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## The Transparency of Labour Relations Boards in Canada and the United States

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## Executive summary

Labour Relations Boards (LRBs) in Canada and the United States exert a great deal of authority and power in determining whether or not employees are collectively represented and what the subsequent relations between employers and unions will be like. It is, therefore, critical that LRBs operate in an open and transparent manner. This study is the first we know of that attempts to quantify the transparency of LRBs.

*The Transparency of Labour Relations Boards in Canada and the United States* documents the level of transparency of the 10 provincial Labour Relations Boards in Canada, the Canadian Industrial Relations Board (CIRB), and the National Labor Relations Board (NLRB) in the United States. All 12 of these LRBs deal with private-sector collective bargaining. Our intent is to measure and thereby encourage greater transparency and openness among Labour Relation Boards.

### Index of Labour Relations Board Transparency

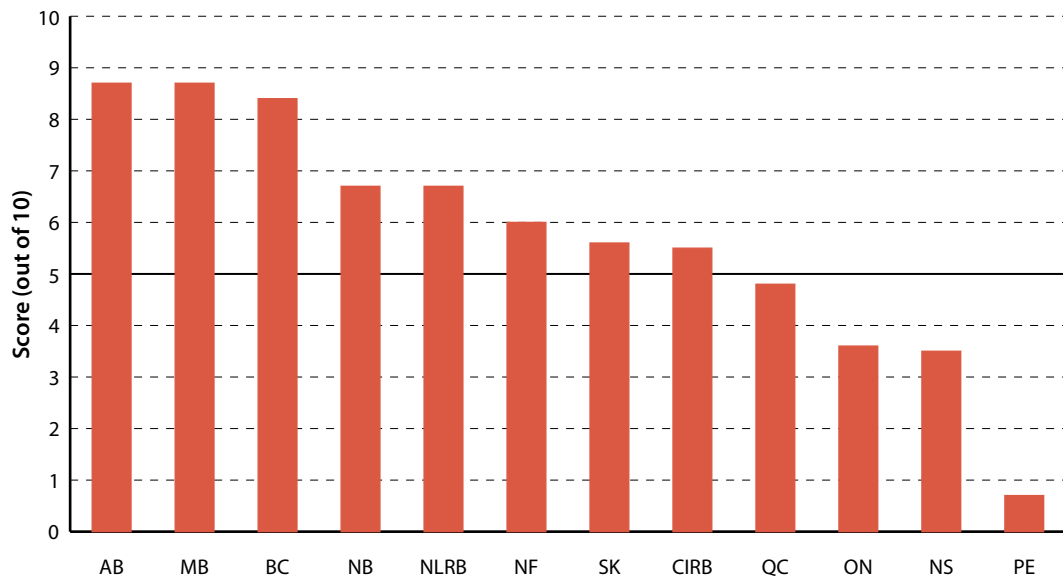
The Index of Labour Relations Board Transparency is composed of three indicators that measure the extent to which LRBs in Canada and the United States disclose and make accessible timely information about their structure and operations. The principal indicator assesses the level of voluntary disclosure of information from two sources of information—the annual report and the website of each LRB. The second indicator examines the responsiveness of LRBs to requests for information. Specific and detailed letters were sent to each of the LRBs requesting information not available in its annual report or on its website. This indicator measures the response of the LRBs to these requests. The third indicator used to evaluate the transparency of LRBs is the timeliness (year) of information available.

### Overall results

Overall, the results indicate that all twelve jurisdictions (10 provincial, 2 national) have room for improvement in terms of voluntary disclosure and dissemination of information in an accessible and timely manner (Exsum Figure 1, Exsum Table 1). The LRBs of western Canadian provinces dominate the top of the Index of Labour Relations Board Transparency. The LRBs of Alberta and Manitoba are the most transparent in Canada and the United States, with the LRB of British Columbia following closely. There is relatively large gap between the LRB of British Columbia in third place and the LRB of New Brunswick and the NLRB in the United States, which ranked fourth.

Unfortunately, four of the 12 LRBs failed to receive scores above 5.0: those of Quebec, Ontario, Nova Scotia, and Prince Edward Island. In addition, the LRB of Saskatchewan and the federal Canadian Industrial Relations Board (CIRB) both received scores only slightly above 5.0. Equally as worrying is that the LRBs of Canada's two most populated provinces, Quebec (ranked 9<sup>th</sup>) and Ontario (ranked 10<sup>th</sup>), performed poorly.

Exsum Figure 1: Index of Labour Relation Board Transparency



Sources: see p. 42. The formula used to calculate each indicator may be found in Appendix D, p. 33.

