson

1.2 Management Representation Statement

I submit, for tabling in Parliament, the 2007–08 Departmental Performance Report (DPR) for the Canada Industrial Relations Board.

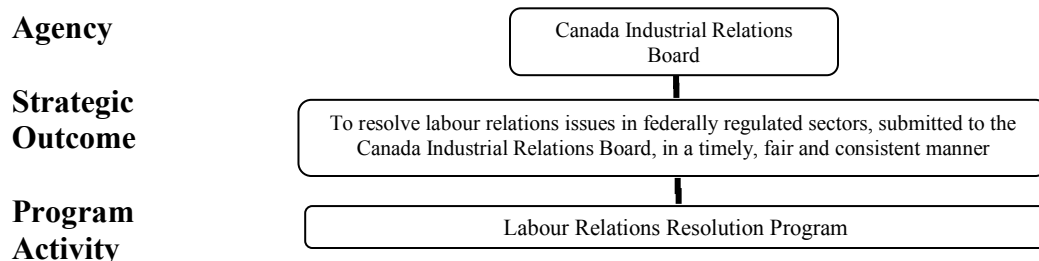
This document has been prepared based on the reporting principles contained in the *Guide for the Preparation of Part III of the 2007–08 Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- It adheres to the specific reporting requirements outlined in the Treasury Board Secretariat guidance;
- It is based on the department's Strategic Outcome and Program Activity Architecture that were approved by the Treasury Board;
- 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.

Elizabeth E. MacPherson
Chairperson

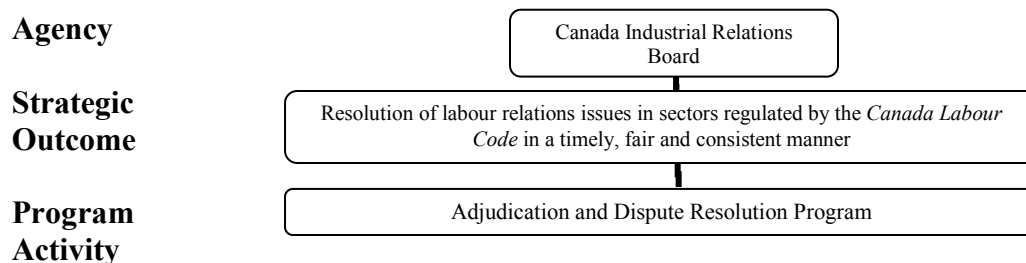
1.3 Program Activity Architecture

Canada Industrial Relations Board–Program Activity Architecture (PAA)



Although the above PAA was in effect for the 2007–08 fiscal year, the CIRB recently made modifications, in consultation with the Treasury Board, to the wording of both its Strategic Outcome and Program Activity. The modifications are only meant to better describe the CIRB’s Strategic Outcome and Program Activity and do not reflect any underlying changes to them. The modified PAA is provided below.

Canada Industrial Relations Board–Modified Program Activity Architecture (PAA)



1.4 Summary Information

Reason for Existence – *The mandate of the CIRB is to contribute to and promote a harmonious industrial relations climate in the federally regulated sectors 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, it 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
\$12,437.0	\$13,301.3	\$12,516.1

Human Resources

Planned	Actual	Difference
110	101	-9

Agency Priorities

Initiative/Priority	Type	Performance Status
Accelerated reduction in the number of backlog cases	Ongoing	Progress made
Reduction of average case disposition time	Ongoing	Not met
Monitoring and fine-tuning of new certification application and disposition process	Ongoing	Progress made
Monitoring and fine-tuning of new duty of fair representation complaint and disposition process	Ongoing	Progress made
Review of reconsideration process	New	In progress
Stakeholder consultations	Ongoing	Progress made

A more detailed account of each priority is provided in section 2.5 below.

1.5 Context and Background

The 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, 2008, the adjudicative team of the Board was composed of the Chairperson, five full-time and two part-time Vice-Chairpersons, and six full-time and two part-time Members—all of whom are Governor in Council (GIC) appointments. 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 and 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 First Nations undertakings
- Certain Crown corporations (including, among others, Atomic Energy of Canada Limited and certain national museums).

This jurisdiction covers some 800,000 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 scope and national significance, contribute to the uniqueness of the federal jurisdiction and the role of the Board, 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 seek solutions to labour relations problems by determining the cause and nature of conflict and by applying the appropriate dispute resolution mechanism, including fact finding, mediation and adjudication;
- to conduct its activities in a fair, timely and consistent manner;
- to consult its clients on its performance and on the development of policies and practices;
- to promote an understanding of its role, processes and jurisprudence through client contact and a variety of information dissemination methods; and
- to 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.

1.6 Operating Environment

The Canadian labour relations environment has faced many challenges in recent years, and indications are that it will continue to do so in the foreseeable future. The globalization of markets, corporate mergers and restructuring, and the pace of technological change has resulted in heightened competition, and has led employers to seek productivity improvements, including the redefinition of bargaining units in some instances, in order to remain competitive. These pressures have increased in the last year with the strong appreciation of the Canadian dollar against its U.S. counterpart, the significant rise in the price of crude oil and concerns over the depth and breadth of a U.S. recession.

On the national front, although the labour market has been relatively tight, with unemployment rates at their lowest levels in thirty years, there has been an increasing number of announced lay-offs and/or plant shutdowns that have led many economic forecasters to predict a rise in the unemployment rate in the coming year. Also, the impending retirement of a sizeable proportion

of the workforce and the difficulty in finding qualified workers may put pressure on both sides of the bargaining table. Combined, these forces have, and will continue to have, an effect on Canadian employers, employees and the union-management relationship.

Those pressures are 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. Also, many services that were once provided by the federal government, such as security and boarding at airports, have been commercialized. In particular, the phenomenal increase in the price of oil is adversely affecting the transportation industry, while the granting of new wireless spectrum by the Canadian Radio-television and Telecommunications Commission should result in new service providers and inject more competition in the wireless industry.

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 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 ensure 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;
- the prompt consideration of situations in which illegal work stoppages are alleged; and
- the need to assist companies and unions in resolving the labour relations implications of corporate mergers and take-overs—including the determination of bargaining unit structures and representation rights.

The complexity and implications of the issues facing federally regulated employers and unions require the Board to judiciously apply a wide range of knowledge and skills in diverse industrial relations, labour law and administrative law contexts. The stable economic environment over the past few years has been reflected in a modest decrease in cases coming before the Board, but current uncertainty is expected to produce increased demand for the Board's services. Furthermore, the commitment of the Board to promote the joint resolution of issues by the parties, wherever possible, 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 will continue to place emphasis on augmenting both its skill and resource levels to meet the needs of its clients.

