

# “A Worthy, if Unlikely Enterprise”: The Labour Relations Board and the Evolution of Labour Policy and Practice in British Columbia, 1973-1980\*

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The decade of the 1970s was a watershed in British Columbia's labour relations history. Until the early 1970s, the province had the reputation of having the most militant labour movement and the most turbulent labour relations on the continent.<sup>1</sup> In large part this reputation was justified, based as it was on the province's "strike-proneness" and on provincial governments that were, at the very least, not advocates of the virtues of collective bargaining.<sup>2</sup> During the 1950s and 1960s labour relations in British Columbia settled into a deep rut. Simply put, the labour relations system failed to meet the challenges of the post-war era. The attitudes and policies of the provincial government and the views of both labour

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<sup>1</sup> For general accounts of labour relations in B.C. see Stuart M. Jamieson "The Nature and Character of Collective Bargaining in British Columbia," in J. T. Montague and S. M. Jamieson, eds., *Labour-Management Conference in Industrial Relations in British Columbia* (Vancouver: Institute of Industrial Relations, University of British Columbia, 1963); and Paul A. Phillips, *No Power Greater: A Century of Labour in B.C.* (Vancouver: Boag Foundation, 1967). For studies of specific sectors and topics, see the items listed in Alan F. J. Artibise, *Western Canada Since 1870: A Select Bibliography and Guide* (Vancouver: University of British Columbia Press, 1977), pp. 218-25.

<sup>2</sup> Jamieson, "Collective Bargaining in B.C.," p. 72. In 1972, for example, within a work force of less than one million, nearly two and one-half million man-days of work were lost due to strikes. See Paul Weiler, *Reconcilable Differences: New Directions in Canadian Labour Law* (Toronto: Carswell, 1980), p. 1. Also worthy of note is the comment of James G. Matkin, a Professor of Law at UBC until appointed Deputy Minister of Labour by the NDP in 1973. He has written that the relationship between government and labour in B.C. prior to the 1970s had "a pernicious side. It would not be exaggerating to say that, in those times, many trade union leaders—and, in particular, the leader of the B.C. Federation of Labour—believed that the government of British Columbia was the enemy of labour." Matkin, "Government Intervention in Labour Disputes in British Columbia," in M. Gunderson, ed., *Collective Bargaining in the Essential and Public Service Sectors* (Toronto: University of Toronto Press, 1975), p. 80.

and management were out of phase with developments elsewhere in North America. Instead of flexibility and good-will, the British Columbia labour relations scene was marked by inflexibility and ill-will.

Two examples of the state of labour relations can be cited to indicate the climate of the times. The first relates to the public sector — specifically, the provincial civil service. In 1965, the government of Quebec took the lead over other provinces and the federal government by granting broad collective bargaining rights — including the right to strike — to employees in the civil service. The federal government followed suit in 1967 and in the ensuing few years all provinces except British Columbia replaced informal consultative arrangements with genuine bilateral negotiations.<sup>3</sup> In the west coast province, the Civil Service Act did permit government employees to join associations, but it limited those associations to a purely consultative role.<sup>4</sup> The British Columbia Government Employees Union (BCGEU), the recognized representative of the majority of government employees, was given the opportunity each year to present its case to government, but no real dialogue took place.<sup>5</sup> Furthermore, as late as 1972 one recognized authority noted that “there is no reason to believe that the present government of British Columbia intends to relinquish any of its arbitrary powers with respect to the civil service. On the contrary, there are indications that it is tightening its control over labour relations in this and other areas of public employment as part of a general policy of enforcing wage guidelines. . . . The battle lines are drawn.”<sup>6</sup>

Another indication of strained relations was the failure of the Mediation Commission, established by the Social Credit government in 1968. The Mediation Commission Act<sup>7</sup> provided for drastic provisions for government intervention and control in cases officially interpreted as having a special “public interest.” Conciliation officers were replaced by

<sup>3</sup> For a comprehensive account, see Shirley B. Goldenberg, “Public-Sector Labour Relations in Canada,” in Benjamin Aaron, Joseph R. Grodin, and James L. Stern, eds., *Public Sector Bargaining* (Madison: Industrial Relations Research Association, 1979), pp. 254-91.

<sup>4</sup> *Revised Statutes of British Columbia*, 1960, c. 56. [Hereafter cited as *RSBC*.]

<sup>5</sup> For a history of the BCGEU and an account of its frustrations in the years prior to 1973, see Bruce McLean, “A Union Amongst Government Employees”: *A History of the B.C. Government Employees’ Union, 1919-1979* (Vancouver: BCGEU, 1979).

<sup>6</sup> Shirley B. Goldenberg, “Collective Bargaining in the Provincial Public Services,” in Institute of Public Administration of Canada, *Collective Bargaining in the Public Service* (Toronto, 1973), p. 13.

<sup>7</sup> *Statutes of British Columbia*, 1968, c. 26. [Hereafter cited as *SBC*.]

mediation officers and *ad hoc* conciliation boards by a permanent, full-time, tripartite Mediation Commission. This body was given the power of deciding whether or not to appoint mediation officers to intervene in disputes, and in disputes involving a "public interest" the commission, upon direction of the Lieutenant-Governor-in-Council, was empowered to intervene and, if agreement could not be reached by the parties in dispute, to impose the final terms of settlement. In effect, the Mediation Commission Act involved compulsory arbitration in potentially any industry or trade.

While generally supported by major businesses in the province, the new act aroused "intense and virtually unanimous opposition from the trade union movement. Indeed, the B.C. Federation of Labour proclaimed a policy of boycotting hearings of the Mediation Commission, which affiliated and unaffiliated unions overwhelmingly supported." In short order, the Commission was "emasculated."<sup>8</sup> It "failed miserably" to generate confidence in compulsory arbitration of public interest disputes and its failure eventually contributed to the defeat of the Social Credit government of Premier W. A. C. Bennett.<sup>9</sup>

The electoral victory of the New Democratic Party in August 1972 was the beginning of a decade of dramatic change in B.C. labour relations. The NDP came to office promising a new era in labour relations. Indeed, in many ways electoral victory was a result of the promise by NDP leader David Barrett that he had a better way to achieve a calmer, more constructive labour relations climate. The new government moved swiftly in an attempt to keep this promise. In rapid succession it enacted a series of laws which created a new legal and administrative framework for labour relations in British Columbia. More importantly, however, the government fostered a new philosophy of labour relations that — to the surprise of many in the province — reversed decades of polarization.

This philosophy, stripped to its essential elements, had three basic ingredients. First, there was an express legislative policy in favour of free collective bargaining for virtually all employees in the province. Second, all facets of labour relations were to be controlled by one agency — the B.C. Labour Relations Board. The power of civil courts in labour relations was to end. Third, the LRB, in exercising its new and considerable

<sup>8</sup> Stuart Jamieson, *Industrial Relations in Canada* (Toronto: Macmillan, 1973), p. 129.

<sup>9</sup> The experiment with the Mediation Commission is ably described and analyzed by Matkin, "Government Intervention in Labour Disputes in B.C." For an account of the role of labour in B.C. politics see T. Morley, "Labour in British Columbia Politics," *Queen's Quarterly* 83 (1976): 291-98.

powers, was to adopt a position that responded to the interests of both employees and employers. As well, the "public interest" was to be considered in the board's decisions.<sup>10</sup>

In retrospect, these propositions seem neither radical nor controversial. But in the context of the province they were, as evidenced by the considerable difficulties the NDP had with labour relations during their term of office between 1972 and 1975.<sup>11</sup> Despite these difficulties, the new philosophy did take hold. It is true, of course, that industrial disputes were not dramatically reduced in number or in scope — in fact, the number and extent of strikes increased — and that the legislative framework continued to evolve and be refined throughout the decade. Most notably, however, the Social Credit government that replaced the NDP in December 1975 continued in virtually every respect the labour relations policies of its predecessor. Alterations and adjustments were made, but "the vast majority of changes in labour law introduced by Social Credit were elaboration of principles laid down by [NDP Labour minister] Bill King in 1973 and 1975."<sup>12</sup>

In a province long noted for sharp divisions in politics and in labour relations, this essential continuity in labour policy was a striking development and deserves detailed analysis. Many reasons can be marshalled to explain the continued success of the new philosophy. It can be noted, for example, that the Labour Code of British Columbia,<sup>13</sup> enacted in 1973, was not a radical piece of legislation in terms of the Canadian experience. Examined from the perspective of substantive law, the Labour

<sup>10</sup> John M. Baigent, "The Labour Code of British Columbia," in William Dodge, L. A. Ferrai, and A. E. Jepson, eds., *Industrial Relations in Canada: Towards a Better Understanding* (Ottawa: The Conference Board in Canada, 1977), pp. 8-18.

<sup>11</sup> For one discussion of these problems, see L. J. Kavic and G. B. Nixon, *The 1200 Days: Dave Barrett and the NDP in B.C., 1972-1975* (Coquitlam, B.C.: Kaen Publishers, 1978), pp. 145-77.

<sup>12</sup> Weiler, *Reconcilable Differences*, p. 9. Some would argue with this view. See, for example, the critique of Social Credit labour legislation in the post-1975 period in Stan Persky, *Son of Socred: Has Bill Bennett's Government Gotten B.C. Moving Again?* (Vancouver: New Star Books, 1979), pp. 187-204. But even Persky is forced to admit that "there was a good deal more finesse to the construction of labour legislation [under the Socreds] than suggested by the sledge hammer rhetoric which accompanied it." *Ibid.*, p. 197. It should also be noted that a good portion of whatever credit is due for the continuation of policies begun by the NDP should be given to the Socred Minister of Labour, Allan Williams, and to top officials in the Ministry of Labour, especially Deputy Minister J. Matkin. This view is based on comments in Weiler, *Reconcilable Differences*, and on discussions I have had with Donald R. Munroe, a former vice-chairman and chairman of the B.C. Labour Relations Board (1976-1981). See also the article on Matkin in the *Vancouver Sun*, 19 March 1982, p. A8.

<sup>13</sup> *SBC*, 1973, c. 22.

Code made several important but few fundamental changes in existing rules. In fact, in most respects the new Labour Code merely adopted legislation already in effect in other provinces and at the federal level and gave effect to certain recommendations of such bodies as the 1968 Rand Commission in Ontario and the 1968 federal Task Force on Industrial Relations. As well, the Labour Code drew on American experience and legislation in certain key sections, most notably in the law of picketing. These familiar origins led one legislator to refer to the Code as "the dullest bill" in the history of labour legislation in the province.<sup>14</sup> Similarly, another major piece of labour legislation enacted by the NDP, the Public Service Labour Relations Act,<sup>15</sup> simply extended to B.C. public service employees rights already enjoyed by similar groups elsewhere in Canada. Thus the lasting success of the new labour relations system in the province can in part be explained by the fact that the statutory framework was one that had been proven effective, in varying degrees, elsewhere in North America.