### Results for indicators

#### Indicator 1: Voluntary disclosure of Information via website or annual report

The LRBs of British Columbia and Ontario voluntarily disclosed the highest percentage (72%) of information either on their website or in their annual report. The LRBs of Alberta and Manitoba tied for third place, each disclosing 68% of the 25 components considered. Unfortunately, LRBs in four Canadian provinces—Quebec, New Brunswick, Nova Scotia, and Prince Edward Island—as well as the CIRB failed to disclose more than 50% of the 25 components either on their website or in their annual report. Evidently, there is a great deal of room for improvement for all jurisdictions in the voluntary disclosure of timely information.

#### Indicator 2: Responsiveness to requests for information

The Canadian Industrial Relations Board (CIRB) had the highest percentage response (94%) to requests for information. New Brunswick’s LRB followed closely with a percentage response of 92% and was followed closely, in turn, by the LRBs of Manitoba and Alberta, both with percentage responses of 88%. Alarming, there were five provincial LRBs—those of Newfoundland, Saskatchewan, Quebec, Ontario and Prince Edward Island—that received 0.0%, indicating that they failed to provide additional information as requested by letter. In fact, three of these LRBs—those of Newfoundland, Saskatchewan, and Ontario—failed to respond at all.

#### Indicator 3: Timeliness of information provided

Ten of the 12 LRBs examined had up-to-date information on their websites and annual reports. It should be noted that there is substantial lag even for these 10 jurisdictions since the reference year is 2003/2004 rather than 2004/2005, which none of the LRBs would have met.

Exsum Table 1: Index of Labour Relations Board Transparency

	Overall		Indicator 1 Voluntary disclosure		Indicator 2 Responsiveness				Indicator 3 Timeliness	
	Score (out of 10.0)	Rank (out of 12)	Percentage of components disclosed	Rank (out of 12)	Number of Components Requested	Number of Components Received	Percentage response	Rank (out of 12)	Number of years information lags	Rank (out of 12)
<b>AB</b>	8.7	1	68%	3	8	7	88%	3	0	1
<b>MB</b>	8.7	1	68%	3	8	7	88%	3	0	1
<b>BC</b>	8.4	3	72%	1	7	4	57%	6	0	1
<b>NB</b>	6.7	4	44%	9	13	12	92%	2	0	1
<b>NLRB (US)</b>	6.7	4	62%	5	9.5	2	21%	7	0	1
<b>NF</b>	6.0	6	60%	6	10	0	0%	8	0	1
<b>SK</b>	5.6	7	56%	7	11	0	0%	8	0	1
<b>CIRB</b>	5.5	8	34%	10	16.5	15.5	94%	1	0	1
<b>QC</b>	4.8	9	48%	8	13	0	0%	8	0	1
<b>ON</b>	3.6	10	72%	1	7	0	0%	8	1	11
<b>NS</b>	3.5	11	24%	11	19	11	58%	5	0	1
<b>PE</b>	0.7	12	20%	12	19	0	0%	8	2	12

Sources: see p. 42. The formula used to calculate each indicator may be found in Appendix D: Methodology, p. 33.

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## Labour Relations Boards and transparency

One of the main objectives of government should be to establish an environment within which productive economic activities can occur. Sustaining a labour market within which individuals and organizations can productively and efficiently exchange labour efforts for remuneration is a critical aspect of any functioning marketplace. Some individuals choose [1] to interact with their employers in a collective manner; that is, through the collective representation of a union. Labour relations laws govern the process through which a union begins and ends as the agent for employees as well as the ongoing interactions between employers and employees (through a union) once collective representation is established. Labour relations laws and the organizations that enforce such laws (Labour Relations Boards) are, therefore, an important component of labour markets. [2]

Transparency, the timely availability of full and accurate information, is a straightforward and cost-effective method by which to ensure accountability. It enables interested individuals, employees, employers, unions, and other affected groups to assess the operations, direction, and decisions of organizations. Given the enormous powers afforded to Labour Relations Boards (LRBs) to adjudicate and enforce labour relations laws, it is imperative that such organizations, like all government organizations, disclose the maximum amount of information in the shortest amount of time in the easiest and most accessible manner possible.

This study is the first that we know of that attempts to quantify transparency [3] of Labour Relations Boards in Canada and the United States. It relies on three indicators, the most important of which is the voluntary disclosure of important information in a LRB's annual report or through its website. The second indicator reports the responsiveness of LRBs to formal requests for information. The third indicator reports the timeliness (year) of the information provided. These three indicators are then combined to calculate the overall Index of Labour Relations Board Transparency.

This study documents the level of transparency of the 10 provincial Labour Relations Boards in Canada, the Canadian Industrial Relations Board (CIRB), and the National Labor Relations Board (NLRB) in the United States. All 12 of these LRBs deal with private-sector collective bargaining. [4] Our intent is to encourage greater transparency and openness among Labour Relation Boards.

### Importance of transparency for Labour Relations Boards

The World Bank defines transparency as an effective flow of information (Kaufmann, 2003). An effective flow of information means that the information is easily accessible, timely, of high quality, and accessible to all relevant parties. In this publication, transparency is defined as the amount of relevant and timely information available to the public. That is, transparency measures the degree to which Labour Relations Boards are open to citizens in reporting their activities in a timely and reasonable manner.

