

## Message from the Chairperson



As 2011 draws to a close, it is an opportune time to take stock of our achievements over the past year. I continue to be very proud of the work being done by all of the Board's staff, members and vice-chairs. Although the number of incoming matters remains steady, the Board has continued to increase its productivity through improved case management practices. The Board has also provided parties with more opportunities to resolve their differences through mediation,

thus reducing the requirement for lengthy hearings. It has implemented procedures to ensure that critical matters are dealt with on a timely basis. As a result of these initiatives, the number of pending matters is now at the lowest point in the Board's history: as of September 30, 2011, there were only 393 pending matters, down from 584 on March 31, 2008. The average length of time required to deal with each case has also been reduced, from 298 calendar days in 2007-08 to 203 calendar days now. On average, more than 80% of all matters are concluded in less than one year.

Recognizing that the Board needs to continue to be responsive to the labour and management communities it serves, the Board has undertaken a substantive review of the *Canada Industrial Relations Board Regulations, 2001*. As noted in an earlier edition of this newsletter, the overarching objective of this review is to ensure that the regulatory framework is clear, modern and practical. The Board is presently in the process of reviewing the comments that were received during the public consultation process that took place in the Spring of 2011 and expects to complete its deliberations by the end of the year. Any proposals for regulatory amendments arising from this review will be communicated to the client communities in early 2012.

Please accept my very best wishes for a safe holiday season and a happy and healthy 2012.

*Elizabeth MacPherson*

## Changes to the Composition of the Board

### **Louise Fecteau**

The Governor in Council has reappointed Ms. Louise Fecteau as a Vice-Chairperson of the Board for a term ending on November 30, 2014. The Board congratulates Ms. Fecteau and looks forward to working with her for the next three years.

### **H. Allan Hope**

The Board regrets to announce the resignation of Mr. Allan Hope as a part-time Vice-Chairperson effective November 17, 2011. Mr. Hope has served for over 45 years as an arbitrator and mediator in hundreds of labour, environmental and commercial disputes. He was appointed to the CIRB on January 14, 2010. Board members and staff would like to extend their very best wishes to Mr. Hope for a happy and healthy retirement.

## Mark your calendars!

The 2012 annual meeting of the Association of Labor Relations Agencies (ALRA) will be held at the Hyatt Regency Hotel in downtown Montréal from July 28 to 31, 2012. Advocates' Day will take place on Monday July 30th. We invite you to visit ALRA's website at <http://www.alra.org/> in the Spring of 2012 for registration details.



## International Forum of Labour Agencies

In September, 2011, the Chairperson and the Executive Director of the CIRB attended the annual meeting of the International Forum of Labour Agencies. This group is composed of representatives of the national labour relations agencies and boards of eight foreign jurisdictions: Australia, the United States, the United Kingdom, Ireland, New Zealand, Northern Ireland, South Africa and Canada. The group meets annually to discuss trends and challenges that face employers, employees and unions in the modern workplace. It is also an opportunity to discuss best practices adopted by the neutral agencies to address these challenges.

At this year's meeting, there was general consensus that the economic crisis of recent years has served as a major driver for change in the approach to labour dispute resolution. Whether we consider Ireland's historic Public Sector Agreement between that country's social partners, the proactive outreach and intensive intervention of the US FMCS in the divisive issue of teacher evaluations as a performance measure in the education sector, or the UK ACAS agency's shift of resources towards the prevention and early resolution of individual claims in the workplace, labour relations agencies worldwide are being challenged to adopt new approaches to improve employment relations in the workplace.

It will be Canada's turn to host the Forum in 2012. We look forward to productive meetings and a positive dialogue on the future of labour dispute resolution.

## Recent CIRB Case—Summary Note

### *Critical Path Couriers Ltd.*, 2011 CIRB 604

#### Constitutional Jurisdiction—Postal Services

This decision determined the constitutional jurisdiction of the operations of Critical Path Couriers Ltd., in the context of an application for certification. Critical Path provides urgent and specialized deliveries of packages within Ontario, freight forwarding services to locations outside Ontario and operates a large warehouse. It specializes in the delivery of items that cannot be handled by Canada Post, such as temperature controlled items (perishable goods and pharmaceutical products), dangerous goods and fragile items. It engages the services of various couriers who deliver by bicycle, by foot and by motor vehicle. The deliveries are made almost exclusively within Ontario, with limited exceptions.

The Board, in analyzing Critical Path's operations, found the facts to be different from those in a previous Board decision, *TurnAround Couriers Inc.*, 2011 CIRB 544 and concluded that its operations fall under provincial jurisdiction. The Board found that, unlike TurnAround, Critical Path has various lines of business, which include the collection, transportation and delivery of both mailable and non-mailable items. The primary focus of Critical Path's operations is the delivery of items that do not meet the definition of "mailable matter" found in the *Canada Post Corporations Act*, either because of their nature or their size. Its operations were thus distinguishable from those of TurnAround, whose business was found to be, in pith and substance, the collection, transportation and delivery of small items capable of being carried by someone on foot or bicycle; generally letters and small packages that meet the definition of "mailable matter" and, but for their time sensitive nature, could have been carried by Canada Post in the

normal course. The Board thus concluded that Critical Path was not engaged in providing postal services and therefore not subject to the *Code*.