[This is too facile an explanation, however; as several experts have noted, legislation — no matter how perfect — cannot be regarded as the prime determinant of labour relations. The statutory framework, of course, does play an important role in any labour relations system, but "laws are not self-executing." In a real sense laws indicate goals to be attained, and success — or failure — is dependent on a positive approach to labour law.<sup>16</sup> In the context of B.C., it was this positive approach that

<sup>14</sup> H. W. Arthurs, "The Dullest Bill": Reflections on the Labour Code of British Columbia," *U.B.C. Law Review* 9 (1974), pp. 280-340. The phrase "The dullest bill" was first used by L. T. Nimsick, Minister of Mines and Petroleum Resources in the NDP government. See *British Columbia Legislative Assembly Debates*, 5 October 1973, p. 464. [Hereafter cited as *Debates*.]

<sup>15</sup> *SBC*, 1973, c. 144. For useful background material on this bill, see "Making Bargaining Work in British Columbia's Public Service": *Report and Recommendations of the Commission of Inquiry into Employer-Employee Relations in the Public Service of British Columbia* (Victoria: Queen's Printer, 1972). This report is often cited as the *Higgins Report*, after the Chairman, R. D. Higgins. For an analysis of the Act in a Canadian context see Kaisree S. Chatarpaul, "Labour Relations Law in the Public Service," Master of Laws Thesis (Osgoode Hall Law School, York University, 1978). For an analysis in a North American context, see Paul C. Weiler, "Making a Virtue Out of a Necessity: Reflections on Strikes by Essential Public Employees," in A. C. Pathy and G. Loerick, eds., *The Problem of "Essential Services": Inconvenience, Importance or Emergency* (Montreal: Industrial Relations Centre, McGill University, 1979), pp. 5-26.

<sup>16</sup> Jacob Finkelman, "Public Sector Bargaining: Some Basic Considerations," *Queen's Law Journal* 3 (1976): 18. The classic, oft-quoted statement is by Otto Kahn-Freund: "Altogether, the longer one ponders the problems of industrial disputes, the more skeptical one gets as regards the effectiveness of the law. Industrial conflict is often a symptom rather than a disease. I think we lawyers would do well to

had for so long been absent. The experience with the Mediation Commission Act had convinced organized labour of the ill-will of the Social Credit government in the period prior to 1973, while many in business and in the Social Credit opposition bitterly assailed the labour legislation enacted by the NDP government between 1973 and 1975. As well, when Social Credit returned to power in 1975, many supporters of that party anticipated a major shift in labour law to "undo" the NDP labour policies. It did not happen. Indeed, by 1979 it was a truism in the province that no matter what party was in power, there would be no dramatic shifts in direction in labour law.<sup>17</sup>

The major reason for this rather remarkable stability in the history of B.C. labour relations during the 1970s can be traced to the innovative and even-handed administration of the province's new labour laws, rather than to the laws themselves. In other words, the most imaginative and striking feature of the province's new labour relations system was the sharply enhanced profile of the Labour Relations Board. Beginning with the Labour Code of 1973, the LRB became a key, determining factor in the success or failure of the province's labour relations system. The Board, by virtue of its exclusive and comprehensive jurisdiction, its balanced and carefully tailored composition, and its flexible and distinctive procedures, slowly but surely won the confidence of all the major actors in the province's labour relations system. To government, management and labour, the LRB became much more than a simple administrative tribunal passively reacting to events. It became, instead, an agent of change, positively influencing the actions of parties involved in labour matters. Rather than being restricted by tight legal rules drafted in the abstract that dictated how and when the Board could exercise its powers, the new LRB was given broad general powers which it soon used to provide — through its interpretation of the statutory framework and through its own jurisprudence — a set of general and enduring guidelines for B.C. labour relations.

The irony of this situation is that the success of this new policy was the result of modest rather than ambitious legislation. The legislature, whether controlled by the New Democrats or the Socreds, rarely attempted to explicitly legislate "cures" or to create a "perfect" labour relations

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be modest in our claims to be able to provide cures." See Kahn-Freund, *Labour Law: Old Traditions and New Developments* (1967), p. 79. See also Kahn-Freund, *Labour and the Law* (London: Stevens and Sons, 1972).

<sup>17</sup> Persky, *Son of Socred*, chap. 11; Weiler, *Reconcilable Differences*, p. 9.

system.<sup>18</sup> Rather, it entrusted to an essentially new tribunal broad powers “to urge, cajole, even coerce, the parties in their own interest and in the public interest, to exercise self-restraint and to practise mutual accommodation.” And this “worthy, if unlikely, enterprise”<sup>19</sup> worked. Paul Weiler, chairman of the Labour Relations Board from 1973 to 1978, confirmed this view:

I think it's worked. I don't know of anybody — on the trade union side or the employer's side — that now wants to turn the clock back and undo what at the time was the most controversial step in the Labour Code, which was not simply changing the substantive law but changing the institution through which the law was to be administered. . . .<sup>20</sup>

It is the purpose of this article to attempt to explain why the experiment worked. What follows is a detailed analysis of the jurisdiction, composition and procedures of the B.C. Labour Relations Board. In the process of detailing these important dimensions of the structure and operations of the LRB, specific cases handled by the Board will be examined to support general observations. This approach should provide an accurate perspective on the evolution of labour policy and practice in B.C. since 1973.

#### JURISDICTION: THE POWERS AND RESPONSIBILITIES OF THE LABOUR RELATIONS BOARD

##### *Background*

When the NDP came to power in August 1972, one of its first orders of business was the abolition of the Mediation Commission and the removal of wage controls on the salaries of provincial government employees and teachers. This “housecleaning” was soon followed by further labour legislation, most notably the introduction of Bill 11, the Labour Code of British Columbia Act, in October 1973.

Despite its obvious pro-labour bias, the new government tried “its level best to find an all-embracing labour law that [would] satisfy the majority, . . . to find new approaches that [would] change B.C.'s reputation as

<sup>18</sup> Some *ad hoc* “cures” were legislated to deal with strikes in “essential services.” While this topic is far too complex to summarize or analyze here, it is safe to say that the B.C. labour relations system remained flexible in the broad sense of that term. See Weiler, *Reconcilable Differences*, chap. 7.

<sup>19</sup> Arthurs, “The Labour Code,” p. 340.

<sup>20</sup> “Working to Rules,” *Urban Reader* 9(3) (1982): 17.

a province of industrial warfare to one of industrial peace.”<sup>21</sup> In this quest, the new Minister of Labour, W. S. King, solicited advice from the labour relations community. He appointed a Committee of Special Advisors composed of Noel Hall, a University of British Columbia law professor and a well-known arbitrator and conciliator; Ted McTaggart, a respected labour relations lawyer; and Jim Matkin, also a member of the law faculty of UBC. This group prepared draft legislation and at this stage Paul Weiler, a professor at Osgoode Hall Law School, was called in to help design the key section of the Code that defined the Labour Relations Board.<sup>22</sup> All the members of this group were given a good deal of latitude by the new government to try out ingenious solutions, “many of which had been floated in some scholarly journal or another.”<sup>23</sup> It is also noteworthy that two members of the group were to play an important, ongoing role in B.C. labour relations — Matkin as Deputy Minister of Labour and Weiler as the first chairman of the new Labour Relations Board.<sup>24</sup>

The result of these combined efforts was a major revision and consolidation of B.C.’s labour laws. Following an “unusually mellow debate,”<sup>25</sup> Bill 11 was passed in November 1973. The new Labour Code was undoubtedly the most innovative labour law in Canada and would quickly attract interest from jurisdictions as far afield as Australia. But, to the surprise of both labour and management, the Code — although the most favourable to labour of any labour legislation in Canada — did not represent a *carte blanche* to labour. Its goal, Premier Barrett stated, was to “create an opportunity to allow some rational maturing to take place in labour-management relations in the province of British Columbia.”<sup>26</sup>

In introducing the Labour Code in the legislature, the Minister of Labour attempted to articulate the central philosophy contained in the bill and, notably, he began with an explanation of the role of the Labour Relations Board. In his speech, King emphasized that both labour and

<sup>21</sup> George Dobie in *Vancouver Sun*, 25 June 1975.

<sup>22</sup> For a discussion of the appointment of this group, see *Vancouver Sun*, 19 March 1982. Some of the information in this section is also based on discussions with Donald R. Munroe.

<sup>23</sup> Weiler, *Reconcilable Differences*, p. vi.

<sup>24</sup> Matkin served as Deputy Minister of Labour until 1981 when he took on the position of Deputy Minister of Intergovernmental Relations. Weiler served as chairman of the LRB from 1973 to 1978. He left the Board to accept the position of Mackenzie King Professor of Canadian Studies at Harvard Law School.

<sup>25</sup> Kavic and Nixon, *The 1200 Days*, p. 151.

<sup>26</sup> *Debates*, 5 October 1973, p. 482.



management had in the past called for a complete overhaul of the structure and procedures of the LRB. "So, in response to . . . appeals by labour and management . . . we have set out to develop a board with a new look." Indeed, not only would the Board have a "new look," it was to be the foundation on which a new labour relations policy would be built.

I think that central to the whole concept of this new legislation is the role that the new Labour Relations Board will play as the agency which will be responsible for [the] administration of industrial relations in the province.

The new board is certainly a key feature of the new legislation.<sup>27</sup>

### *The Board's Statutory Authority*

Under the B.C. Labour Code and subsequent legislation, the LRB was granted exclusive, concurrent or supervisory jurisdiction over practically every phase of collective bargaining law within the province. The Board's major responsibilities are set out in the Labour Code, which was phased into force by a series of nine proclamations of the Lieutenant-Governor-in-Council between 13 November 1973 and 16 September 1974<sup>28</sup> (see Appendix, Table A, Part One: The Labour Code). The first proclamation on November 13 brought into effect six sections of the Code including section 12, which continued the Board appointed under the old Labour Relations Act<sup>29</sup> as the Board under the Labour Code, but in accordance with the new structure set out in the Code. Under sections 24, 139 and 150, a procedure for fixing the compensation and terms of office for Board members was determined and the Board was enabled to employ staff and to "make regulations" for the purpose of carrying out the provisions of the Code.<sup>30</sup> The proclamation of these sections was the first step in the development of the new administrative tribunal which

<sup>27</sup> *Ibid.*, 3 October 1973, p. 397. Most other MLAs who spoke on the bill echoed this judgement.

<sup>28</sup> As of March 1982, sections 128-137 of the Code have not been proclaimed. They are the sections providing for a Labour Ombudsman. The reasons why these sections have never been proclaimed are unclear, but it is the opinion of Donald R. Munroe, a former chairman of the LRB, that there has been virtually no pressure from either management or labour to proclaim the ombudsman portions of the Code. Organized labour, in particular, has resisted the concept of a labour ombudsman since it views this proposal as an undue and unnecessary intrusion into the internal affairs of unions.