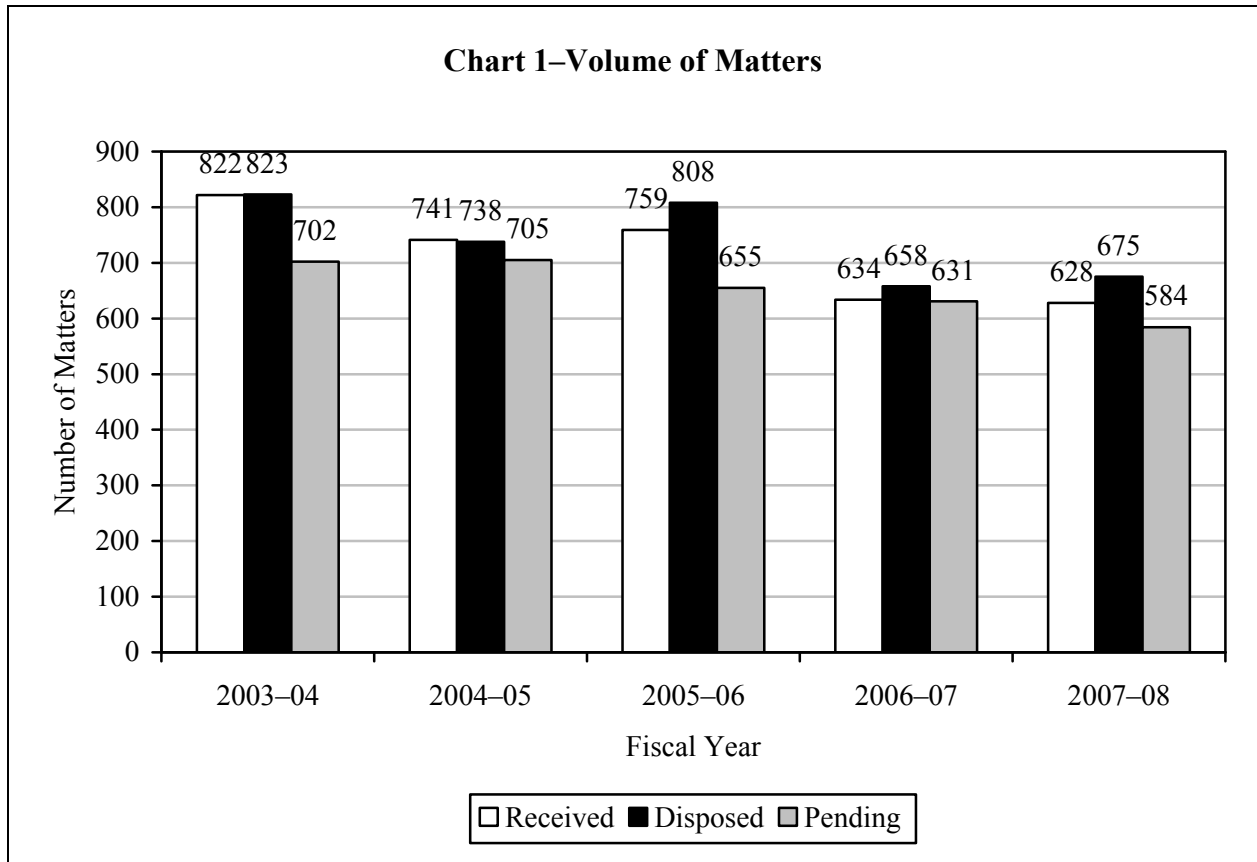
1.6.1 Volume of Matters

After an initial spike in caseload levels in the years following the 1999 amendments to the *Code*, which widened the scope of matters that the CIRB could hear, the number of applications/complaints received has steadily declined over the last four fiscal years. In the first five years following the 1999 amendments to the *Code*, the CIRB received an average of 924 applications/complaints a year, compared to 691 over the last four years. The decline is even more apparent in the last two fiscal years (see Chart 1), as the number of incoming matters dropped to 634 in 2006–07 and 628 in 2007–08—the lowest level in the last twenty-five years.

The decline in the number of matters received over the last two fiscal years is essentially comparable across the various types of applications/complaints, although it was slightly larger for unfair labour practice (ULP) complaints other than duty of fair representation (DFR) complaints, applications for reconsideration and applications for an interim order. The decline was less pronounced for DFR complaints and applications for certification, and the number of maintenance of activity applications actually increased in 2007–08.

The reasons for the decline in the number of applications/complaints received by the Board are undoubtedly numerous, and would certainly include the solid jurisprudence that the Board has established since its inception. The Board has always maintained that the larger number of applications/complaints received in the years following the 1999 amendments to the *Code* were in part due to the lack of jurisprudence on the new *Code* provisions, since parties were more likely to litigate, given the uncertain interpretation of the new *Code* provisions. Another contributing factor in the recent decline of incoming matters is, until lately, the state of the economy and of the federally regulated sector. The Canadian economy has been doing quite well in the last few years, with a relatively robust rate of growth and the level of unemployment has dropped to a level that has not been seen for thirty or more years. At the federal level, the wave of major consolidations and restructuring of the early 2000s, particularly in air transport and telecommunications sectors, has subsided. This has translated to fewer frictions on the industrial relations front, which can be seen by a lower incidence of strikes and lockouts, by a trend to longer-term collective agreements and fewer applications/complaints to the Board.

This appears to be borne out by the CIRB's statistics. ULP complaints, which represent approximately 40% of incoming matters in any given year, and are an indicator of the labour relations climate, are down by 27% on average in the last two fiscal years (representing 93 fewer complaints per year) compared to the previous five years. Excluding DFR complaints, which are complaints by union members against their union, and which are less sensitive to the state of the economy, the decline in ULP complaints would be much more pronounced at 47% (representing 80 fewer complaints per year).



With respect to the disposition of matters, the Board was able to improve its rate of matter disposition in the years following the 1999 amendments—it disposed of 855 matters per year on average over the five fiscal year period of 2001–02 to 2005–06 compared to an average of only 756 matters in the previous five fiscal years. However, similarly to incoming matters, the number of matters disposed of by the Board also declined in the last two fiscal years. In 2007–08 the Board disposed of 675 matters, only slightly higher than the 658 matters disposed of in 2006–07 (see Chart 1). The reasons for this decline are addressed below.

Nevertheless, given that the rate of disposition of matters outpaced the rate of incoming matters, the number of pending cases has steadily dropped, and stands at 584 cases as of March 31, 2008 (see Chart 1), the lowest level since 1997–98.

1.6.2 Complex Matters

The CIRB’s workload and disposition rate continues to be largely affected by the greater incidence of more complex matters which typically involve lengthy hearings and numerous provisions of the *Code*. Such cases are both longer 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 disposed of per year over the last five fiscal years, but have risen to 107 matters in 2007–08 or close to 16% of all disposed cases.

Table 1—Number of Complex Matters Disposed

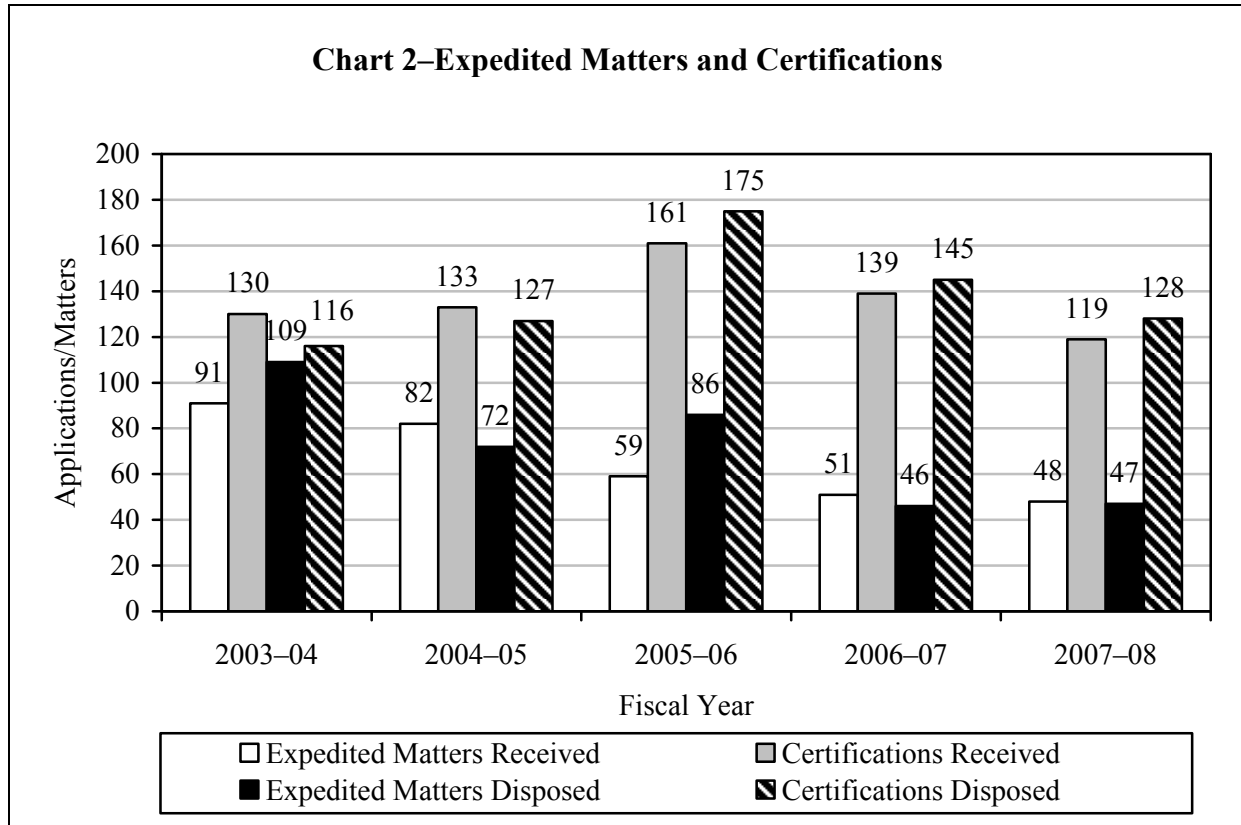
	2003–04	2004–05	2005–06	2006–07	2007–08
Review of bargaining unit structure	17	21	19	9	18
Single employer	12	20	20	13	16
Sale of business	33	34	34	25	32
Maintenance of activities	28	19	23	16	41
Total	90	94	96	63	107

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 attention. These cases include requests for an interim order/decision, requests to file Board orders in Court, referrals to the Board by the Minister of Labour relating to the maintenance of activities during a legal work stoppage, applications alleging an invalid strike or lockout vote, applications for a declaration of unlawful strike or lockout, and ULP complaints alleging the use of replacement workers or dismissal 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 applications for certification, and to any other matter in which there appears to be a significant potential for adverse industrial relations consequences if there is a delay in its resolution.