Transparency is important for a number of reasons. First, transparency can increase effectiveness and efficiency of LRBs. Monitoring and keeping track of relevant information (in a timely manner) can lead to better governance simply through the provision of performance information. Such information can be used to target areas for improvement and ensure that the LRB is allocating resources to high-priority areas.

Second, transparency leads to accountability; indeed, it is the bedrock of accountability. Transparency allows the public to verify rules and decisions and to scrutinize the rationale for rulings, thus ensuring the consistency of decisions and process.

Finally, and perhaps most importantly, transparency allows potential employers and investors to evaluate and compare the procedures, decisions, and orders of a Labour Relations Board in one jurisdiction with those in other jurisdictions. In other words, it facilitates inter-jurisdictional competition in labour laws, creating an incentive for jurisdictions to determine the most cost-effective and balanced set of labour relations laws and the most efficient LRB to enforce such laws.

Empirical research demonstrates the benefits of transparency. For instance, Kaufmann (2003) found that transparency is one of the key ingredients of good governance, not only in the public sector but in the private sector as well. Similarly, Islam (2003) found, using data from 169 countries, that those countries that are more transparent have governance of higher quality. A study from the World Bank that examined how best to combat corruption in the transition economies argues that “[t]ransparency via public scrutiny has proven to be one of the most powerful forms of monitoring public officials” (World Bank, 2000: 40). Furthermore, a study from the United States Agency for International Development (USAID, 1999) notes that in order to improve institutional accountability, one needs to improve transparency first to increase detection and oversight. [5] Given the enormous powers and influence of the various Labour Relations Boards across Canada and in the United States, it is crucial for the proper functioning of those labour markets that LRBs are open and transparent.

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## The nature and powers of Labour Relations Boards

Labour Relations Boards (LRBs) are responsible for the enforcement and interpretation of labour relations laws. They regulate the process through which unions gain and lose the right to collectively represent employees as well as the subsequent interactions between employers and unionized employees through their representative unions once such representation is realized (certified).

In general, LRBs have two principal functions: (1) to determine whether employees wish to be represented by a union in dealing with their employer; and (2) to remedy unlawful acts, referred to as unfair labour practices, by employers and unions as well as agents acting on their behalf.

The process through which a union acquires the right to be the exclusive bargaining agent for a group of employees is called “certification.” For a union to submit an application (or petition as it is referred to in the United States) for certification to a LRB, they must have written support from a prescribed percentage of employees. Labour relations laws in eight Canadian provinces (British Columbia, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland) as well as the Canada Labour Code (federal) require employees to complete union membership cards while the labour legislation in the remaining two provinces (Alberta and Saskatchewan) and the National Labor Relations Act in the United States require either written petitions, individual letters, or membership cards.

The threshold for indications of support, either through membership cards, petition, or individual letters ranges from a low of 25% of employees in a bargaining unit in Saskatchewan to 50%+1 in Prince Edward Island. For all American states, the threshold is 30%. [6]

The LRB’s role in the certification process is to determine if the union in question has the required support and if the unit, for which the union applied, is appropriate for collective bargaining. The LRBs, with a few restrictions, have the power to alter and change the unit suggested by the union.

Once the LRB determines that the union has the required level of support, it will either conduct a vote by secret ballot or, in some jurisdictions, automatically certify the union based on a prescribed level of support. Currently, labour relations laws in all 50 US states and five Canadian provinces (British Columbia, Alberta, Ontario, Nova Scotia, and Newfoundland) require a mandatory vote by secret ballot to certify a union. The remaining five provinces (Saskatchewan, Manitoba, Quebec, New Brunswick, and Prince Edward Island) and the federal government allow automatic certification if the indication of support exceeds a specified threshold (Karabegović et al., 2004b; Department of Justice, Canada, 2005).

In the case of an employer deemed to have illegally interfered with a union campaign for certification or otherwise influenced or threatened employees not to vote in favour of certification (classified as an “unfair labour practice” in legislation), the Labour Relations Board may have remedial certification power, whereby it can automatically certify a union that claims to represent the aggrieved employees. In most cases, the Labour Relations Board will automatically certify a union only if, in their opinion, a fair and representative election is not possible. The Labour Relations Boards in six Canadian provinces (British Columbia, Manitoba,



New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island) [7] as well as the Canadian Industrial Relations Board have the power to certify a union automatically in the event that an employer commits an unfair labour practice. Labour legislation in the remaining four Canadian provinces (Alberta, Saskatchewan, Ontario, and Quebec) does not permit remedial certification.