<sup>29</sup> *RSBC*, 1960, c. 205.

<sup>30</sup> It is noteworthy that the new LRB was not hampered by normal Public Service Commission regulations in employing staff but, rather, was given the opportunity to find "the best people possible" regardless of their background inside or outside the civil service. Donald Munroe feels this was of "fundamental importance" in creating an effective board in a very short period of time.

was to implement the legislative mandate of the Labour Code. A new set of Regulations was prepared setting out the Board's general procedure for receiving and disposing of applications under the Code and these were approved by the Lieutenant-Governor-in-Council on 20 December 1973.<sup>81</sup>

The substantive sections of the Labour Code were proclaimed into law in stages, from 14 January to 16 September 1974. The first step was the repeal of the Labour Relations Act and its replacement by the corresponding provisions of the Labour Code. This meant that the Board continued to exercise jurisdiction over such matters as certification, unfair labour practices, differences under a collective agreement, and so on, but under the new statutory provisions approved by the legislature in the fall of 1973. One of the final steps in the process was the proclamation on Labour Day, 1974, of Part V of the Labour Code, giving the Board exclusive jurisdiction over strikes, lockouts and picketing.

The transition of authority from the old to the new LRB occurred early in 1974. At the time, there were a number of cases pending under the old Labour Relations Act which had been superseded by the Code. The judgement was made that these cases should be disposed of by a Board composed largely of members who had served under the Labour Relations Act. These individuals continued in office for several months until all such cases were concluded. During this transition phase, new members of the Board, acting under the Code, were assigned responsibility for all new matters.<sup>82</sup>

Since 1974, the Labour Code has been amended or clarified on ten separate occasions (see Appendix, Table A, Part Two: Amending Acts). Some of these amendments involved major substantive changes while others were purely technical refinements. The most extensive revisions were made in the Amendment Act of 1975 (Bill 84) under the NDP, and the Amendment Acts of 1976 (Bill 77) and 1977 (Bill 89) under Social Credit.<sup>83</sup> In general terms, however, all these amendments either clarified or expanded the powers of the Board; the amendments did not restrict or dilute the Board's authority. Both political parties accepted in practice what had been set out in general terms in the original Code.

In addition to its broad powers under the Code, the Labour Relations Board was also entrusted with a legislative mandate under fifteen other

<sup>81</sup> See Table C, "Regulations Under the Labour Code," in Labour Relations Board of B.C., *Annual Report*, 1980, p. 10. [Hereafter cited as *AR*.]

<sup>82</sup> *AR*, 1974, p. 3.

<sup>83</sup> Detailed analysis of these amendments can be found in the appropriate *Annual Reports* of the Board.

statutes (see Appendix, Table B: Statutes Conferring Authority on the Labour Relations Board). Among these statutes were the Public Service Labour Relations Act, which regulated bargaining between the province as an employer and members of the public service, and the British Columbia Ferry Corporation Act, which placed employees of the new Crown corporation under the jurisdiction of the Board. The essential thrust of this legislative activity was to give the LRB jurisdiction across the total spectrum of B.C. labour law.

### *The Powers of the Board*

In assigning the Labour Relations Board a comprehensive jurisdiction across the entire sweep of labour law, British Columbia legislators were breaking with Canadian tradition. Until the passage of the 1973 Labour Code, labour law had been the shared responsibility of the courts, labour boards and arbitrators, with some overlapping jurisdiction among the three. The Labour Code and related legislation changed this pattern dramatically as the LRB was granted exclusive jurisdiction in most areas of labour relations and a concurrent jurisdiction with arbitrators over the adjudication of mid-contract grievances. Moreover, the LRB was assigned a supervisory jurisdiction where arbitrators were called on to act as mid-contract adjudicators. Thus, "the essential thrust" of the new legislation was to end the situation of fragmented jurisdiction in labour law and to confer on one agency the authority to deal with all the legal features of labour relations.

The specific powers of the LRB are numerous and wide-ranging and it is inappropriate to delineate all of them here. Certain aspects of the powers exercised by the Board do deserve attention, however. The most significant feature of the Labour Code is the placement of all facets of labour problems under one roof. Prior to 1973, the civil courts provided the forum for issuance of injunctive relief and the review of Board decisions. Even though most labour statutes contained privative clauses which attempted to circumscribe the role of the courts in the review function, "the lesson of history was that the courts would not hesitate to exercise jurisdiction and review board decisions if it could be shown that a board had acted in excess of its own jurisdiction under the statute which it was entrusted to enforce."<sup>34</sup> Central to the B.C. Labour Code was a policy of foreclosing quite categorically the power of civil courts to review decisions of the LRB. This exclusive jurisdiction was defended on three sides

<sup>34</sup> Baigent, "Labour Code of B.C.," p. 9.

by stringent privative clauses and on the fourth by a network of provisions specifically denying the courts recourse to substantive doctrines or remedies.<sup>35</sup> The most controversial of these was section 33, which provides that:

The board has and shall exercise exclusive jurisdiction to determine the extent of its jurisdiction under this Act, a collective agreement, or the regulations, to determine a fact or question of law necessary to establish its jurisdiction and to determine whether or in what manner it shall exercise its jurisdiction.

In adopting this scheme the NDP government received a good deal of criticism from all sides but, notably, they did not back off from the basic thrust of section 33. In Labour Code amendments introduced in 1975, the NDP government clarified but did not basically alter the line between the Board and the courts.<sup>36</sup> Furthermore, the powers of the Board were expanded in 1976 by the Social Credit government in several ways.<sup>37</sup> For example, in the context of the issue of exclusive jurisdiction, the definitions of "picketing" and of "common site" in section 86 of the Labour Code were changed, following a decision of the British Columbia Court of Appeal.<sup>38</sup> The court ruled that the LRB had a very limited jurisdiction to restrain picketing arising out of a labour dispute within provincial jurisdiction when that picketing affects an employer engaged in a federal work, undertaking or business. The court reached its conclusion by construing the word "employer," where it occurred in the definition of "picketing," as meaning an employer within the constitutional jurisdiction of British Columbia. In an effort to prevent further "interference" of this kind, the Labour Code was amended by eliminating the word "employer" from the definitions of "picketing" and "common site" and replacing it whenever it occurred with the word "person."<sup>39</sup>

The courts, as well as the legislature, have attempted to give credence to the transfer of labour relations to the LRB. One indication of this

<sup>35</sup> *Labour Code*, sections 31, 32, 33, 24, 87 and 89. For a legal analysis, see Arthurs, "The Labour Code." It should also be noted that the recent Crevier decision of the Supreme Court of Canada has cast some doubt, by implication, on Section 33. But this decision does not alter the main burden of my argument.

<sup>36</sup> *AR*, 1975, p. 10.

<sup>37</sup> *AR*, 1976, pp. 5-8.

<sup>38</sup> *AR*, 1976, p. 7.

<sup>39</sup> "Western Stevedoring Co. Ltd. v. Pulp, Paper and Woodworkers of Canada," (1975) 61 *Dominion Law Reports* (3d), p. 701. While later cases have indicated that this effort did not completely succeed, the effort does indicate that legislative support for the LRB was present.

support occurred in a series of decisions that began in October 1976.<sup>40</sup> Under the British Columbia Hydro and Power Authority Act, Hydro set up a pension plan for its employees. After an actuarial report indicated a substantial deficit, Hydro raised employees' contributions from 6 to 6½ per cent to partially offset the deficit. The unions alleged that Hydro unlawfully altered the rates of wages and asked the LRB for an order to repay the increases. The union also applied for a declaration that Hydro's refusal to negotiate pension plans was a breach of its duty to bargain in good faith, a requirement under section 6 of the Labour Code. Hydro, however, took the position that it could not subject its power to "establish and maintain a fund" to collective bargaining.

The LRB held that while there was no breach of either the Code or the collective agreement in the increase in contributions, Hydro did have a duty under the Code to bargain collectively regarding the pension plan. The Board made its decision in this case not under its section 33 jurisdiction, but rather on the grounds that the Hydro Act, which dealt with the pension issue, did not specifically exclude the application of the Labour Code. This decision followed the lines of several earlier cases where the provisions of the Labour Code had been challenged by other, special legislation.<sup>41</sup> It was stated that there was "the necessity for a clear expression" that the Labour Code did not apply before its provisions could be set aside.

What was important about this case was the fact that the Board's decision was upheld by the courts. Since the decision involved the consideration of a statute other than the Code, the Board allowed that its decision could be reviewed in the courts in the normal manner. At the B.C. Supreme Court, the decision of the LRB was quashed, but shortly after this judgement the B.C. Court of Appeal upheld the Board's original decision. While the British Columbia Hydro and Power Act<sup>42</sup> placed Hydro beyond most of the laws of B.C., it was not beyond the reach of the Labour Code. The court stated: "The zeal of the draftsman to give

<sup>40</sup> "British Columbia Hydro and Power Authority and International Brotherhood of Electrical Workers, Local 213 and 258; Amalgamated Transit Union, Division 101-134 and Division 109; and Office and Technical Employees Union, Local 378," (1977) 1 *Canadian Labour Relations Board Reports*, pp. 116-24.

<sup>41</sup> See the following B.C. Supreme Court decisions: "The Board of School Trustees of School District No. 61 (Greater Victoria) v. C.U.P.E., Local 382" (1976-unreported) Vancouver Registry No. 030/75; "Re Assessment Authority and Matthew Pruden" (1976-unreported) Victoria Registry No. 453/76; and *R. v. B.C.L.R.B., Exp. Simon Fraser University* (1968) 58 *Dominion Law Reports* (2d), p. 571.

<sup>42</sup> *SBC*, 1964, c. 7.

the [Hydro] Authority immunity has been equalled by the zeal of the draftsman to give the Labour Relations Board jurisdiction."<sup>43</sup> Subsequently, the B.C. Legislature amended the Hydro Act to specifically exclude pensions from collective bargaining.<sup>44</sup>

Two other aspects of the Board's relationship to the courts are worthy of attention. The first is the question of judicial review of Board decisions. Section 34(2) of the Code asserts:

Except in respect of the constitutional jurisdiction of the board, a decision or order of the board under this Act . . . upon any matter in respect of which the board has jurisdiction, or determines under section 33 that it has jurisdiction under this Act . . . is final and conclusive and is not open to question or review in a court on any grounds, and no proceedings by or before the board shall be restrained by injunction, prohibition, mandamus or another process or proceeding in a court, or be removable by certiorari or otherwise into a court.