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 by a panel of the Board—difficult to resolve expeditiously.

Chart 2 sets out the volume of expedited matters and certifications from 2003–04 to 2007–08.



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

The mandate 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 Board 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 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 Written *Reasons for Decision*

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, thereby providing more timely industrial relations outcomes for parties.

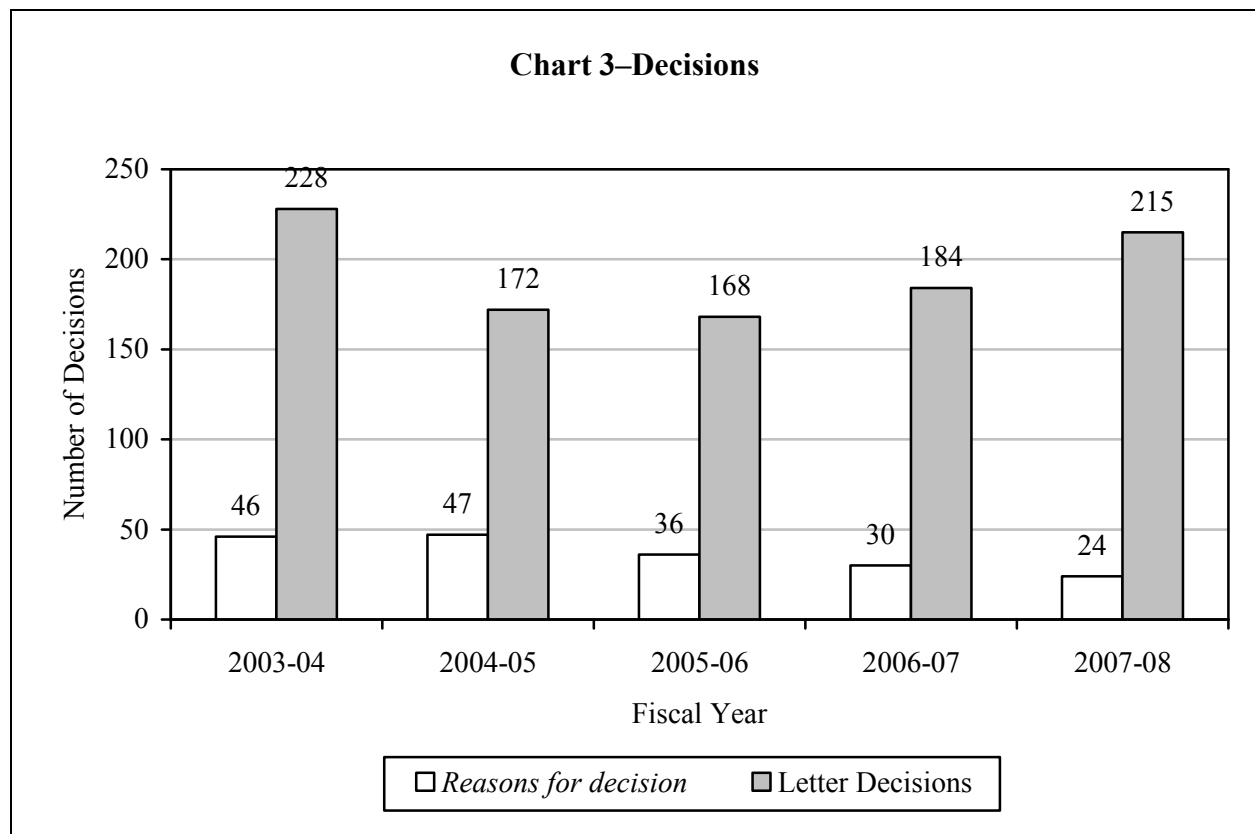
Another factor affecting the CIRB’s adjudicative output, particularly in 2007–08, has been the increased emphasis on issuing detailed written decisions, which require more time and resources to produce. In order to carry out their responsibilities for judicial review, the Courts have been demanding more fulsome reasons for decision. The disposition of complex cases also requires more detailed reasons for decision. As mentioned earlier, the absolute number of complex matters disposed of by the Board in 2007–08 was higher than in the previous four fiscal years, and many of those matters involved cases of significant importance, which demanded far more effort to adjudicate than that usually required. Also, uncertainties resulting from the new legislative provisions introduced in 1999, and the lack of jurisprudence in applying them, resulted in a situation where parties were more prone to litigate matters, with a resulting requirement for written decisions.

These written *Reasons for decision* serve both to resolve the issues arising in complex circumstances and to clarify the way the *Code* is to be interpreted and applied. In this respect, the

Board strives to provide timely, clear, consistent and legally sound decisions in order to establish strong jurisprudence to guide the parties and reduce the number of applications and complaints.

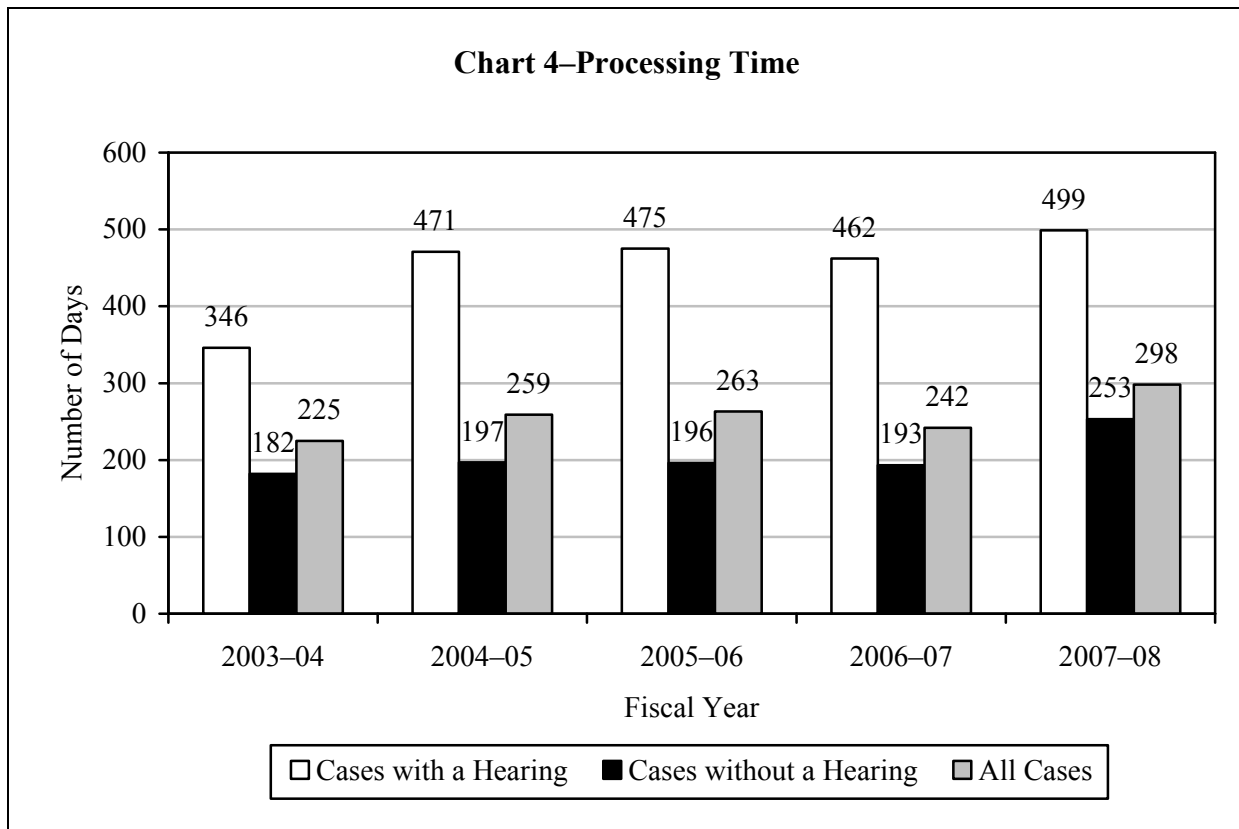
The Board's experience with issuing *Reasons for decision* and letter decisions in the last five fiscal years is reflected in Chart 3. On average, the Board has issued 37 of the more detailed *Reasons for decision* each year over the last five years, and 193 letter decisions, for a total of 230 written decisions on average. In 2007–08, the Board produced 215 letter decisions and 24 *Reasons for decision*. The balance of matters are either withdrawn or disposed of by orders.