In the United States, it is the Supreme Court's position that the National Labor Relations Board has remedial authority only where the unfair labour practices of the employer are so outrageous and pervasive "that there is no reasonable possibility that a free and uncoerced election could be held" (395 US 575, 1969). For the overwhelming majority of cases, the National Labor Relations Board will undertake an investigation and then proceed to normal certification procedures. In other words, while the National Labor Relations Board has remedial certification authority, it is rarely used (Karabegović et al., 2004b; Department of Justice Canada 2005).

Decertification is the reverse of certification. It is the process by which a union ceases to be a bargaining agent for a group of employees. As in the process of certification, employees must gather a prescribed percentage of employee support in order for the Labour Relations Board to issue a decertification vote. The threshold required to issue a vote varies from a low in US states of 30% of employees in a bargaining unit to a high of 50% + 1 in four Canadian provinces (Saskatchewan, Quebec, Nova Scotia, and Prince Edward Island) and at the federal level (Karabegović et al., 2004b; Department of Justice Canada, 2005).

Unfair labour practices refer to any acts committed either by employers, unions, or agents acting on their behalf that contravene the labour relations laws. Labour Relations Boards are also required to investigate complaints of actions such as employers interfering in union campaigns, unions intimidating employees, illegal activities during a strike or lockout, and alleged violations of the collective agreement by either employers or unions.

In addition to being responsible for certification and decertification applications and complaints of unfair labour practice, LRBs also are responsible for dealing with successor employer applications, technological change provisions, the reinstatement of employees after a legal strike or lock-out, and a number of other provisions that govern the relationship between employers, employees and unions. In each of these cases, Labour Relations Boards are responsible for determining facts and rendering a decision.

### **Differences between LRBs in Canada and the United States**

In Canada, regulation and enforcement of labour relations laws are largely decentralized to the provincial level. Each of the 10 provinces maintains its own independent Labour Relations Board. [8] Each province establishes and maintains its own labour relations laws, which are separate and distinct from those of other Canadian jurisdictions including the federal government. In Canada, federal labour laws do not supersede provincial labour laws.

The federal labour relations board in Canada, referred to as the Canadian Industrial Relations Board, has jurisdiction over the approximately 10% of Canadian employees who are either federal employees or work in federally-regulated industries such as banking (Canadian Industrial Relations Board 2005; Statistics Canada 2004). [9]

Conversely, in the United States, private-sector labour relations laws are regulated by federal law [10] and enforced by the National Labor Relations Board (NLRB). [11] Further, federal labour laws in the United States pre-empt (supersede) any lower, state law. The American states are permitted, however, to clarify, expand, or introduce new labour laws so long as they do not contravene federal law. The NLRB is charged with enforcing all labour relations laws and maintains a network of offices across the United States for this purpose.

### **Scope of powers and the structure of the LRBs**

Labour Relations Boards in Canada are independent, quasi-judicial administrative authorities with full adjudicative responsibilities: they both administer the labour relations laws and resolve disputes arising under the auspices of such laws. The National Labor Relations Board (NLRB) is made up of the main Board, General Counsel, and Regional Offices.

The Board and the General Counsel of the NLRB have two distinct roles. The General Counsel, with the help of Regional Offices, acts as a “prosecutor.” This means that it decides whether to issue a complaint or a petition. [12] The Board, on the other hand, acts as a “panel of judges.” If a Regional Office decides that a complaint or petition has merit and is warranted, the case is sent to an Administrative Law Judge, employed by the NLRB, who determines the facts and issues a decision. All parties may appeal the Administrative Law Judge’s decisions to the Board.

Some Labour Relations Boards have the power to determine their own practices and procedures as deemed necessary to enforce the respective labour relations laws. It is also important to note that LRB decisions in both Canada and the United States can be enforced by the courts. If any of the parties involved fail to comply with an LRB order, the Labour Relations Board can seek remedy and enforcement in the courts (see Appendix C).

### **Appointment of members to Labour Relations Boards**

The members of the LRBs are appointed somewhat differently in Canada and the United States. In Canada, LRB members are appointed by either the Lieutenant Governor (provincial), the Governor General (federal), or by provincial government, as is the case in Quebec. The length of time for which LRB members are appointed varies across provinces (see Appendix C). For example, in Prince Edward Island members of the LRB are appointed for no longer than three years. In Manitoba, on the other hand, a chair and vice-chair are appointed for a period no longer than seven and not less than five years and the remaining members of the LRB are appointed for a term of not less than two years and no longer than five years. LRB members in each province and at the federal level are eligible for reappointment.

In the United States, the NLRB and the General Counsel are appointed by the US President with the consent of the US Senate. [13] The Board members are appointed for a term of five years, except for the last (fifth) member, who is appointed for a term of two years, whereas the General Counsel is appointed for a term of four years. Each Board member and the General Counsel are eligible for reappointment.