The intent of this section was unmistakable and unique. The framers of the Code and the legislators wanted a successful problem-solving approach to industrial relations, making extensive use of informal mediation. In this context, the parties could not be allowed to side-track or to derail the Board's processes "by running off to the courts along an open-ended avenue for judicial review."<sup>45</sup> The Board, therefore, had to be seen as the final authority on labour law by the labour-management community. Furthermore, it was argued, in matters as complex and vital to the orderly functioning of society as labour relations, legal policy could not be developed rationally by separate bodies, each with its own perspective and responsibilities. Perhaps of even more importance and practical justification, however, was the recognition that those labour disputes which in the past had led to injunction applications would now be dealt with by the same body which had previously created and regulated the relationship between the parties. "Only such a body could bring to the dispute a sense of history or perspective which would take into account the peculiar problems of the parties before it."<sup>46</sup>

<sup>43</sup> "Re British Columbia Hydro and Power Authority et al. and Office and Technical Employees Union, Local 378, et al." (1977) *Dominion Law Reports* (3d), pp. 283-87.

<sup>44</sup> *Miscellaneous Statutes Amendment Act*, 1978, amended the Hydro Act to specifically exclude pensions from bargaining.

<sup>45</sup> See the *Debates* on the Labour Code and subsequent amendments to the Code. See also Weiler, "The Administrative Tribunal: A View from the Inside," *University of Toronto Law Journal* 26 (1973): 193-214.

<sup>46</sup> Baigent, "The Labour Code," p. 10.

Given this reasoning, the removal of judicial review was coupled with a second, related set of clauses which gave the Board a concurrent power with arbitrators to deal with any and all grievances that may arise in the life of a contract, and gave the LRB an appellate jurisdiction over arbitrators. The argument here was that the legislature wanted to minimize the formal legal approach in labour relations in which, in a formal court setting, lawyers threw “rights” and “duties” at each other in front of a judge who was expected to be “a neutral legal arbiter, remote and above the battle,” making his rulings and letting the chips fall where they may.<sup>47</sup> By granting wide-ranging powers to the LRB, the legislature was recognizing that collective bargaining implied a continuing and complex relationship and that conflict was inevitable in this ongoing relationship. Formerly, the courts dealt only with the effects of mid-contract grievances — such as wildcat strikes — by issuing cease-and-desist orders. The Labour Relations Board, while it could and at times did issue similar orders, could also adopt quite a different style of conflict resolution. It was, for example, given the power to use investigation and mediation as systematic techniques for the resolution of illegal strikes or lockouts, an ability that was supported by its distinct composition and administrative style. In jurisdictional terms, the key point is that the LRB, not the courts, was to have final authority over labour-management disputes. It was given authority to adjudicate not only the legality of a strike, lockout or picketing action, but also to determine the merits of the grievance or unfair labour practice which may have triggered these actions and, further, in most instances to deal positively with the underlying problems.<sup>48</sup>

Among the Board’s many other powers, four more deserve special attention, either because they were viewed with suspicion when introduced or because they are significant in terms of Canadian labour law. Perhaps the most controversial powers of the LRB are two provisions designed to short-circuit traditional and often successful tactics utilized by employers to avoid certification of their employees. One provision is designed to correct the situation where a trade union commences an organizational drive and the employer inserts himself into the campaign, perhaps firing one or two of the union leaders in the process. In these cases, the Board can reinstate employees but it can also go far beyond this expedient. Since the dismissals may have destroyed the momentum of an organizational drive, the Board can certify the trade union even if

<sup>47</sup> Weiler, *Reconcilable Differences*, p. 292.

<sup>48</sup> The manner in which some of these powers are exercised is discussed below, under “Procedures.”

“the true wishes of the employees cannot be ascertained.”<sup>49</sup> This power is designed to expose an employer to the very act — certification — which his conduct was aimed at preventing.

The second and equally controversial power was similar in that under section 70 of the Labour Code the Board could impose a first (but not a second) collective agreement where either party to a new certification simply refused to attempt to achieve a collective agreement. The view of the framers of the Code was that court orders were an ineffective remedy in such circumstances and section 70 could therefore threaten to impose the very thing which by their illegal conduct the parties were seeking to avoid.

TABLE 1  
*The B.C. Labour Relations Board  
and Settlement of First Collective Agreements, 1974-1980*

<i>Year</i>	<i>No. of cases disposed of</i>	<i>Settled informally</i>	<i>Contract imposed</i>	<i>Rejected</i>	<i>Withdrawn</i>
1974	13	3	5	3	2
1975	6	5	1	0	0
1976	6	2	1	3	0
1977	2	1	1	0	0
1978	0	0	0	0	0
1979	3	0	3	0	0
1980	2	1	1	0	0
Totals	32	12	12	6	2

Since 1974, neither provision has been used extensively (see Table 1).<sup>50</sup> The impact of these provisions on the nature of collective bargaining in British Columbia cannot, however, be measured merely in terms of their invocation. It is far more subtle. Both provisions were implemented as a deterrent to particular forms of conduct which had previously, under the courts, been impervious to regulation through cease-and-desist orders. Since 1974, there is evidence to suggest that the provisions have served as compelling disincentives to unfair labour practices.<sup>51</sup>

<sup>49</sup> *Labour Code*, section 8(4)(e).

<sup>50</sup> The use of these powers is analyzed in the *Annual Reports* of the LRB. Unfortunately, precise details of the use of section 8(4)(e) cannot be determined. It can be noted, however, that between 1974 and 1978, only two automatic certifications were imposed. See Baigent, “The Labour Code,” p. 13.

<sup>51</sup> Baigent, “The Labour Code,” p. 14.



A third, distinctive power of the LRB was a bold 1975 amendment to the Labour Code which gave the Board the power to review decisions of arbitration boards.<sup>52</sup> Previously that had been the domain of the civil courts, but as a result of the 1975 amendments the courts were left with an extremely narrow jurisdiction that has resulted in very few applications.<sup>53</sup> The grounds for review by the LRB are twofold: a party to the arbitration has been or is likely to be denied a fair hearing, or the decision or award is inconsistent with the principles expressed or implied in the Code. These policies are consistent with and indeed stem from the underlying policies implicit in the Labour Code — that the integration of all aspects of the Code and their administration should be the responsibility of one unified body. The legislation makes clear that absentee management of the arbitration system, the kind of management formerly exercised by the courts, is not conducive to good labour relations. Since the legislation mandates an arbitral review system during the terms of the collective agreement as a counter-balance to the absolute ban on strikes and lock-outs, and since the Code insists on such a system of review and in fact defines the breadth of the arbitration board's decision, it follows that the Code — through the LRB — should also review awards flowing from the required dispute resolution mechanism. It must be emphasized, however, that while this whole process does weed out and correct seriously defective awards, the LRB has not permitted the review procedures to develop into an avenue for a complete re-hearing of cases. Since 1975, only thirty arbitration decisions have been set aside (see Table 2).

Another significant aspect of the Board's powers is section 57 of the Code, which allows for the creation of councils of trade unions with ministerial reference. These non-voluntary changes in bargaining structure can be made "for the purpose of securing and maintaining industrial peace and promoting conditions favourable to settlement of disputes."<sup>54</sup> Similarly, the Board may certify an employer's organization for

<sup>52</sup> *Labour Code*, section 108. For a detailed analysis, see John Baigent, "The Labour Relations Board and Arbitration Process Under the New Provisions of the Labour Code," in M. A. Hickling, ed., *Grievance Arbitration: A Review of Current Issues* (Vancouver: Institute of Industrial Relations, University of British Columbia, 1977), pp. 184-191; Joseph M. Weiler, "Arbitration under The British Columbia Labour Code," *McGill Law Journal* 25 (1979): 193-216, and especially 203-07; and Paul C. Weiler, "The Code, The Collective Agreement, and the Arbitration Process as Seen from the Labour Board," in Hickling, *Grievance Mediation*, pp. 1-17.

<sup>53</sup> For an analysis of this issue and the 1975 amendment, see Donald R. Munroe, "Address" to Personnel Association of Toronto, 20 April 1978. A copy of this address is in my possession.

<sup>54</sup> *Labour Code*, section 57(1).

TABLE 2

*The B.C. Labour Relations Board  
and the Review of Arbitration Awards, 1976-1980*

<i>Year</i>	<i>Applications received</i>	<i>Applications disposed of</i>	<i>Withdrawn</i>	<i>Dismissed</i>	<i>Decisions set aside<sup>a</sup></i>
1976	21	18	1	14	3
1977	34	27	7	16	4
1978	43	45	17	23	5
1979	34	35	5	23	7
1980	46	47	5	31	11
Totals	178	172	35	107	30

<sup>a</sup> This category includes referring cases back to arbitrators; the Board substituting its own award; and referring cases back to the parties to settle.

a number of different employees operating within a segment of an industry. Accreditation of an employer's organization is different from certification of a council of trade unions in that an employer must consent to the accreditation whereas a trade union can be ordered into a council against its wishes. Yet, once an employer's organization is established, the Board will not allow an employer member to opt out of an accredited association simply because it believes such a move is in its own interest.<sup>55</sup> Councils of trade unions have been created under section 57 of the Code in two important instances — in the creation of the Council of Unions on the British Columbia Railway in 1976, and in the creation of the Bargaining Council of B.C. Building Trades Unions in 1978.<sup>56</sup> In dealing with both employers and employees, however, the legislative policy has given the Board broad powers to minimize the incidence of possible bargaining confrontations. This policy favouring larger bargaining units has clearly emerged, in both the public and private sectors, where a

<sup>55</sup> "Board of School Trustees, School District No. 68 (Nanaimo), and C.U.P.E., Local No. 606, and Mid-Island Public Employers Association" (25 September 1980) B.C. LRB no. 79/80.

<sup>56</sup> For a detailed analysis of these two cases see Kenneth Strand, "Non-Voluntary Changes in Union Bargaining Structure Within the Province of British Columbia," dated 26 August 1980. A copy of this paper is in my possession. See also "Council of Trade Unions and B.C. Railway," *AR*, 1976, p. 31; and *AR*, 1977, pp. 18-20. In another case, the LRB "invited" a group of trade unions to make an effort to put together a council on a voluntary basis and those efforts, with the assistance of the Board, were ultimately successful. See "Council of Trade Unions," *AR*, 1978, pp. 24-27.

number of unions apply to the Board for initial certification of different groups of employees of one employer. In virtually all instances, the Board has used its broad powers to insist on large, plant-wide units, even when this means going against the express wishes of employees.<sup>57</sup> Again, the Board has exercised its considerable powers to ensure that within a particular area disputes will be limited to one set of negotiations and that components within the structure will be forced to resolve their differences at the bargaining table.

This analysis of several of the Board's broad powers indicates that this administrative agency has a role in B.C. labour relations which was never approached even remotely by its predecessor. But it would be incorrect to assume that the Board's powers in the labour relations area are absolute. They are not. Indeed, with the granting of power, the legislature wisely gave the Board both specific and general responsibilities, and subjected it to a number of important restraints.