See Section 4.1 for examples of illustrative Board decisions.



2.2 Processing Time

The time required to process a file—the time spent opening, investigating, mediating, hearing, and deciding a case—increased significantly in 2007–08, averaging 298 calendar days compared to 242 days in 2006–07 and 263 days in 2005–06 (see Chart 4). In the first five years of the CIRB's existence (1999–00 to 2003–04), processing time averaged 219 days.



There are two main reasons for the increase in processing time experienced in 2007–08. The first reason is related to the increased incidence of complex matters, which, as indicated earlier, represented 16% of matters disposed of in 2007–08 compared to 11% in the previous four fiscal years. Since these matters, by their nature, typically take longer to process, the overall average processing time can be expected to increase if their proportion rises.

The second and far more important reason for the increase in processing time experienced in 2007–08 is related to DFR complaints. As mentioned in previous reports, in the past DFR complaints have often been set aside for more urgent matters. As a result, the CIRB had accumulated a significant backlog of DFR complaints, and their proportion of all pending matters grew from 25.6% in 2002–03 to almost 43% at the end of 2006–07. The CIRB decided to seriously address this DFR backlog in 2007–08. Consequently, DFR complaints represent more than 28% of disposed matters in 2007–08 compared to an average of 19% in the five previous fiscal years. An unfortunate consequence of this decision is that the Board had to accept that it would adversely affect its processing time statistics, given that many of the complaints were long-standing.

Table 2 illustrates the impact of DFR complaints, and to a lesser extent complex matters, on average processing times. Whereas the average processing time of DFR complaints increased by almost 200 calendar days over the five fiscal years from 2003–04 to 2007–08 (from 294 to 489 days), it dropped for cases that did not involve a DFR complaint or a complex matter, to 175 days from levels of 200 or more days in earlier years. In fact, more than three-quarters of cases that did not involve a DFR complaint or complex matter took less than six months to

render a decision in 2007–08 compared to two-thirds of cases in the previous five fiscal year period.

Table 2–Processing Time by Type of Matter (Calendar Days)

Decisions rendered in	2003–04	2004–05	2005–06	2006–07	2007–08
Complex matters	260	347	332	374	390
DFR	294	392	342	338	489
Other	201	210	235	184	175
Total	225	259	263	242	298

2.3 Decision-making Time

One component of the overall processing time is the length of time required by a Board panel¹ 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 an oral hearing. Chart 5 presents the decision-making time for both types of processes² for the last five fiscal years.

Similar to processing time, and for many of the same reasons, the average decision-making time of matters disposed of has increased in 2007–08 to an average of 91 calendar days from 77 days in 2006–07. However, this level is nevertheless lower or equivalent to levels experienced in the 2002–03 to 2005–06 period. Also, Chart 5 shows that there exists a considerable difference between cases with and without an oral hearing. Whereas the decision-making time of cases involving an oral hearing declined substantially, quite the opposite happened with cases that did not involve an oral hearing. The reason for the latter is directly the result of the higher incidence of DFR complaints in 2007–08, which are typically decided on the basis of written submissions. Excluding DFR complaints, the decision-making time would have stood at 42 calendar days for cases with a hearing in 2007–08 and 40 days for cases without a hearing, which represents a marked improvement over the recent past.

Another way to look at the Board’s performance on decision-making time is to use section 4.2(2) of the *Code* as a benchmark, which requires that a 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 2007–08 when compared to previous years. Table 3 shows that more than three quarters of decisions were rendered in 90 days or less in 2007–08 which, except

¹ A panel is composed of the Chairperson or a Vice-Chairperson for single member panels and the Chairperson or a Vice-Chairperson and two Members in a full panel.

² The Board measures its disposition time for cases decided with a public hearing from the date it reserves its decision (which generally coincides with the last day of the hearing) to the date the decision is issued to the parties. Where cases are decided without an oral 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.

for 2006–07, is the highest level in the last five fiscal years, in spite of the impact of DFR complaints.

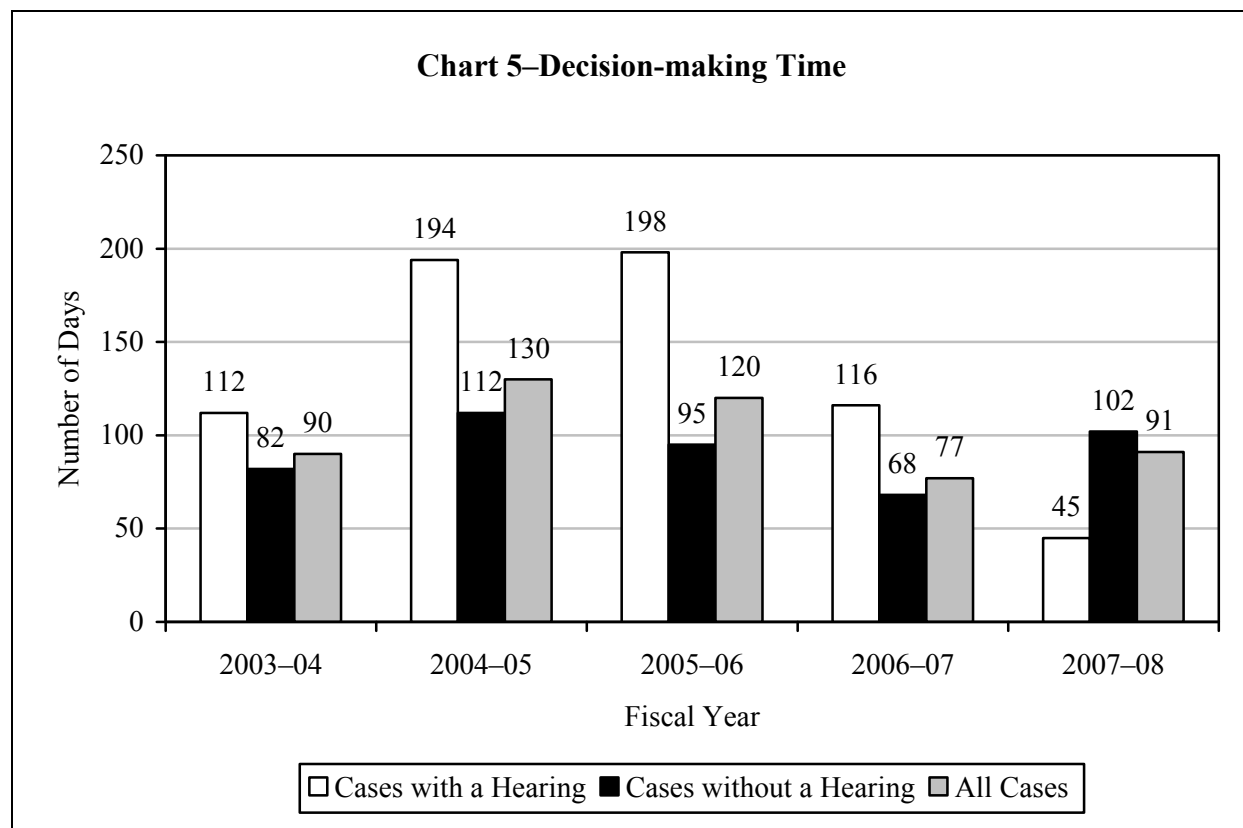


Table 3–Distribution of Disposed Matters by Decision-making Time

Decisions rendered in	2003–04	2004–05	2005–06	2006–07	2007–08
90 days or less	69.6%	61.5%	72.6%	78.9%	75.3%
More than 90 days	30.4%	38.5%	27.4%	21.1%	24.7%

2.4 Judicial Reviews

Another measure of the Board’s performance, as well as a measure of the quality and soundness 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 Board has performed exceptionally well.