The Board found, in addition, that Critical Path's freight-forwarding operations were structured in a manner that causes it to fall under provincial jurisdiction. It does not own or operate the means by which the freight is transported out of Ontario. Instead, it arranges for independent third parties to do so. Finally, the Board found that the small number of out-of-province assignments undertaken by it do not constitute a regular and continuous part of its operations so as to bring it under federal jurisdiction. The application for certification was dismissed for lack of jurisdiction.

On October 6, 2011, the union filed a request for reconsideration of this decision.

## 2012: Celebrating 40 Years of Constructive Labour Relations in the Federal Private Sector

In 1972, significant amendments to the *Canada Labour Code* were enacted that laid the foundation for a new era of labour relations in Canada. The new *Code* moved away from the model that had previously been established in the *Industrial Relations and Disputes Investigation Act* and created an independent, full time quasi-judicial tribunal with responsibility for promoting and contributing to effective industrial relations and the constructive settlement of labour disputes. Prior to the introduction of these legislative changes, the Canada Labour Relations Board operated as a branch within the Department of Labour and all Board members were appointed on a part time basis.

Marc Lapointe, Q.C. was appointed as the first Chairperson of the new Canada Labour Relations Board in 1973. The legislation gave the newly constituted Board considerably broader powers than it previously had in a number of areas. For example, the Board gained jurisdiction over unfair labour practices and could declare strikes and lockouts to be unlawful. It also gave the Board the power to declare a single employer or to inquire into successor rights resulting from a sale of business. As Mr. Lapointe stated at the time, he saw the Board's role as one of "breathing life into law."

Marc Lapointe remained Chair of the Board until his retirement in 1989. Forty years later, his jurisprudential legacy and policy imprints are still very present and continue to guide the Board's work.

To recognize the significant contribution that Marc Lapointe made to labour relations in the federal sector and his dedication to making the Board a reputable and distinguished dispute resolution agency, the Canada Industrial Relations Board will officially name its Ottawa hearing room the "*Marc Lapointe Hearing Room*" and will unveil a plaque in his honour in the spring of 2012. Invitations containing the details of the ceremony will be sent to the labour relations community early in the New Year.

### Practice Note

Please take note that Board citations no longer include first names when the applicant or complainant is an individual. The Board has adopted this practice to comply with the standard developed by the Canadian Citation Committee of the Canadian Judicial Council and with the rules set out in the *Canadian Guide to Uniform Legal Citation*. This change took effect on October 1, 2011, and all Board documents now cite current and past decisions using this format.

For example: *McRaeJackson*, 2004 CIRB 290  
(rather than *Virginia McRaeJackson*)

### Regulatory Review

The Board has concluded its consultations with the labour law and labour relations community and has compiled the feedback and comments received in a comprehensive document that is now available on the CIRB's website. We invite you to consult this document at: [http://www.cirb-ccri.gc.ca/download-telechargement/consultation\\_chart\\_e.pdf](http://www.cirb-ccri.gc.ca/download-telechargement/consultation_chart_e.pdf).

The Board is now reviewing all the comments and deliberating on the proposals that it will put forward for amendment.

## Peter Suchanek retires after 28 years with the CIRB



Peter Suchanek recently retired from his position as the Regional Director, Ontario Region at the Canada Industrial Relations Board. Peter distinguished himself by constructing a career built on trust, confidentiality and long-standing relationships with the Board's clients.

Peter joined the (then) Canada Labour Relations Board in 1983, as a Labour Relations Officer. He became Regional Director of the Toronto Region in 1990 and then, the newly created Ontario Region in 2009. Peter has, over the years, worked tirelessly on behalf of the Board and was instrumental in assisting clients to find labour relations solutions in many complex and lengthy disputes. His skills, abilities to think outside the box, forge relationships and establish common ground are some of the characteristics that earned him great respect as a mediator.

Peter graduated from Carleton University with a B.A. in Psychology and completed his Honours B.A. at the University of Waterloo. He also obtained a degree in Industrial Relations from the University of Toronto and an M.B.A. from Queen's University.

Prior to joining the Board, Peter worked for both the labour side and the management side. He commenced his labour relations career as a shop steward with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 707, at the Ford Motor Co. truck plant in Oakville, Ontario. He then became involved with the union at Coca Cola (now the United Food and Commercial Workers International Union (UFCW)). On the management side, Peter held labour relations positions at Gulf Canada, Clarkson and Canada Post.

In his non-working hours, Peter managed to find time for his personal interests and to contribute to the good of the wider community. He is an avid sailor, runner, cyclist, sports fan, gardener, and traveler. He has a black belt in not one, but two different karate styles and has volunteered for over 25 years to teach martial arts to inner city youth at the Toronto Metro Central YMCA.

Peter's loyalty to his convictions, family, friends and colleagues, his dedication to getting a job professionally done, and his willingness to share his skills, knowledge and experience, will be greatly missed. He has our sincere wishes for success in all his future endeavours.

## Contact Us

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TTY calls should be placed with the assistance of a Bell Relay Service operator at 1-800-855-0511