### *Constraints on Board Powers*

In granting the LRB broad, discretionary powers, and in removing the courts from the labour relations process, the legislature did not anticipate that the Board would act capriciously. Rather, it expected the Board to slowly evolve coherent and workable standards on a step-by-step basis, from the cumulative experience in a series of concrete cases. Thus, for example, between 1974 and 1976 Board policies in respect to picketing were defined,<sup>58</sup> policies in respect of appropriate bargaining units were determined,<sup>59</sup> and a policy in respect of grievance arbitration was published.<sup>60</sup> The result of this evolution of Board jurisprudence is to provide general and enduring guidelines within which individual judgements respecting concrete disputes are made. In other words, while the Board

<sup>57</sup> "Insurance Corporation of British Columbia, and C.U.P.E., Local 1695, and Office and Technical Employees' Union, Local 378, and B.C.G.E.U., and Miscellaneous Workers', Wholesale and Retail Delivery Drivers' and Helpers' Union, Teamsters Local 351" (12 June 1974) B.C. LRB no. 63/74.

<sup>58</sup> The Board has issued two major decisions which define its policies and standards in the exercise of its major discretionary powers to regulate picketing under the Code: "MacMillan, Bloedel Packaging Ltd." [1976], *Canadian L.R.B. Reports*, p. 100 (section 84(2) of the Code); p. 129 (section 86 of the Code). See also Nichols, "The Law of Picketing in B.C. under the Labour Code," *The Advocate* 34 (1976): 31-45.

<sup>59</sup> See citation in note 57, above.

<sup>60</sup> LRB of B.C., "Statement of Policy: Section 96 of the Code," [1976] 2 *Canadian L.R.B. Reports*, p. 17.

undoubtedly has discretion to exercise, this discretion is shaped by legal reference points.

It is also noteworthy that in 1975 the legislature for the first time provided an explicit and integral statement of the purposes and objects of the Code, a statement further clarified in 1977.<sup>61</sup> Section 27 states:

27. (1) The board, having regard to the public interest as well as the rights and obligations of the parties before it, may exercise its power and shall perform the duties conferred or imposed on it under this Act so as to develop effective industrial relations in the interest of achieving or maintaining good working conditions and the well being of the public. For those purposes, the board shall have regard to the following purposes and objects:
- (a) securing and maintaining industrial peace, and furthering harmonious relations between employers and employees;
  - (b) improving the practices and procedures of collective bargaining between employers and trade unions . . . ; and
  - (c) promoting conditions favourable to the orderly and constructive settlement of disputes. . . .

These objectives are designed to guide and direct the Board in discharging its responsibilities and in exercising its statutory authority.

Furthermore, notwithstanding what might appear evident from the surface legal language of section 33 of the Code, LRB members are "not . . . free to go off on a frolic of their own, contrary to the clear directions of the statute. Instead, they operate within a network of real-life constraints which loom much larger than the occasional experience of judicial review."<sup>62</sup> At least four identifiable constraints and/or responsibilities can be discovered. The first is the fact that under section 36 of the Labour Code there is an ability for Board decisions to be reconsidered. The procedure for internal administrative review involves having a decision of the Board reconsidered either by a different panel than the one that made the original decision or, in cases of major policy significance, by the full Board. "This procedure provides a backstop by which the Board can avoid or correct inadvertent errors and undo any miscarriages of procedural justice which may have occurred in the regular flow of its large caseload. It may also bring out into the open serious issues of law or policy which are implicit in the original decision and which a party

<sup>61</sup> In terms of the impact the change of government in 1975 had on the Code, it is noteworthy that the 1977 amendments added the words "public interest" in 27(1) and inserted "improving" for "encouraging" in 27(1)(b). These changes can be viewed as a move by the Socreds to placate anti-union forces in the party.

<sup>62</sup> Weiler, "The Administrative Tribunal," p. 209.

contends have not been satisfactorily dealt with.<sup>63</sup> Even though this procedure is internal to the Board it is meaningful: in the more than one hundred requests for reconsideration of decisions in each year, more than thirty result in either reversal or variation of the original decision (see Table 3).

TABLE 3  
*Number and Disposition of Appeals Filed and  
Disposed of by the B.C. Labour Relations Board, 1974-1980*

<i>Year</i>	<i>Number of appeals</i>	<i>Dismissed</i>	<i>Varied</i>	<i>Reversed</i>	<i>Withdrawn</i>
1974	106	51	15	21	19
1975	126	67	8	15	36
1976	122	58	18	18	28
1977	123	59	19	12	33
1978	155	90	20	11	34
1979	137	80	21	12	24
1980	140	76	29	17	18
Yearly Averages	130	69	19	15	27
% of Total No.	—	53%	15%	12%	21%

A second constraint is the membership of the Board itself, a topic that will be addressed in more detail below. Board members include, in addition to a few lawyers, a majority of members from a wide spectrum of trade union and employer groups. Decisions of the Board obviously affect the balance of interests among different segments of the labour-management community which are represented on the Board. Given a well-chosen and representative Board, it is highly unlikely that the tribunal would run roughshod over the rights of either group.

The final two constraints relate to the fact that in British Columbia labour relations is a highly visible and contentious area of law. Thus both the watchful eye of the public (in the form of the media, trade unions, employer groups, or the Law Society) and of the Minister of Labour and legislators provides a definite sense of restraint on the Board. The policies

<sup>63</sup> *Ibid.*

the Board adopts and follows are closely watched and, when deemed to be incorrect or out of line, can be reversed or corrected by statutory amendment. Within a broader perspective which goes beyond specific legislative overrulings, there is in practice an ongoing dialogue among the "public," the legislature and the Board in the refinement and clarification of labour law policy. This dialogue is encouraged by the fact that, unlike the pre-1973 Board, the LRB under the Code not only prepares an annual report, but also renders reasons in a substantial number of cases each year. This latter development was one that many legislators and members of the public saw as being of particular importance in exposing the Board's activities to public scrutiny.<sup>64</sup> In short, the Board's performance and the exercise of its powers are constantly and effectively monitored.<sup>65</sup>

#### COMPOSITION: THE NATURE OF BOARD MEMBERSHIP

It has already been observed that laws are not self-executing. The success of even the most carefully crafted legislation usually depends on whether or not the laws are seen to be not only just in written form, but also that they can be seen to be executed in an even-handed and enlightened manner. The framers of the Labour Code wisely recognized this truism and set out to create a Labour Relations Board that would have some degree of willing co-operation from the parties affected in order to make its decisions and policies effective.

This difficult goal was achieved by adopting a number of principles. In the first instance, the Board followed the tripartite pattern originally set in Ontario. Indeed, the Labour Code, unlike most other similar statutes, specifically mandates tripartism.<sup>66</sup> At any given time, the Board was composed of a number of "neutrals" designated as vice-chairmen and, in one case, as chairman. The chairman serves a statutory term of five years; vice-chairmen are appointed for periods ranging from two to five years. The remaining members of the Board are divided equally between representatives of trade unions and representatives of manage-

<sup>64</sup> See *Debates*, 1973. It is also noteworthy that the Board's formal decisions are mailed to more than 150 places. Many of these recipients are law firms, employers and trade unions who, in turn, further inform their members of Board decisions. Other Board decisions — numbered letter decisions, unnumbered letter decisions, and administrative decisions — are also available to the public.

<sup>65</sup> Baigent, "The Labour Code," p. 19.

<sup>66</sup> *Labour Code*, section 12(2). This was a significant and risky departure from the recommendation of the Woods Task Force.

ment (see Table 4). These part-time members are typically appointed for two or three year terms, but many terms have been extended. The Board also have a well-trained administrative staff and can call on the Ministry of Labour's industrial relations officers in the field. In 1980, for example, there were officers in Burnaby, Chilliwack, Victoria, Courtenay, Nanaimo, Kelowna, Prince George, Terrace, Dawson Creek, Cranbrook, Nelson, Williams Lake and Kamloops.

TABLE 4  
*The Composition of the B.C. Labour Relations Board:  
Number of Members, 1974-1980*

Year	Total no. of board members	Chairman and vice-chairman	Board Members		Support staff
			Trade union	Management	
1974	12	4	4	4	c.30
1975	18	6	6	6	31
1976	18	6	6	6	32
1977	18	6	6	6	35
1978	20	6	7	7	34
1979	21	7	7	7	39
1980	25	9	8	8	39

In practice, this tripartite model has been carefully utilized as one means of ensuring that the divergent constituencies and experiences which are found within either the management community or the trade-union movement were represented. Thus the Board has not been dominated by lawyers, although care has been taken to ensure that the Board contains some members with legal backgrounds.<sup>67</sup> In 1980, for example, the Board included among its twenty-five members only six lawyers: the chairman; four of the eight vice-chairmen; and one management representative (see Appendix, Table C: Members of the Labour Relations Board). Other neutral, full-time members were drawn from academia, management, and the trade-union movement. In addition, the constitu-

<sup>67</sup> It should be noted, however, that one of the results of the highly regulated labour relations system designed by the Labour Code has been a sharp increase in the number of labour lawyers in B.C. "Before the L.R.B. was founded in 1974, maybe a half-dozen lawyers were involved full-time in Labour-Management matters. Now there are close to 100 and likely more on the way." For a full discussion of this development, see Donald Gutstein, "How the Lawyers Came to Labour," *Vancouver Magazine* 15(3) (March 1982): 36-44, 141-43.

ency representatives have been chosen with great care to ensure that senior and respected individuals from the labour-management communities were involved.<sup>68</sup> In 1980, for example, part-time members included: a former senior industrial relations officer from the province's largest forestry firm, MacMillan Bloedel; the executive director of the Public Employers of British Columbia; a senior industrial relations officer from B.C. Coal Ltd.; a former president of Dillingham Corporation (Canada) Ltd., a real estate firm; a former senior officer of the Teamsters; the chief executive officer of the Registered Nurses' Association of B.C.; the general secretary of the BCGEU; and a former president of the Provincial Council of Carpenters.

The thrust of such appointments was that the tribunal consisted primarily of people who were still living and working in the environment which the LRB was trying to shape and contain. This kind "of community participation is the ideal means of ensuring that the practical flavour of an industrial relations setting is apparent to the Board as it is reaching the judgements that it must make."<sup>69</sup> In this respect, the Board was seeking knowledge and skills other than legal knowledge and craftsmanship. The Board was thus composed in large part of members who were drawn from or were still experiencing situations which the Code was dealing with in legal terms. Furthermore, this meant that Board members provided "an invaluable means of communication, both in explaining . . . what the Board is doing and reporting back the reactions and difficulties which these policies are evoking."<sup>70</sup>

The tripartite structure of the LRB was also useful in another way. The representative nature of the tribunal offers a basis for assurance that discretion will be exercised not simply on the basis of a legally enforceable right but on the basis of what the Board considers to be a fair reconciliation of conflicting interests and claims. In this regard, it is of great comfort to the claimant to know that a friendly point of view will be found on the Board. Significantly, the claimant's knowledge that his case is understood and carefully reviewed by a representative Board also adds moral strength to the tribunal's final decision, especially when it goes against the claimant. Since it is difficult for the claimant to argue that he was

<sup>68</sup> This information is based on an interview with Donald R. Munroe, former chairman of the B.C. Labour Relations Board. The same point is made by Paul C. Weiler, first Chairman of the LRB, in his book, *Reconcilable Differences*, p. 294.