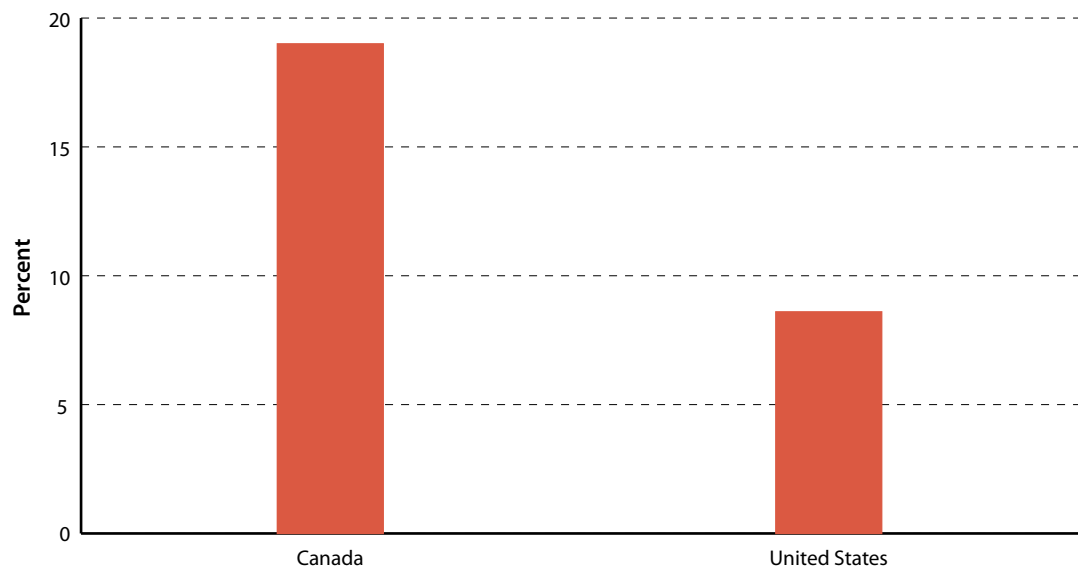
## Influence of LRBs—a function of the rate of unionization

The importance or influence of labour relations laws and the Labour Relations Boards that enforce such laws rests largely on the extent to which employees are unionized. [14] A LRB in a jurisdiction with high levels of private-sector unionization will have more influence and larger effects on the labour market than a LRB in a jurisdiction with a relatively low rate of unionization. [15]

The data for private-sector unionization rates indicate that Canada, much more than the United States, should be cognizant of the activities of LRBs, given the much higher rates of unionization in Canada. Recall that labour relations laws, and thus LRBs, only influence the activities of unionized employment. In 2004, 19.0% of private-sector employment in Canada was unionized versus 8.6% in the United States (table 1, figure 1). [16]

Rates of unionization vary considerably among the Canadian provinces as well as the US states. For example, in 2004, private-sector union coverage varied from a high of 26.7% in Quebec to 9.6% in Prince Edward Island (figure 2). In the United States, the variation across states is even more pronounced: Hawaii has a private-sector unionization of 16.7% compared with North Carolina's 2.2% (table 1).

**Figure 1: Rates of unionization in the private sector in Canada and the United States, 2004**



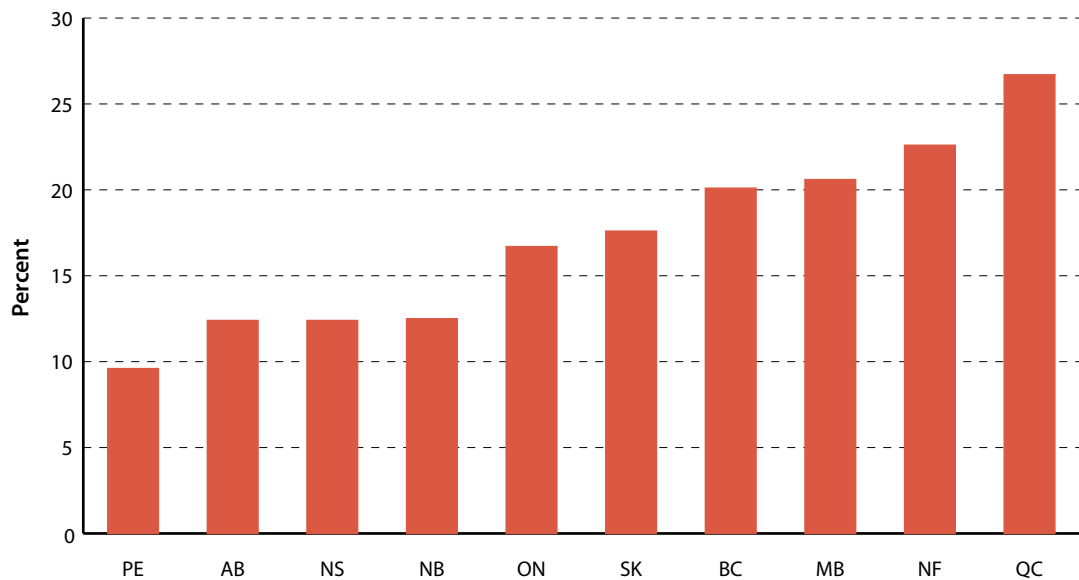
Sources: Statistics Canada, 2004; Hirsch and Macpherson, 2005.