Table 4 shows the pattern of judicial reviews over the last five fiscal years, and indicates that 12 judicial reviews were filed in 2007–08, representing 1.8% of all matters disposed of by the Board in that year. This percentage is somewhat lower than typical, notwithstanding annual fluctuations, as judicial reviews have represented 3.1% of matters disposed of on average over the previous five fiscal years. With respect to the outcome of the reviews before the Court, the Board’s decisions have been upheld in all cases except one in the last five fiscal years.

See Section 4.2 for examples of illustrative judicial reviews in 2006–07.

Table 4—Applications for Judicial Review

	2003–04	2004–05	2005–06	2006–07	2007–08
Matters disposed of by CIRB	823	738	808	658	675
Judicial reviews filed	32	31	23	14	12
Percent reviewed (%)	3.9	4.2	2.8	2.1	1.8
Reviews disposed	27	32	35	14	9
Reviews granted	1	0	0	0	0
Reviews dismissed	12	19	19	8	5
Reviews withdrawn	14	13	16	6	4
Board success rate (%)	96.3	100.0	100.0	100.0	100.0

2.5 Change Management Performance

In its 2007–08 Report on Plans and Priorities, tabled in Parliament in early spring of 2007, the CIRB identified six main priorities for immediate attention. These were to accelerate reduction in the number of backlog cases, to reduce average case disposition time, to monitor and fine-tuning the certification application process, to monitor and fine-tuning the DFR complaint process, to review the reconsideration process, and to continue Stakeholder consultations. The progress on each of these priorities is provided below.

Progress on reducing the backlog of pending cases and improving average case disposition time is heavily dependent upon initiatives that were introduced to improve the handling of certification and duty of fair representation cases.

2.5.1 Monitoring and Fine-tuning the Certification Application Process

Following consultations with major client groups and stakeholders, in 2004–05 the CIRB established a committee to review its certification application processing practices and to recommend ways in which it could expedite the disposition of these matters. New procedures were developed and tested as a pilot project in late 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 straight forward applications—(those that do not involve complex issues of law or jurisdiction and that do not require a vote or a hearing)—in 50 days or less. The CIRB recognized from the outset that this target would not be met for complex applications, but expected the new procedures to reduce the average processing time for certification applications overall.

There were a total of 126 applications for certification that were disposed of under the revised procedures in 2007–08 and, although the average processing time has increased somewhat in the last three fiscal years³, Table 5 shows that the processing time demonstrated a phenomenal improvement when compared with the five fiscal years that preceded the new procedures. The

³ The increase in processing time is statistically normal, given that the numbers since 2005–06 only include applications received since April 1, 2005. Obviously, some applications will take much longer to process and are thus not a factor in the early years of the new process.

processing time for certification applications averaged 92 days in 2007–08 compared to an average processing time of 179 days in the five fiscal years preceding 2005–06. This represents a reduction in processing time of almost 50%. An even greater improvement can be seen for applications that do not require a vote or a hearing, as their average processing time dropped to 62 days from 134 in the five fiscal years preceding 2005–06.

In view of these results, it is fair to state that the new certification procedures have met their intended objective. Nevertheless, the CIRB continues to monitor the situation and to make adjustments in order to reduce processing time even further.

Table 5–Processing Time*, Applications for Certification Received before and on or after April 1, 2005

	2000–01 to 2004–05		2005–06		2006–07		2007–08	
	Applications Disposed of	Processing Time (Days)	Applications Received on or after April 1, 2005		Applications Received on or after April 1, 2006		Applications Received on or after April 1, 2007	
			Applications Disposed of	Processing Time (Days)	Applications Disposed of	Processing Time (Days)	Applications Disposed of	Processing Time (Days)
Total	779	179	11	61	138	79	126	92
With Vote or Hearing	137	392	21	107	27	160	32	182
Without Vote or Hearing	642	134	90	50	111	59	94	62

* For the purposes of applications for certification, processing time is established as the time in days from receipt to the date a certification order or decision is issued.

2.5.2 Monitoring and Fine-tuning the DFR Complaint Process

Following consultation with stakeholders, the CIRB established a committee in 2005–06 to review its case processing practices with respect to DFR complaints and to recommend ways in which it 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. DFRs represent 23% of all applications/complaints received in the five fiscal years preceding 2007–08, and since they are more likely to be deferred, they represent only 19% of matters that were disposed of over the same period. As a result, the number of pending DFR complaints has grown from 180 in 2002–03 to 270 at the end of 2006–07, which represents almost 43% of all pending matters.

The new procedures were put into place on January 1, 2006, and although they have had some success—DFR complaints resolved under the new procedures in 2006–07 and 2007–08 took an average 195 days to process compared to 298 days in the five fiscal years preceding the change—the improvements did not appear to be lasting or practical from a legal perspective, and the Board felt that other changes needed to be made. As a result, the Board made further refinements to the treatment of DFR complaints on February 1, 2008. Unfortunately, since the new procedures only came into effect on February 1, 2008, there is an insufficient number of DFR complaints disposed of under the new regime to properly assess the impact and effectiveness of the new process. However, the little information available suggests that the improvement in processing time will be significant. If this is the case, the new DFR procedures

should have a significant effect on the backlog of pending matters as well as on the average processing time in the near future.

2.5.3 Other Identified Change Management Priorities

The new certification and DFR processes and other operational changes appear to be having a positive effect and, as the stock of older cases (particularly DFR complaints) diminishes, the improvements in case processing times and backlog reduction should be more evident.

Due to other priorities, work on the review of the reconsideration process did not begin until late in the fiscal year, and will be reported on in the 2008–09 Departmental Performance Report. Stakeholder consultations continued during FY 2007–08 and valuable input was received with respect to the review of the Board’s regulations. Work on this initiative was continuing at year end.

2.6 Other Results

The CIRB has also undertaken and/or achieved the following results in meeting its strategic outcome:

- Following the multi-year migration of its main case management tool—the Case Management System (CMS)—to replace an obsolete system, the CIRB continued with the implementation of enhancements to this extremely complex information system. Continuing review of business rules and processes, as well as the thorough audit and examination of information held on the system mean that enhancement and amendments to the programming will be an on-going challenge. The Board also continued to implement improvements in its document management system and to integrate it to the CMS. Other technological initiatives include enhancing the Board’s videoconferencing capabilities; maintaining a comprehensive and dynamic CIRB intranet; ensuring a secure remote access to CIRB 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 almost 7,900 information requests in 2007–08. Approximately 48% of these 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. Close to 4,100 inquiries needed a more involved response from the Board, compared to the 4,700 inquiries received in 2006–07. 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 to provide clear and concise summaries of its practices to its clients and the general public. Information circulars are meant to increase the accessibility and transparency of Board processes by providing plain-language instructions respecting the interpretation and application of the *Code* and *Regulations*. It is expected that the information circulars 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 proceed efficiently thereby reducing the time required for the hearing process, ensuring that pre-hearing information disclosure processes are as effective as possible and that preparation for matters scheduled for hearing is as complete as possible.

- The CIRB continued to revise and update its Web site in order to make more departmental 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. These initiatives have 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 primary responsibility for labour-management relations rests with the provinces. However, the Constitution assigns exclusive jurisdiction to Parliament for 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 employee/employer relations in the federal private sector 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 and administration of collective agreements with their employer. It also establishes the framework within 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 *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 *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 composed 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 http://www.cirb-ccri.gc.ca/about/members/index_e.asp.)