<sup>69</sup> *Ibid.*, p. 295.

<sup>70</sup> Weiler, "The Administrative Tribunal," p. 200.



misunderstood, he is under great pressure to quietly accept the Board's ruling.

Two other aspects of Board composition are noteworthy. First, there was a high degree of continuity on the Board; not only did few members resign before their terms expired but many were reappointed to second terms. Second, while appointments were made by the Lieutenant-Governor-in-Council under section 12 of the Labour Code, in practice the Board itself, through its chairman, played a key role in determining who would serve on the tribunal.<sup>71</sup> Both these facets added to the Board's prestige and authority in the labour-management communities.

#### PROCEDURES: THE INTER-RELATIONSHIP OF STYLE AND EFFECTIVENESS

In many respects, the most important aspect of the Board is the procedures it is able to follow in disposing of individual cases. Indeed, the specialized jurisdiction and carefully tailored composition of the Board were designed to ensure that a distinctive approach would be taken in dealing with labour relations issues. This distinctive approach includes many features that stemmed from and were dependent upon what has already been noted about jurisdiction and composition. In particular, the jurisdiction of the Board across the total spectrum of labour law allowed it not only to tell parties what not to do but to influence in a positive way what they would do. Second, the composition of the Board gave its skills in the areas of bargaining and mediation and these skills were to be used often. Finally, the Board, as a permanent and cohesive agency, complete with support staff and industrial relations officers, was set to take the initiative at the propitious moment. And, in labour relations, "timing is just about everything."<sup>72</sup>

One of the most important features of the Board's procedures is the control it exercises over the flow and disposition of its caseload; unlike the courts, the LRB is not exclusively a passive institution that can react only to cases brought before it. It can anticipate problems and influence actions before they get out of hand. Given the sheer volume of cases (see Table 5), the Board found it necessary and prudent to streamline its procedures. It followed a policy of establishing panels made up of one, three, or all members of the Board to deal with the 300 or more cases a

<sup>71</sup> Based on an analysis of Board membership since 1974 (see *AR*, 1974-1980) and on discussions with Donald R. Munroe.

<sup>72</sup> Weiler, "The Administrative Tribunal," p. 200.

TABLE 5  
*The Workload of the B.C. Labour  
 Relations Board, 1974-1980*

Year	Applications and Complaints		No. of applications at formal hearings <sup>a</sup>
	Filed	Disposed of	
1974	3645	3319	n/a
1975	3764	3344	459
1976	3325	3422	329
1977	3813	3859	310
1978	3678	3674	218
1979	4305	4130	252
1980	4419	4426	375
Yearly Average	3850	3739	324
% of Total Applications	—	97% <sup>a</sup>	9% <sup>b</sup>

<sup>a</sup> Percentage of complaints filed.

<sup>b</sup> Percentage of complaints disposed of.

year that required formal hearings. Even so, it was necessary gradually to increase the Board's size from eighteen in 1974 to twenty-five in 1980. In addition to flexible policies in terms of both panel and Board size, the LRB has adopted policies to ensure that the interval between the time an application is filed and its final disposition is kept to a minimum. One such procedure is that formal hearings are not always held in Vancouver at the main office of the Board; in as many as 25 per cent of the cases dealt with by formal hearings each year, the hearing is held outside Vancouver. As well, administrative procedures are constantly monitored and occasionally altered with a view to reducing the delay factor.<sup>73</sup>

The bulk of the Board's cases, however, are not dealt with by formal adjudication since a great many of the matters coming before it are routine and repetitive. Accordingly, the preferred procedural technique adopted in a clear majority of cases — see Tables 6, 7, and 8 — is investigation. Using its permanent industrial relations officers, the Board appoints one of them to investigate and to make a detailed, confidential

<sup>73</sup> See, for example, the discussion of new administrative procedures in *AR*, 1979, pp. 23-25.

TABLE 6  
*The B.C. Labour Relations Board and  
 the Administration of Collective Agreements, 1974-1980*

<i>Year</i>	<i>No. of applications</i>	<i>Cases settled by officer mediation</i>	<i>Cases dealt with by Board orders</i>	<i>Referred back</i>	<i>Withdrawn or not arbitrable</i>
1974	320	199	65	40	16
1975	478	307	94	67	10
1976	672	439	129	92	12
1977	625	442	77	99	7
1978	639	443	70	98	28
1979	558	372	72	98	16
1980	565	397	39	118	11
Yearly Average	551	371	78	87	14
% of Total Applications	—	67%	14%	16%	3%

TABLE 7  
*The B.C. Labour Relations Board  
 and Unfair Labour Practices, 1974-1980*

<i>Year</i>	<i>Complaints filed</i>	<i>Complaints disposed of</i>	<i>Informal settlement</i>	<i>Formal settlement</i>	<i>Withdrawn</i>
1974	142	132	60	52	20
1975	168	164	91	68	5
1976	141	138	92	44	2
1977	211	186	103	83	0
1978	220	206	164	40	2
1979	244	225	148	76	1
1980	241	247	154	92	4
Yearly Average	195	185	116	65	4
% of Total Applications	—	95% <sup>a</sup>	63% <sup>b</sup>	35% <sup>b</sup>	2% <sup>b</sup>

<sup>a</sup> Percentage of complaints filed.

<sup>b</sup> Percentage of complaints disposed of.

TABLE 8  
*The B.C. Labour Relations Board and Alleged Illegal Strikes,  
 Lockouts, and/or Picketing, 1974-1980*

Year	Number of applications	Settlement by officer or panel <sup>a</sup>	Settlement by board adjudication <sup>b</sup>	Dismissed, rejected or withdrawn <sup>c</sup>
1974	36	28	4	4
1975	138	72	44	22
1976	142	89	40	13
1977	136	104	27	5
1978	214	150	51	13
1979	315	228	59	28
1980	312	225	59	28
Yearly Average <sup>d</sup>	210	145	47	18
% of Total Applications <sup>d</sup>	—	69%	22%	9%

<sup>a</sup> Dispute settled by an investigating officer or a Panel of the Board. It should also be noted that the LRB, in an attempt to deal with applications as expeditiously as possible, often disposes of cases informally (by phone, by letter, by informal meetings) without the need for formal, written applications. The percentage of applications dealt with in this manner each year have been indicated by the Board since 1976. The figures are: 1976 (35%); 1977 (52%); 1978 (30%); 1979 (29%); 1980 (23%).

<sup>b</sup> Dispute disposed of by a Board adjudication that a violation had occurred or would occur or that a specific activity should be restricted.

<sup>c</sup> Dispute disposed of by a Board adjudication that no violation had occurred or would occur or that a specific activity should not be restricted; or by the Board refusing to rule on proceedings; or application withdrawn prior to significant involvement of the Board.

<sup>d</sup> Excludes 1974 since figures cover only a part of the year. Section V of Code was not proclaimed until Labour Day, 1974.

report. On the basis of this report and the written submission of the parties, the Board disposes quickly and efficiently with the majority of its caseload.

The Board also possesses useful powers to enable it to carry out its investigating role. It has power *inter alia* to compel testimony, to accept evidence which may not be admissible in a court of law, to enter and inspect premises and examine records, and to perform investigative functions through authorized agents (i.e., industrial relations officers). The

Board is also master of its own procedures, subject only to the requirement that parties be afforded a full opportunity to be heard.<sup>74</sup>

In a certain number of cases, however, investigation is only a preliminary stage for either adjudication before a Board panel or mediation. In the latter case especially, the Board's procedures and powers combine in an almost surgical manner to respond directly to the problem before it gets out of hand without using "overkill." Perhaps the best — although by no means the only — example of the Board's flexible and effective procedures are those utilized in cases of grievance that arise during the life of a collective agreement.<sup>75</sup> The Board's role in this sensitive and troublesome area is principally outlined in section 96 of the Labour Code, which states that notwithstanding the grievance and arbitration provisions of a collective agreement, either party to the agreement may apply to the LRB for the appointment of an officer to confer with the parties to assist them to settle the grievance. The officer shall then meet with the parties and then provide the Board with a report. If the officer fails in his efforts to find a settlement, the Board may either arbitrate the dispute itself or refer the matter back to the parties to be arbitrated by an ordinary arbitration board. In short, subject to one caveat, the Board is empowered to substitute itself for the ordinary arbitration process, and where it does, the legislation contemplates that the initial thrust of the Board's involvement will be mediative. The one caveat is that the legislation allows the parties to negotiate into their collective agreements a provision which excludes the operation of section 96, but few agreements in the province contain such an exclusion.<sup>76</sup>

<sup>74</sup> *Labour Code*, sections 18, 19, 20, 21 and 35.

<sup>75</sup> Another important example is the Board's procedures in dealing with alleged strikes, lockouts and/or picketing. See Table 8.

<sup>76</sup> Donald R. Munroe, "The British Columbia Experience with Grievance Mediation," Address to 1981 Conference, Society of Professionals in Dispute Resolution, Toronto. A copy of this paper is in the author's possession.

It should also be noted that the Board has issued a lengthy policy statement on section 96. See note 60, above. The statement examines the powers of the Board under section 96 and attempts to formulate general guidelines for the exercise of the Board's discretion. In addition, the policy statement sets out in detail the Board's views of the purpose of the section 96 procedure and how, within the larger framework of the Code, the use of that procedure may promote the constructive settlement of grievances and thus secure and maintain industrial peace during the term of the collective agreement.

The Board's experience with section 96 is discussed in some detail in Paul C. Weiler, "The Role of the Labour Board as an Alternative to Arbitration," in Barbara D. Denis and Gerald G. Somers, eds., *Arbitration — 1977: Proceedings of the Thirtieth Annual Meeting, National Academy of Arbitrators* (Washington: Bureau of National Affairs, 1978), pp. 72-89.

TABLE 9  
*The B.C. Labour Relations Board's Use of Section 96  
of the Labour Code*

Year	Cases disposed of	Form of Settlement				
		Mediation	Referred back	Admini- strative decision	Board adjudi- cation	Other <sup>a</sup>
1974	320	199	40	65 <sup>b</sup>	—	16
1975	478	307	67	82	12	10
1976	672	439	92	114	15	12
1977	625	442	99	66	11	7
1978	639	443	98	63	7	28
1979	558	372	98	57	15	16
1980	565	397	118	28	11	11
Yearly Average	551	371	87	68 <sup>c</sup>	12	14
% of Cases Disposed of	—	67%	16%	12% <sup>c</sup>	2%	3%

<sup>a</sup> This category includes cases found to be non-arbitrable or cases that were withdrawn.