Table 1: Private-sector union coverage as a percentage of private-sector employment, 2004

Canada	19.0	Florida	3.7	New Mexico	4.1
United States	8.6	Georgia	5.0	New York	16.0
		Hawaii	16.7	North Carolina	2.2
British Columbia	20.1	Idaho	4.8	North Dakota	4.5
Alberta	12.4	Illinois	13.0	Ohio	11.2
Saskatchewan	17.6	Indiana	9.6	Oklahoma	3.9
Manitoba	20.6	Iowa	8.1	Oregon	8.8
Ontario	16.7	Kansas	7.4	Pennsylvania	10.1
Quebec	26.7	Kentucky	8.5	Rhode Island	9.4
New Brunswick	12.5	Louisiana	5.2	South Carolina	2.9
Nova Scotia	12.4	Maine	6.5	South Dakota	3.6
Prince Edward Island	9.6	Maryland	7.1	Tennessee	5.3
Newfoundland	22.6	Massachusetts	8.6	Texas	3.3
		Michigan	16.6	Utah	3.5
Alabama	6.5	Minnesota	11.6	Vermont	4.8
Alaska	11.8	Mississippi	4.6	Virginia	4.1
Arizona	4.7	Missouri	11.6	Washington	13.7
Arkansas	4.0	Montana	6.1	West Virginia	11.4
California	10.2	Nebraska	5.7	Wisconsin	11.0
Colorado	5.6	Nevada	11.0	Wyoming	6.1
Connecticut	8.4	New Hampshire	5.2		
Delaware	8.2	New Jersey	12.7		

Sources: Statistics Canada, 2004; Hirsch and Macpherson, 2005.

Figure 2: Rates of private-sector unionization in Canadian provinces, 2004



Source: Statistics Canada, 2004.

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## Index of Labour Relations Board Transparency

The Index of Labour Relations Board Transparency is composed of three indicators that measure the extent to which LRBs in Canada and the United States disclose and make accessible timely information about their structure and operations. The principal indicator assesses the level of voluntary disclosure of information from two sources of information—the annual report and the website of each LRB. The second indicator examines the responsiveness of LRBs to requests for information. Specific and detailed letters were sent to each of the LRBs requesting information not available in its annual report or on its website. This indicator measures the response of the LRBs to these requests. The third indicator used to evaluate the transparency of LRBs is the timeliness (year) of information available.

### Methodology in brief<sup>[17]</sup>

Three sources were used to collect information for the index: the websites and annual reports of LRBs and information requested through letters. The overall index is computed on the basis of the information retrieved from these three sources plus the timeliness of information.

In order to evaluate the information provided through the websites and annual reports, and the responsiveness of LRBs to requests for information through letters, we considered 25 pieces of information (Appendix A).<sup>[18]</sup> For each of these components, a LRB received a score of 1.0 if it disclosed the information or a 0.0 (zero) if the information was not available.

The number of components collected from websites and annual reports were combined with the number of components obtained from the response to letters requesting additional information. The information received through letters was given less weight than information made available voluntarily through the websites or annual reports. The weight given to information obtained through the letters depends negatively on the percentage of components requested by letters, which means that the more indicators obtained through the letters, the lower the weight (see Appendix D for further details).<sup>[19]</sup> The result obtained by combining these two indicators, information available from website or annual report and response to letters, was combined with the timeliness indicator to calculate the overall index. The overall index is measured on a scale of 0.0 to 10.0. Higher scores indicate higher levels of transparency.

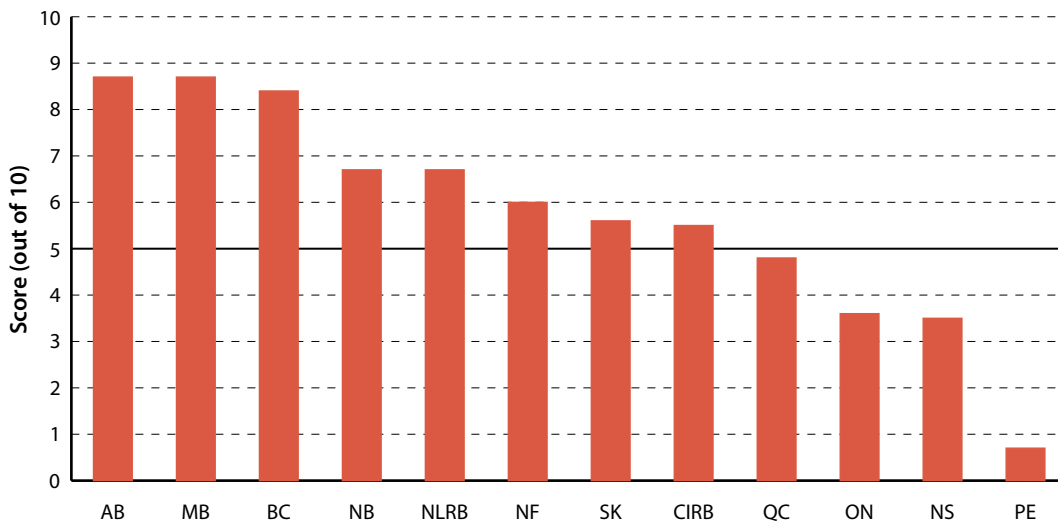
### Overall results for the Index of Labour Relations Board Transparency