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: 1-800-855-0511

Email: info@cirb-ccri.gc.ca

Web site: <http://www.cirb-ccri.gc.ca>

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

3.2 Agency Link to Government of Canada Outcomes

Strategic Outcome: Harmonious industrial relations climate in the federally regulated sectors through the impartial, effective and appropriate administration of the rules of conduct that govern labour and management in their representational and bargaining activities			
	Actual Spending 2007–08		Alignment to Government of Canada Outcome Area
	Budgetary	Total	
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>	12,516.1	12,516.1	Income security and employment for Canadians

3.3 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–Voted and Statutory Items

Table 3–Financial Statements

Table 4–Response to Parliamentary Committees, and Audits and Evaluations for Fiscal
Year 2007–08

Table 5–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 \$864,000 more than originally planned. The additional authorities consisted mainly of:

- \$533,400 carried over from previous fiscal years;
- \$502,520 to offset employee salary increases as a result of collective bargaining;
- A reduction of \$172,000 in the allowance for the contribution to employee benefits.

Actual spending represented 94% of authorized amounts.

(\$ thousands)	2005–06 Actual	2006–07 Actual	2007–08			
			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>	12,286.9	11,658.2	12,437.0	12,437.0	13,301.3	12,516.1
Total	12,286.9	11,658.2	12,437.0	12,437.0	13,301.3	12,516.1
Less: Non-respendable revenue*	-1.1	-0.9	N/A	0.0	N/A	-1.0
Plus: Cost of services received without charge	2,785.9	2,822.4	N/A	3,010.0	N/A	2,857.4
Total for the Board Spending	15,071.7	14,479.7	N/A	15,447.0	N/A	15,372.0
Full-time Equivalents	104	103	N/A	110	N/A	101

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

Table 2—Voted and Statutory Items

This table explains the way in which 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)		2007–08			
Vote or Statutory Item	Truncated Vote or Statutory Wording	Main Estimates	Planned Spending	Total Authorities	Total Actuals
10	Operating Expenditures	10,877.0	10,877.0	11,922.9	11,138.0
(S)	Contributions to Employee Benefit Plans	1,550.0	1,550.0	1,378.1	1,378.1
(S)	Crown Assets Surplus	0.0	0.0	0.3	0.0
	Total	12,437.0	12,437.0	13,301.3	12,516.1

Table 3—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, 2008, and all information contained in these statements rests with the CIRB'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	2008	2007
(in dollars)		
Expenses		
Salaries and employee benefits	10,107,479	9,716,573
Accommodation	2,277,000	2,206,000
Professional and special services	657,316	884,921
Travel and relocation	950,562	681,556
Communication	359,484	416,349
Equipment	275,231	124,528
Equipment rentals	167,429	170,912
Amortization	428,031	454,078
Repairs and maintenance	118,460	139,146
Utilities, materials and supplies	146,278	151,872
Information	16,513	11,905
Miscellaneous	20,919	132
Total Expenses	15,524,702	14,957,972
Revenues		
Miscellaneous revenues	1,143	965
Total Revenues	1,143	965
Net Cost of Operations	15,523,599	14,957,007

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

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

At March 31	2008	2007
(in dollars)		
Assets		
Financial Assets		
Accounts receivable (Note 4)	232,555	374,925
Advances	4,400	4,900
Total Financial Assets	236,955	379,825
Non-financial Assets		
Tangible capital assets (Note 5)	2,342,713	2,654,827
Total	2,579,668	3,034,652
Liabilities and Equity of Canada		
Liabilities		
Accounts payable and accrued liabilities	1,239,206	993,559
Vacation pay and compensatory leave	441,390	444,245
Employee severance benefits (Note 6)	1,519,106	1,653,381
	3,199,702	3,091,185
Equity of Canada	(620,034)	(56,533)
Total	2,579,668	3,034,652

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

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

For the Year Ended March 31	2008	2007
(in dollars)		
Equity of Canada, beginning of year	(56,533)	306,270
Net cost of operation	(15,523,559)	(14,957,007)
Current year appropriations used (Note 3)	12,516,149	11,658,196
Revenue not available for spending	(1,143)	(965)
Change in net position in the Consolidated Revenue Fund (Note 3)		
Services provided without charge from other government departments (Note 7)	(412,948)	114,281
	2,858,000	2,822,692
Equity of Canada, end of year	(620,034)	(56,533)

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	2008	2007
(in dollars)		
Operating Activities		
Net cost of operations	15,523,559	14,957,007
Non-cash items:		
Amortization of tangible capital assets	(428,031)	(454,078)
Services received without charge	(2,858,000)	(2,822,692)
Variations in Statement of Financial Position:		
Decrease (increase) in liabilities	(108,517)	(118,356)
Increase (decrease) in accounts receivable and advances	(142,870)	124,931
Cash used by operating activities	11,986,141	11,686,812
Capital Investment Activities		
Acquisitions of tangible capital assets (Note 3)	115,917	84,700
Cash used by capital investment activities	115,917	84,700
Financing Activities		
Net cash provided by Government of Canada	(12,102,058)	(11,771,512)
Cash provided by financing activities	(12,102,058)	(11,771,512)

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 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 CRF

The change in net position in the CRF 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

	2008	2007
(in dollars)		
Net Cost of Operations	15,523,559	14,957,007
Adjustments for items affecting net cost of operations but not affecting appropriations:		
Add (Less):		
Services provided without charge	(2,858,000)	(2,822,692)
Refund/reversal of previous year's expenses	23,599	86,399
Amortization of tangible capital assets	(428,031)	(454,078)
Employee severance benefits	134,275	(169,086)
Vacation pay	2,855	(15,365)
Revenue not available for spending	1,143	965
Other	832	(11,690)
	(3,123,327)	(3,385,547)
Adjustments for items not affecting net cost of operations but affecting appropriations:		
Add (Less):		
Acquisitions of tangible capital assets	115,917	84,700
Reduction of capital lease obligation	0	2,036
	115,917	86,736
Current Year Appropriations Used	12,516,149	11,658,196

(b) Appropriations provided and used

	Appropriations provided	
	2008	2007
(in dollars)		
Operating expenditures–Vote 10	10,887,000	10,822,000
Supplementary–Vote 10a	0	479,500
Transfer from TB–Vote 15	131,000	97,000
Transfer from TB–Vote 22	533,400	
Transfer from TB–Vote 23	371,520	
	11,922,920	11,398,500
Less:		
Lapsed appropriations	(784,909)	(1,006,686)
	11,138,011	10,391,814
Add:		
Contributions to employee benefit plans	1,378,138	1,266,382
Current Year Appropriations Used	12,516,149	11,658,196

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

	2008	2007
(in dollars)		
Net cash provided by Government	12,102,058	11,771,512
Revenue not available for spending	1,143	965
Change in net position in the CRF		
Refund/reversal of previous year's expenses	23,599	86,399
Variation in accounts receivable	142,370	(126,931)
Variation in accounts payable and accrued liabilities	245,647	(64,059)
Other adjustments	1,332	(9,690)
	412,948	(114,281)
Current Year Appropriations Used	12,516,149	11,658,196

4. Accounts receivable

	2008	2007
(in dollars)		
Receivables from other federal government departments and agencies	218,061	357,677
Receivables from external parties	14,494	17,248
Total	232,555	374,925

5. Tangible Capital Assets

Cost	Opening Balance	Acquisitions	Transfers	Closing Balance
(in dollars)				
Leasehold improvements	263,333	0	0	263,333
Informatics hardware	492,561	0	0	492,561
Informatics software	2,781,491	0	0	2,781,491
Furniture and equipment	240,134	0	0	240,134
Machinery and equipment	35,735	0	0	35,735
Assets under construction	0	115,917	0	115,917
	3,813,254	115,917	0	3,929,171
Accumulated Amortization	Opening Balance	Amortizations Expense 2006–07	Transfers	Closing Balance
(in dollars)				
Leasehold improvements	157,549	93,515	0	251,064
Informatics hardware	464,808	27,753	0	492,561
Informatics software	452,177	278,125	0	730,302
Furniture and equipment	65,019	24,013	0	89,032
Machinery and equipment	18,874	4,625	0	23,499
	1,158,427	428,031	0	1,586,458
Net Book Value	2,654,827			2,342,713

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 2008 expense amounts to \$1,004,662 (\$933,324 in 2007), which represents approximately 2.1 times (2.2 in 2007) the contributions by employees.