<sup>b</sup> Figures for 1974 cannot be broken down between administrative decisions and board adjudication.

<sup>c</sup> Average and % excludes 1974.

While the Board is not required to appoint an officer simply because it has been requested to do so, its practice has been to make appointments if the difference between the parties appears to be arbitrable under the agreement and if all steps in the grievance procedure prior to arbitration have been exhausted. This is because the Board considers that the primary purpose of section 96 is to offer the parties help and advice in resolving their differences without the expense and delay of an arbitration hearing.<sup>77</sup>

Since 1973, officer mediation under section 96 has achieved a settlement in approximately two-thirds of the applications made to the Board (see Table 9). This very substantial rate of officer settlement is a clear tribute to the effectiveness of Board procedures and is of major benefit to the labour relations community in British Columbia. Through officer mediation, the parties often reach a voluntary accommodation of their

<sup>77</sup> AR, 1980, p. 46.

differences under their own contract rather than having a binding decision imposed on them by an outside legal authority. And a settlement reached in this manner is always more effective than one imposed by outsiders, whether by a court or a labour relations board.

The frequent use of mediation also involves a recognition that few collective agreements are models of clarity, even though they are expected to govern a wide range of employment conditions and relationships for conditions and relationships for lengthy periods of time. Given the fact that most labour negotiators are not legally trained, and the fact that most contracts are prepared under the extreme pressure of an expiry date or strike deadline with a major concern for economic impact and not precise language, it is not surprising that problems will occur. In such circumstances, it is often artificial for the parties to a contract to speak of legal rights or duties. In such circumstances, if a skilled grievance mediator can bring the parties to a voluntary accommodation, he not only resolves the immediate grievance, he also assists the parties in clarifying for future negotiations the contract language problems that exist. Significantly, "the parties' confidence in their collective agreement as an instrument of self-government is more likely to be maintained by such volunteerism than by an attributed solution which, in the context of hopelessly ambiguous contract language, is more a product of arbitral intuition than of law."<sup>78</sup>

There is, as well, another important benefit derived from the Board's frequent use of grievance mediation. Not only does this procedure avoid a potentially serious overloading of the arbitration process, it prevents arbitration procedures from becoming unduly prolonged, too formalized, and too expensive.

The cost of getting simple grievances settled can be too great for less prosperous trade unions and employers. The result is that a "rich" employer can stonewall a "poor" trade union on all grievances, and probably win the most cases by default; or a "rich" trade union can arbitrate a "poor" employer to death, with the result that the trade union wins most grievances by default. In either event, that is an exercise of power; not an exercise in the sanctity of contract.<sup>79</sup>

The mediation procedures of the Board under section 96 thus provide an additional resource to the parties in the form of an industrial relations

<sup>78</sup> Munroe, "Grievance Mediation," p. 4.

<sup>79</sup> *Ibid.* For similar sentiments, see Paul Weiler, "The L.R.B. as an Alternative to Arbitration," pp. 78-79.

officer who, at no expense to the parties, can assist in securing voluntary dispositions of grievances.

Several other observations can be made regarding grievance mediation by the LRB. There is evidence to suggest that there is a growing appetite for this service, not only from employers — from whom the “sanctity of contract” argument is most frequently heard — but also from trade unions. There is also an increasing number of joint applications.<sup>80</sup> Secondly, one happy by-product of grievance mediation by a standing tribunal is the opportunity to identify preventive mediation opportunities. Board officers, for example, in addition to settling specific grievances, often assist the parties in restructuring their own grievance procedures so as to make them more streamlined and efficacious. As well, a poisoned mid-contract relationship — often the precursor to a bitter and prolonged strike or lockout — can be recognized early and the parties can be assisted in improving the atmosphere of and structure for their upcoming collective bargaining.<sup>81</sup>

Officer mediation, of course, does not always achieve a settlement of an arbitrable difference and in these situations the Board resorts to other techniques. It may either refer the difference back to the parties or inquire into the difference and make an order for final and conclusive settlement of the difference. In exercising its discretion about how it is to proceed in respect to unsettled section 96 applications, the Board takes account of such factors as the nature and significance of the particular grievance, the character of the bargaining relationship between the parties, and the relative capability of Board procedures in achieving a satisfactory disposition of the dispute.

<sup>80</sup> Precise figures can be found in LRB *Annual Reports*. The reasons for the consistent utilization of section 96 by employers, to the extent of thirty to forty applications per year, have been outlined by Paul Weiler: “First, there is a considerable number of small employers who feel the pinch of high arbitration costs as much as do local unions. They will often refer a grievance to the Board even though the trade union wants to take it to arbitration. But even major corporations invite the Board to settle a grievance lodged by a union. They are motivated by a different deficiency in arbitration: the fact that normally it takes quite a bit of time. Sometimes an instant decision is essential in the case of a grievance which is the source of an actual or an incipient wildcat strike. The virtue of a public agency — especially one that is not forced into an adjudicative mold — is that a telephone call from either a management or union official will have the industrial relations officer parachuted immediately into such a dispute. . . . In a high percentage of these cases a solution to the entire dispute is worked out in a matter of hours, often heading off any work stoppage at all, and without forcing any party into a formal confrontation in which it feels compelled to defend its rights and save face.” Paul Weiler, “The L.R.B. as an Alternative to Arbitration,” pp. 83-84.

<sup>81</sup> Munroe, “Grievance Arbitration,” p. 5.



In a considerable number of cases — the number has ranged from a low of 28 in 1980 to a high of 114 in 1976 — the Board exercises its powers to make a binding decision on the basis of the officer's report and submissions from the parties. Generally the cases dealt with by administrative decisions involve minor grievances which the Board anticipates would not go to arbitration or which would place a disproportionate burden on a party required to go to arbitration for a decision. The parties require an authoritative judgement on the merits of the case and a reasonable appraisal of these merits is made on the basis of investigation and written submissions. Typical examples of such grievances are trade-union claims against an insolvent employer for unpaid wages or fringe benefits; differences about minor discipline; and disputes as to the proper identification of specific contract language.

Another category of cases also involves instances where an officer is not able to mediate a settlement but where the matter in dispute is of considerable significance to the parties and thus should receive the full consideration of an oral hearing. The Board's normal practice is to refer these cases back to the parties for an arbitration hearing. This policy embodies the statutory principle that adjudication of key disputes under the agreement should be conducted in an environment which is under the control of the same parties who have negotiated the agreement. As well, the policy reflects several other factors: the need for the selective allocation of the Board's own scarce hearing time among the almost 4,000 cases which come before it each year; the fact that parties are free to design an arbitration system with which they feel comfortable in contrast to the Board which has its own approach and philosophy; and, most fundamental of all, the fact that the parties can choose their own decision makers.<sup>82</sup> Cases are referred back most often in the following kinds of areas: disputes over the discharge of an employee when there is disagreement as to the facts; unresolved seniority grievances in connection with a layoff or promotion where the relative qualifications of the affected employees are at issue; cases involving major issues of contract interpretation which may be of significant value as a future precedent and require reference to extrinsic evidence and argument about the relative arbitral jurisprudence; and situations where the parties have developed their own specialized dispute resolution procedures, such as jurisdictional disputes in the construction industry or specialized job evaluation programs.

<sup>82</sup> For a full discussion of these factors see Paul Weiler, "The L.R.B. as an Alternative to Arbitration," pp. 86-87.

The one important exception to this policy of referring cases back for arbitration under the collective agreement occurs when the difference between the parties raises an issue of general importance within the statutory responsibilities of the Board. In such instances the matter will be scheduled for a hearing in front of a panel of the Board which will then proceed to adjudicate the grievance and prepare formal reasons for its decisions. Examples of such cases include: grievances about an issue which has led to a wildcat strike or other form of industrial unrest; grievances tied to unfair labour practices; grievances in which the primary issue in dispute is the proper application of key statutory concepts such as "employee," "dependent contractor," or "collective agreement"; and grievances involving major issues of law and/or policy relating to the collective agreement and its proper interpretation, such as the proper scope of disciplinary demotion.

It is significant that the Board's involvement in mid-contract disputes involves not only using an innovative range of resolution techniques, but also using those techniques within a special context. The Board has been "emancipated from the difficult task of interpreting a collective agreement according to the often conflicting dictates of modern arbitral jurisprudence or the traditional common-law doctrines derived from the context of the master-servant relationship."<sup>83</sup> The LRB has noted:

Collective agreements deal with the entire range of employment terms and working conditions often in large, diverse bargaining units. The agreement lays down standards which will govern that industrial establishment for lengthy periods— one, two, even three years. The negotiators are often under heavy pressure to reach agreements at the eleventh hour to avoid a work stoppage and their focus of attention is primarily on the economic content of the proposed settlement, not the precise contract language in which it is expressed. Finally, the collective agreement, though the product of negotiations over many years, must remain a relatively concise and intelligible document to the members of the bargaining unit and the lower echelon of management whose actions are governed by it.<sup>84</sup>

Given these circumstances, disputes which reach the Board usually involve situations where neither side has anticipated an issue. The resolution of such issues is one that calls for a special attitude; the parties to the dispute expect the Board to provide not only assistance, but understanding. The Code recognizes and affirms these expectations by directing the

<sup>83</sup> Joseph Weiler, "Arbitration Under the B.C. Labour Code," p. 195.

<sup>84</sup> "Simon Fraser University and Association of University and College Employees, Local 2" [1976] 2 *Canadian L.R.B. Reports*, pp. 54-59.

Board, in interpreting a collective agreement, to apply principles consistent with sound industrial relations policy. The Board is expected to, and does, examine the contract according to its perception of the typical expectations of an experienced negotiator.<sup>85</sup>

This detailed analysis of the range of procedures used by the LRB in dealing with mid-contract grievances demonstrates that the tribunal is a flexible institution with a full range of techniques at its disposal. These techniques — investigation, mediation, adjudication — are also utilized by the Board for handling cases under other aspects of its jurisdiction, most notably in cases involving unfair labour practices, strike and picketing complaints, and requests for first contract arbitration. In some instances, of course, these techniques are not appropriate and the Board reverts to its judicial role and issues formal orders. Indeed, in certain cases where parties to a dispute are intransigent or where there is persistent and knowing disregard for its orders or for the policies of the Code, to the potential destruction of industrial harmony, the Board grants parties the right to sue.<sup>86</sup> But the key point is that since 1973 this formal — some would say rigid — reaction to labour relations problems has been supplemented by a wide range of other, less formal reactions which are usually more appropriate to a complex, industrial society.