LRBs in western Canadian provinces dominate the top of the overall Index of Labour Relations Board Transparency. The LRBs of Alberta and Manitoba are the most transparent LRBs in Canada and the United States with a score of 8.7 out of 10.0 (figure 3, table 2). British Columbia's LRB (third place) follows closely with score of 8.4. There is large gap between British Columbia's LRB and, in fourth place, the LRB of New Brunswick and the NLRB in the United States, which had a score of only 6.7.

Four of the 12 LRBs failed to receive scores above 5.0; all four jurisdictions were Canadian provincial LRBs, those of Quebec, Ontario, Nova Scotia, and Prince Edward Island. Two other boards received scores that only narrowly exceeded 5.0: the LRB of Saskatchewan (5.6) and the Canadian Industrial Relations Board (5.5).

Prince Edward Island’s LRB had the lowest score of 0.7. Equally as worrying, however, is that LRBs in Canada’s two most populous provinces, Quebec (score 4.8; ranked 9th) and Ontario (score 3.6; ranked 10th) performed poorly.

**Figure 3: Index of Labour Relation Board Transparency**



Sources: see p. 42. The formula used to calculate each indicator may be found in Appendix D, p. 33.

**Table 2: Index of Labour Relations Board Transparency**

	Overall		Indicator 1 Voluntary disclosure		Indicator 2 Responsiveness				Indicator 3 Timeliness	
	Score (out of 10.0)	Rank (out of 12)	Percentage of components disclosed	Rank (out of 12)	Number of components Requested	Number of components Received	Percentage response	Rank (out of 12)	Number of years information lags	Rank (out of 12)
AB	8.7	1	68%	3	8	7	88%	3	0	1
MB	8.7	1	68%	3	8	7	88%	3	0	1
BC	8.4	3	72%	1	7	4	57%	6	0	1
NB	6.7	4	44%	9	13	12	92%	2	0	1
NLRB (US)	6.7	4	62%	5	9.5	2	21%	7	0	1
NF	6.0	6	60%	6	10	0	0%	8	0	1
SK	5.6	7	56%	7	11	0	0%	8	0	1
CIRB	5.5	8	34%	10	16.5	15.5	94%	1	0	1
QC	4.8	9	48%	8	13	0	0%	8	0	1
ON	3.6	10	72%	1	7	0	0%	8	1	11
NS	3.5	11	24%	11	19	11	58%	5	0	1
PE	0.7	12	20%	12	19	0	0%	8	2	12

Sources: see p. 42. The formula used to calculate each indicator may be found in Appendix D: Methodology, p. 33.

**Indicator 1: Voluntary disclosure of information via website or annual report**

The first indicator of the Index measures the availability of information from two sources: the LRBs’ websites and annual reports. LRBs are given a positive score (1.0) for each of the 25 components considered if the information is provided in either their annual report or on their website. This is the most important indicator of transparency since it represents a voluntarily disclosure of the 25 pieces of information (components) considered. Note that each of the 25 pieces of information was equally weighted even though some of the components are more important than others. Table 3 lists the 25 points of information and the results for each LRB.