The Board'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 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:

	2008	2007
(in dollars)		
Accrued benefit obligation, beginning of year	1,653,381	1,484,295
Expense for the year	85,257	284,834
Benefits paid during the year	(219,532)	(115,748)
Accrued benefit obligation, end of year	1,519,106	1,653,381

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 that 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:

	2008	2007
(in dollars)		
Accommodation	2,277,000	2,206,000
Employer's contribution to the health and dental insurance plans	581,000	616,692
Total	2,858,000	2,822,692

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

	2008	2007
(in dollars)		
Accounts receivable with other government departments and agencies	172,612	322,437
Accounts payable to other government departments and agencies	263,438	70,493

Table 4–Response to Parliamentary Committees, and Audits and Evaluations for Fiscal Year 2007–08

Response to Parliamentary Committees
No recommendations were received.

Response to the Auditor General including to the Commissioner of the Environment and Sustainable Development (CESD)
<p>The Office of the Auditor General looked at the controls applied by three small organizations, including the CIRB, for acquisition cards, contracting, executive travel, hospitality, executive compensation, and selected areas of human resources management. They also examined whether the entities' management and control practices comply with government policies.</p> <p>Three recommendations were formulated:</p> <p>Recommendation 1–The CIRB should ensure that controls for procurement are applied rigorously and that transactions are conducted in accordance with the requirements of the Treasury Board Contracting Policy and the <i>Government Contracts Regulations</i>.</p> <p>CIRB Response 1–The CIRB agrees with this recommendation. All managers have recently successfully completed the Canada School of Public Service's Authority Delegation online assessment course on procurement. All new managers are required to undergo similar training in procurement policy. The CIRB is currently staffing the position of Manager, Materiel Management and Administrative Services, and will ensure that the successful candidate is fully trained in contract management and procurement and rigorously applies the requisite policies and controls.</p> <p>Recommendation 2–The CIRB should develop and implement human resources plans that clearly define the current and future human resources needs, that are integrated with the business plans, and that outline the strategies to fill current and projected gaps in the workforce.</p> <p>CIRB Response 2–The CIRB agrees with this recommendation. The CIRB currently has a number of strategic plans and/or anticipated actions covering a range of human resources activities, such as employment equity, official languages and succession planning. It will now move to integrate those existing plans into an overall comprehensive plan linked to business objectives. This will be completed in the 2007–08 fiscal year.</p> <p>Recommendation 3–The CIRB should ensure that performance pay awards are based on complete performance assessments.</p> <p>CIRB Response 3–The CIRB agrees that there have been shortcomings with respect to the performance management process and the maintenance of comprehensive file records of all completed performance assessments. The CIRB will rectify the process immediately, in the current year, and will ensure that all completed performance assessments are maintained by its Human Resources Unit. The CIRB will continue to ensure that performance agreements and assessments are prepared in accordance with government guidelines.</p> <p>More detailed information can be obtained at the following link:</p> <p>http://www.oag-bvg.gc.ca/internet/English/parl_oag_200710_02_e_23826.html</p>

Table 5–Travel Policies

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

SECTION IV–ILLUSTRATIVE BOARD DECISIONS AND JUDICIAL REVIEWS

4.1 Illustrative Board Decisions

British Columbia Terminal Elevator Operators’ Association et al., [2007] CIRB no. 384

This decision elaborated on the Board’s reasons for finding that the employees’ refusal to cross picket lines established by the Public Service Alliance of Canada (PSAC) in relation to legal strike action against the Canadian Grain Commission constituted a strike within the meaning of the *Code* and addresses a *Charter* issue raised by the unions concerning whether the definition of “strike” in the *Code* and the *Code* provisions prohibiting mid-contract strikes infringe the rights to freedoms of expression and association protected by sections 2(b) and 2(d) of the *Charter*.

The Board confirmed the objective definition of strike as established by its jurisprudence and found, in this case, that the concerted refusal to cross a picket-line constituted a “strike” within the meaning of the *Code*, notwithstanding the existence of picket line clauses contained in the parties’ collective agreements. The Board noted that the statutory prohibition against all forms of mid-contract strikes must take precedence over the parties’ contractual rights.

The Board concluded that the act of refusing to cross a picket line constitutes a form of expression, but is not a lawful activity under the *Code*. The *Code*’s restrictions, which affect only the timing and manner of the expression, as opposed to the content, do not amount to infringement of the workers’ right to freedom of expression under section 2(b) of the *Charter*. With respect to the freedom of association under section 2(d) of the *Charter*, the Board stated that although *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016, may have made the test somewhat broader to include certain activities that might not otherwise have been caught by the Supreme Court of Canada’s 1987 labour trilogy analysis, it nevertheless confirmed the principle that there is no constitutionally protected right to strike or bargain collectively. Individual employees, unionized and non-unionized alike, remain free to join together to demonstrate their solidarity and support towards other workers, in other ways and at other times. Therefore, the provisions of the *Code* did not infringe the freedom of association protected by section 2(d) of the *Charter*.

Even if there had been an infringement on the right to freedom of expression or association, the infringement would still be justified under section 1 of the *Charter*.

This decision was issued on June 8, 2007, the same date as the Supreme Court of Canada’s landmark decision in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391.

Applications for reconsideration of this decision are pending before the Board; judicial review applications are pending before the Federal Court of Appeal.

Bank of Canada, [2007] CIRB no. 387

The Board was seized with an unfair labour practice complaint filed by the Public Service Alliance of Canada (the union), alleging that the Bank of Canada (the employer) violated its obligation to bargain in good faith by refusing to disclose to the union, in the context of negotiations for a first collective agreement, the salary and premium information for individual employees. The employer argued that it was prohibited from disclosing the specific information to the union under the provisions of the *Privacy Act* and sought an order that the union is subject to the requirements of the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

In this case, the union, as the exclusive bargaining agent for the employees in the bargaining unit, was entitled to the complete compensation package information, including full salary, premium and disbursement information, for each employee in the bargaining unit. Since the information was gathered by the employer to administer the individual employment contracts of employees prior to being unionized, this purpose was consistent with the purpose for which the information was being sought by the union, that is, the negotiation of employees' terms and conditions of employment. The Board therefore found that the exceptions under the *Privacy Act* allow the disclosure of the requested information by the employer to the union.

Although the Board has the power and jurisdiction to examine other statutes such as PIPEDA in the exercise of its functions under the *Code*, the Board was of the view that the question of whether the union is subject to PIPEDA is better left for the Privacy Commissioner to answer in the context of a complaint made before that Commissioner by an individual against the union. However, the Board nonetheless confirmed that it is the union's duty to respect the requirements of any law that may apply to it, including PIPEDA.

Global Helicopter Pilots Association (2007), as yet unreported CIRB decision no. 396

The Global Helicopter Pilots Association applied to the Board, pursuant to section 24 of the *Code*, to be certified as the bargaining agent for a group of helicopter pilots hired in Canada but located at various bases throughout the world. The named employer (CHC Global Operations, a Division of CHC Helicopters International Inc. (Global)) is a Canadian business with headquarters in British Columbia. It provides chartering helicopter services, operating in Canada and around the world, to the oil and gas industry.

The decision dealt with a preliminary issue of the Board's jurisdiction to hear the application for certification insofar as it extends to helicopter pilots located outside of Canada. The question was whether the pilots were employed on or in connection with the operation of a federal work, business or undertaking.

The Board concluded that Global was a federal business or undertaking, and that the employees working at the Nova Scotia base were clearly employed on or in connection with Global. Assuming that Global was the true employer of all the pilots in question, as had been assumed for the purposes of this preliminary issue, the Board was of the view that many, if not all of the

pilots could be considered as having sufficient connection with Global as the federal undertaking in question. Consequently, most if not all employees concerned could potentially be within the jurisdiction of the *Code* and the Board for the purposes of the application for certification. On the basis of all the evidence, the Board found that it was possible to rule that the Board had the initial jurisdiction to entertain the application for certification; however, the Board also concluded that a final determination as to the Board's jurisdiction over all of the different pilots concerned ought to await the determination of the issues of true employer and appropriateness of the bargaining unit.

The Board's decision was upheld on reconsideration; an application for judicial review is pending before the Federal Court of Appeal.