#### CONCLUSION

Labour relations policy in British Columbia has always been a controversial subject and opinions still vary widely about the degree of progress made toward mutual toleration among management, labour and government leaders. Suspicions born of past hostilities still pervade the labour relations scene, sometimes with justification, and these suspicions often still contribute to intransigence. But it can be confidently asserted that the province has come a long way since 1973 in its search for an effective labour relations system.

The 1973 Labour Code began an experiment that has been sustained for almost one decade. It is still too early to determine the long-range success of this experiment but there is little doubt that it will be continued in the foreseeable future. Central to this experiment was the crea-

<sup>85</sup> Paul Weiler, "The Code, The Collective Agreement and the Arbitration Process," pp. 7-8.

<sup>86</sup> See, for example, "Government of the Province of British Columbia on Behalf of the Liquor Distribution Branch of the Ministry of Consumer and Corporate Affairs and Brewery, Winery and Distillery Workers Union, Local 300," [1980] 3 *Canadian L.R.B. Reports*, pp. 468-75.

tion of a Labour Relations Board whose jurisdiction, composition, and procedures fit together in an internally coherent way. This Board, which has generally won praise from all sides, has succeeded in instilling a certain calmness to the B.C. labour relations scene. The advent of the new Board did not, of course, mark an end to industrial conflict. But while labour disputes still figure prominently in news headlines, the climate of labour relations has improved since 1973. The fact is that there is no magic cure for industrial conflict; it will be an integral feature of industrial societies at least until workers and employers become angels. Yet in an imperfect world, the B.C. Labour Relations Board has made a significant contribution to the realization of an effective industrial relations system. It has been instrumental in dissuading all concerned with labour relations from viewing situations in strictly legal terms. Its role has been to facilitate rather than to coerce, and in its use of a pluralistic arsenal of tools for conflict resolution it can claim considerable success.

## APPENDIX

## TABLE A

## STATUTORY HISTORY OF THE LABOUR CODE

*Part One: The Labour Code*

<i>Statute</i>	<i>Date and Manner of Coming into Force</i>	<i>Sections in Force</i>	<i>B.C. Gazette References</i>
<i>Labour Code, RSBC 1979, c.212 (formerly Labour Code of British Columbia, SBC 1973, (2nd Sess.), c. 122)</i>	13 November 1973 Proclamation	12, 26, 124, 139, 140, 150	Reg. 424/74, Pt. II, V. 16, p. 645
	20 December 1973 Proclamation	21, 55	Reg. 12/74, Pt. II, V. 17, p. 158
	14 January 1974 Proclamation	1-11, 13-20, 22-25, 27-30, 32-54, 56, 59-69, 73 92-112, 122, 123, 125-127, 138, 141-149, 150A, 151(a), 152	Reg. 41/74, Pt. II, V. 17, p. 192
	24 January 1974 Proclamation	70-72	Reg. 53/74, Pt. II, V. 17, p. 195
	1 March 1974 Proclamation	74-78	Reg. 154/74, Pt. II, V. 17, p. 407
	14 March 1974 Proclamation	113-121A	Reg. 174/74, Pt. II, V. 17, p. 433
	15 August 1974 Proclamation	57, 58	Reg. 578/74, Pt. II, V. 17, p. 949
	2 September 1974 Proclamation	31, 79-91	Reg. 606/74, Pt. II, V. 17, p. 998
	16 September 1974 Proclamation	151(b) and (c)	Reg. 682/74, Pt. II, V. 17, p. 1116

## APPENDIX

## TABLE A

## STATUTORY HISTORY OF THE LABOUR CODE

*Part Two: Amending Acts*

<i>Statute</i>	<i>Date and Manner of Coming into Force</i>	<i>Sections in Force</i>	<i>B.C. Gazette References</i>
<i>Statute Law Amendment Act, 1974, SBC 1974, c.87, s.22</i>	14 October 1974 Proclamation	22(a) (among others)	Reg. 709/74, Pt. II, V. 17, p. 1158
	20 June 1974 Royal Assent	22(b) - 22(i) (among others)	N/A
<i>Essential Services Continuation Act, SBC 1974, c.108, s.6</i>	9 August 1974 Royal Assent	6 (among others)	N/A
<i>Elevator Construction Industry Labour Disputes Act, SBC 1974, c.107, s.6</i>	26 November 1974 Royal Assent	6 (among others)	N/A
<i>Labour Code of British Columbia Amendment Act, 1975, SBC 1975, c.33</i>	26 June 1975 Royal Assent	1-6, 8-33	N/A
	14 January 1974 Retroactive Effect	7	N/A
<i>Labour Code of British Columbia Amendment Act, 1976, SBC 1976, c.26</i>	30 June 1976 Royal Assent	1-8	N/A
<i>Miscellaneous Statutes Amendment Act, 1976, SBC 1976, c.32</i>	8 July 1976 Proclamation	12A	Reg. 391/76, Pt. II, V. 19, p. 511
<i>Labour Code of British Columbia Amendment Act, 1977, SBC 1977, c.72</i>	27 September 1977 Royal Assent	1-12	N/A
<i>Ministerial Titles Amendment Act, SBC 1977, c.75</i>	21 October 1977 Proclamation	Sch. I, Ss. 8(2), 127(3), 129(a) 136, 137(1) (a)	N/A
<i>Essential Services Disputes Act, SBC 1977, c.83</i>	28 October 1977 Proclamation	19 repeals 73(1) to (6)	N/A
<i>Miscellaneous Statutes Amendment Act, 1978, SBC 1978, c.28</i>	6 July 1978 Proclamation	11 amends 69	N/A

## APPENDIX

TABLE B

STATUTES CONFERRING AUTHORITY ON THE  
LABOUR RELATIONS BOARD

<i>Statute</i>	<i>Date and Manner of Coming into Force</i>	<i>Sections in Force</i>	<i>B.C. Gazette References</i>
<i>Labour Code, RSBC 1979, c.212</i>	Refer Table A	1-127, 138-154	
<i>Public Service Labour Relations Act, RSBC 1979, c.346</i>	3 January 1974 Proclamation	1-28 (amendments to ss.4, 11 and 17 yet to be proclaimed)	Reg. 14/74 Pt. II, V. 17, p. 160
<i>Assessment Authority Act, RSBC 1979, c.22</i>	20 June 1974 Royal Assent	21 (among others)	N/A
<i>Institute of Technology Act, RSBC 1979, c.199</i>	4 July, 1974 Proclamation	7	Reg. 485/74, Pt. II, V. 17, p. 788
<i>Essential Services Continuation Act, SBC 1974, c.108, s.4</i>	9 August, 1974 Royal Assent	4 (among others)	N/A
<i>Elevator Construction Industry Labour Dispute Act, SBC 1974, c.107, ss.3, 5</i>	26 November 1974 Royal Assent	3, 5 (among others)	N/A
<i>Collective Bargaining Continuation Act, SBC 1975, c.83, s.7</i>	7 October 1974 Royal Assent	7 (among others)	N/A
<i>Ferry Corporation Act, RSBC 1979, c.128</i>	30 June 1976 Royal Assent	23 among others)	N/A
<i>Hospital Services Collective Agreement Act, SBC 1976, c.21, s.7</i>	9 June 1976 Royal Assent	7 (among others)	N/A
<i>Railway and Ferries Bargaining Assistance Act, SBC 1976, c.48, s.19</i>	15 June 1976 [s.22(1)] Royal Assent on 14 June 1976	Part II (6-14)	N/A
	3 February 1977 Proclamation	1, Pt. I (2-5)	Reg. 44/77, Pt. II, V. 20, p. 198

<i>Statute</i>	<i>Date and Manner of Coming into Force</i>	<i>Sections in Force</i>	<i>B.C. Gazette References</i>
<i>Community Resource Board Act, RSBC 1979, c.58</i>	30 September 1977 Proclamation	4	N/A
<i>Essential Service Dispute Act, RSBC 1979, c.113</i>	28 October 1977 Proclamation	1-18 (and schedule)	N/A
<i>System Act, RSBC 1979, c.399</i>	1 September 1977 Proclamation	17 (among others)	N/A
<i>College and Institute Act, RSBC 1979, c.53</i>	15 December 1977 Proclamation	30, 42 (among others)	N/A
<i>West Kootenay Schools Collective Bargaining Assistance Act, SBC 1978, c.42</i>	8 December 1978 Royal Assent 15 January 1979 Proclamation	10 (among others)	
<i>Public Service Amendment Act, SBC 1980, c.46</i>	21 August, 1980 Proclamation	6-8 (among others)	N/A

## APPENDIX

## TABLE C

MEMBERS OF LABOUR RELATIONS BOARD  
OF B.C. AS OF 28 FEBRUARY 1981*Chairman*

Donald R. Munroe, Barrister and Solicitor (Munroe, Fraser &amp; Co.)

*Vice-Chairman and Registrar*

Ronald F. Bone, formerly a senior officer of the Office and Technical Employees Union

*Vice-Chairmen*

Rodney L. Germaine, Barrister and Solicitor (Germaine &amp; Jackson)

Ben van der Woerd, formerly a senior industrial relations officer of Lenkurt Electric and ICBC and faculty member at BCIT

G. Bud Gallagher, Barrister and Solicitor (Russell &amp; DuMoulin)

Angus Macdonald, formerly an officer of the United Steelworkers of America

Gabriel M. Somjen, Barrister and Solicitor (Ladner Downs)

Stephen F. D. Kelleher, Barrister and Solicitor (Fraser, Kelleher)

Ray Gautier, formerly president of B.C. &amp; Yukon Building Trades Council



*Members-Management Representatives (part-time)*

Clarence J. Alcott, formerly senior industrial relations officer of MacMillan Bloedel Limited; management consultant

Daniel J. Bell, senior industrial relations officer of Afton Mines Ltd.; small business consultant

John M. Billings, formerly president of Forest Industrial Relations

Brian Foley, executive director of Public Employers of British Columbia

Herbert L. Fritz, real estate developer; formerly president of Dillingham Corporation (Canada) Ltd.

Charles C. Loyst, senior industrial relations officer of Finning Tractor & Equipment Co. Ltd.

Anthony D. Saunders, Barrister and Solicitor (Stewart, Saunders and Aulinger)

Henry H. Volkmann, senior industrial relations officer of B.C. Coal Ltd. (formerly Kaiser Resources Ltd.)

*Members-Trade Union Representatives (part-time)*

John Brown, formerly a senior officer of Teamsters

John L. Fryer, general secretary, B.C. Government Employees' Union

Jack Gerow, business manager, Hospital Employees' Union

James McAvoy, senior officer of the International Brotherhood of Electrical Workers

Jack A. Moore, formerly senior officer of the International Woodworkers of America

Nora A. Paton, chief executive officer of the Registered Nurses' Association of British Columbia (Labour Relations Division)

J. Ray Pegley, formerly a senior officer of Canadian Association of Smelters and Allied Workers

Arnold J. Smith, formerly president of Provincial Council of Carpenters