British Columbia Maritime Employers Association (2007), as yet unreported CIRB decision no. 397

The dispute had its genesis in the introduction of the federal government's Marine Transportation Security Clearance Program (MTSCP), as prescribed by the *Marine Transportation Security Regulations* (the *Regulations*). The MTSCP requires employees who work in safety sensitive positions to obtain a Transportation Security Clearance (TSC) by a certain date. The International Longshore and Warehouse Union (ILWU) advised the identified employees "not to apply at this time" for the TSC. This led the British Columbia Maritime Employers Association to apply for a declaration of unlawful strike under section 91 of the *Code*. The ILWU argued that the *Regulations* violated the *Canadian Charter of Rights and Freedoms*, the *Privacy Act*, the *Canadian Bill of Rights* and the *Canadian Human Rights Act*. During the hearing, the Attorney General of Canada filed a Reference with the Court concerning these challenges.

The Board first addressed the preliminary issue regarding what impact the Reference might have on the matters before it. The majority of the Board was of the view that the challenges to the legislation contained in the Reference had been moved to the Court's jurisdiction. The majority then determined that the Board had a continuing statutory duty to decide whether or not an unlawful strike was taking place. The majority found that an unlawful strike had occurred when the ILWU advised the employees not to apply for the security clearance, and the employees refused in concert to apply.

The dissenting member found that there had not been a strike, and would have awaited the Court's decision in the Reference before rendering a final decision.

The Attorney General's Reference is still pending before the Federal Court of Appeal; however, the Court denied the union's request for a stay of the Board's order and the Regulations.

Canadian National Railway Company (2007), as yet unreported CIRB decision no. 398

This case dealt with the unique circumstances surrounding a displacement application filed by the Teamsters Canada Rail Conference to represent a unit of employees working for the Canadian National Railway Company (CN). The application was filed during the ratification process for a tentative settlement agreement reached between the incumbent union (the United Transportation Union (UTU)) and CN in the context of a lawful strike. The parties to the tentative settlement agreement had concluded an interim return-to-work protocol providing that employees return to work during the ratification process. Seventy-nine percent of the UTU membership rejected the tentative settlement agreement. Parliament ultimately passed back-to-work legislation, entitled the *Railway Continuation Act, 2007* (the *Railway Act*), providing for an end to any strike action and imposing a final offer selection process, which was conducted by Arbitrator Sims.

The main issue in this case was whether the Board should grant consent, as required pursuant to section 24(3) of the *Code*, to file the application for certification during a lawful strike.

Although the UTU and CN submitted that the Board should first determine the issue of consent as a preliminary issue, prior to even processing the application for certification, the Board found that, in this particular case, it was preferable to receive and review the full submissions of the parties in order to determine whether it would exercise its discretion to grant consent, should consent be required in the circumstances, because the question of whether there was an ongoing strike at the time the application was filed was a contested issue.

With respect to the substantive issues raised in the application, the Board first found that the *Railway Act* did not have the effect of closing the open periods provided for under section 24 of the *Code* and, secondly, that the application was filed during a lawful strike even if a majority of the employees had returned to work for the period of time between the signing of the tentative settlement and the ratification vote. That being found, the determining issue was whether or not to grant consent. The Board examined the unusual circumstances of this case: the fact that a majority of employees were back at work at the time the application was filed, that back-to-work legislation had been tabled, that there existed internal union problems within the UTU, that 79 percent of the membership rejected the tentative agreement, and that the final offer selection award would be binding on any other union certified by the Board. The Board found that there were compelling labour relations reasons and, consequently, a labour relations purpose to be served for the Board to grant consent. Consent was therefore granted, and the employees were given an opportunity to decide which union they would like to represent them.

The Board subsequently ordered a representation vote to be taken. A reconsideration application of the decision to hold a representation vote is currently pending before the Board.

4.2 Judicial Reviews

***TD Canada Trust v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union* (2007), 370 N.R. 267 (F.C.A., no. A-192-05)**

The original panel of the Board granted an application for certification filed by the United Steelworkers of America (the union) and determined that a single bargaining unit comprising employees of eight of TD Canada Trust's (TD) branches was appropriate (*TD Canada Trust in the City of Greater Sudbury, Ontario*, [2005] CIRB no. 316). The Board dismissed TD's reconsideration application (*TD Canada Trust in the City of Greater Sudbury, Ontario*, [2006] CIRB no. 363; and 141 CLRBR (2d) 94).

The Court dismissed the application for the judicial review filed by TD.

The Court addressed two natural justice grounds. The first dealt with the Board's alleged insufficient and procedurally unfair investigation into certain employees' allegations of intimidation and coercion by union representatives. The Court found that this ground could not succeed, as the Board is entitled to considerable deference in procedural matters. The second ground dealt with the fact that the request to intervene filed by the seven employees at the Lively Branch (the Lively Seven) had apparently been ignored by the original panel. According to the Court, this oversight was remedied when the group was granted intervenor status in the reconsideration hearing. The Court stated that "[a] reconsideration hearing is meant to be a serious review of the original decision" and concluded that the reconsideration panel gave full consideration to the applicants' material and submissions.

The Court confirmed that the standard of review for the Board's certification decision and reconsideration decision was that of patent unreasonableness. As such, it did not find any error of fact or law that would warrant the Court's interference.

The Court was not convinced that there was interference with the freedom of association (section 2(d) of the *Charter*) that warranted *Charter* protection. It found that there was no evidence of any forced association of any individual of the Lively Seven with ideas or values to which he or she did not adhere. As a result, the Court concluded that an analysis under section 1 of the *Charter* was not required.

***Air Canada Pilots Association v. Air Line Pilots Association et als*, no. A-144-06, June 19, 2007 (F.C.A.)**

The Court upheld a decision of the Board in *Air Canada*, [2006] CIRB no. 349; and 138 CLRBR (2d) 193, in which the Board decided, among other things, that it had no jurisdiction, under section 16(p) of the *Code*, to rule on whether or not arbitrator Teplitsky's recommendations (to modify in part arbitrator Keller's seniority integration list at Air Canada), if implemented, would violate the *Code*.

The Court stated that section 16(p) is an “empowering” provision, one which grants the Board discretionary powers, as opposed to a jurisdictional provision. Therefore, the applicable standard of review is that of patent unreasonableness. In this case, the Board’s decision was rational and made particular sense in the overall context of the seniority list proceedings. The Air Canada Pilots Association (ACPA) tried to rely on other provisions of the *Code*, such as sections 15.1(2), 18 and 18.1, but these sections were not applicable and the ACPA’s reliance on section 15.1(2) indicated to the Court that it was simply seeking a reconsideration of arbitrator Keller’s award.

Application for leave to appeal to the Supreme Court of Canada has been dismissed.

Thien v. International Longshore and Warehouse Union, Ship & Dock Foremen, Local 514 et al. (2008), 372 N.R. 252 (F.C.A., no. A-250-07)

Mr. Thien originally complained to the Board under section 37 of the *Code* that his union, the International Longshore and Warehouse Union, Ship and Dock Foremen Local 514 (the union), breached its duty of fair representation by refusing to represent him in a grievance procedure pertaining to his entitlement to a retirement allowance. Mr. Thien had been dismissed by Western Stevedoring Company Limited, his employer, for cause and was subsequently denied a retirement allowance. The Board dismissed Mr. Thien’s complaint in *Harvey Thien*, April 20, 2007 (CIRB LD 1592), on the basis that the complainant had not provided sufficient facts to establish a violation of the duty of fair representation.

Mr. Thien sought judicial review of the Board’s decision on two grounds: (1) the Board had not dealt satisfactorily with his request for an oral hearing; and (2) the Board had failed to examine the issue of whether the union had breached its duty of fair representation when the union did not address the complexity of the issue and the structure of the longshore industry and the issue of whether termination by one employer within a group of employers severs all entitlements.

The Court dismissed the application for judicial review. It found that there was no error in the Board’s decision not to hold an oral hearing; that Mr. Thien’s allegations of failure on the part of his union to address the issues outlined above were not substantiated; and that Mr. Thien did not show that the Board’s conclusion—that most of his arguments appeared to be directed at the merits of the grievance—was erroneous. The Court also commented that Mr. Thien’s complaints on judicial review went beyond the question of whether or not the union breached its duty of fair representation, and involved considerations relating to the merits of both the decision denying him entitlement to the retirement allowance and the employer’s decision to terminate his employment.

Application for leave to appeal to the Supreme Court of Canada was dismissed.