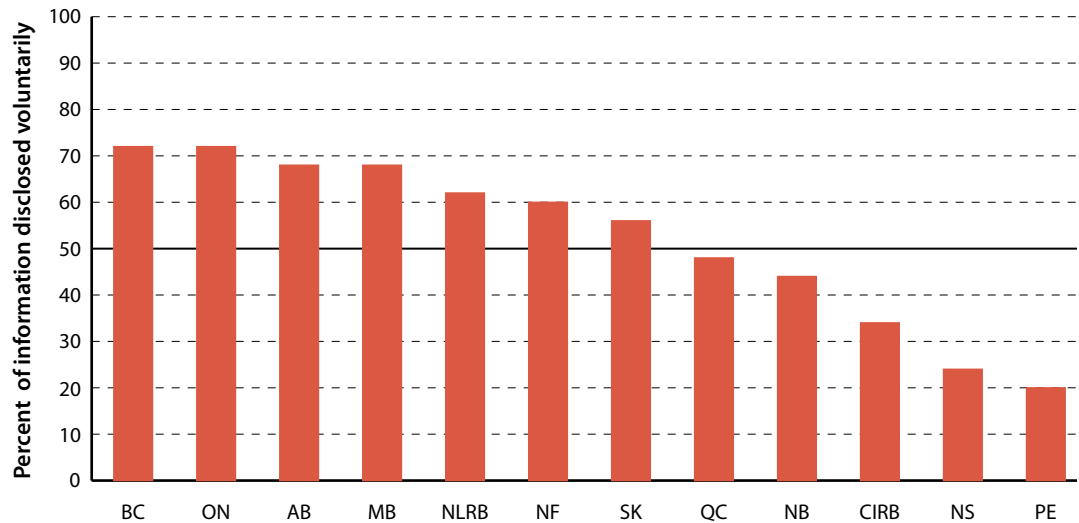
**Observations**

The Labour Relations Boards of British Columbia and Ontario voluntarily disclosed the highest percentage (72%) of information either on their website or in their annual report (figure 4). The LRBs of Alberta and Manitoba tied for third place, each disclosing voluntarily 68% of the information considered. Following these are the NLRB (US), which disclosed 62% of the information, and Newfoundland’s LRB, which disclosed 60%.

Unfortunately, LRBs in five Canadian jurisdictions—Quebec, New Brunswick, the Canadian Industrial Relations Board (federal), Nova Scotia, and Prince Edward Island—failed to disclose voluntarily more than 50% of information considered either on their website or in their annual report. Prince Edward Island disclosed voluntarily the smallest percentage (20%).

Even though seven of the 12 jurisdictions examined disclosed more than 50% of the information considered either on their website or in their annual report, there is considerable cause for concern about the level of voluntary disclosure. LRBs in the top-ranked jurisdictions, British Columbia and Ontario, only disclosed a little over 70% of the information for which we were searching and there is a great deal of room for improvement for all jurisdictions in the voluntary disclosure of timely information.

**Figure 4: Voluntary disclosure of information via website or annual report**



Sources: see p. 42. The formula used to calculate each indicator may be found in Appendix D, p. 33.



Table 3: Information available from the websites and annual reports of Labour Relations Boards

	BC	AB
<b>Governance</b>		
1 Biographies of board members	✓	✓
2 Information on balance of representation of a Labour Relations Board	✓	✓
3 Balance sheet and income statement		✓
4 Information on goals and performance measures as guidelines for assessing performance		✓
5 Real-time tracking system		✓
6 Average annual cost per disposed case		
<b>Information relating to specific provisions in the labour legislation</b>		
7 Total number of certification applications, processed and granted	✓	✓
8 Time required to process a certification application	✓	
9 Number of certification applications based on a secret ballot vote, processed and granted	✓	✓
10 Total number of decertification applications, processed and granted	✓	✓
11 Time required to process a decertification application	✓	
12 Total unfair labour practices complaints, processed and granted	✓ [a]	✓
13 Time required to process an unfair labour practice complaint	✓ [a]	
14 Unfair labour practice complaints processed by employer, processed and granted	✓ [b]	✓
15 Unfair labour practices complaints processed by union, processed and granted	✓ [b]	✓
16 Total strike complaints, processed and granted	✓	✓
17 Time required to process strike complaints		
18 Total lock-out complaints, processed and granted	✓	✓
19 Time required to process a lock-out complaint		
20 Total number of successor employer applications, processed and granted	✓	
21 Time required to process successor employer applications	✓	
<b>Accessibility of information via a website</b>		
22 Availability of a website	✓	✓
23 Availability of the most recent annual report	✓	✓ [c]
24 Availability of "Contact Us" page	✓	✓
25 Availability of Labour Relations Act, Regulations, and Labour Relations Board's rules	✓	✓
<b>Summary Information</b>		
Number of available components	18	17
Total number of components considered	25	25
Percent of components disclosed voluntarily	72%	68%
Rank	1	3

Sources: see p. 42. Notes: see p. 18.

✓ indicates that the information was disclosed by a Labour Relations Board either on its website or in its annual report.



SK	MB	ON	QC	NB	NS	PE	NF	CIRB	NLRB (US)
✓	✓	✓					✓	✓	✓
✓	✓	✓		✓		✓	✓	✓	✓
✓	✓	✓	✓	✓	✓		✓	✓	✓
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
			✓ [d]						
		✓		✓					
✓	✓	✓	✓	✓			✓	✓ [j]	✓
	✓	✓	✓				✓		✓
	✓	✓					✓		✓
✓	✓	✓		✓			✓		✓
	✓		✓				✓		
✓	✓	✓		✓			✓		✓ [k]
	✓	✓	✓						✓
									✓ [k]
									✓ [k]
✓		✓							✓ [l]
✓									
		✓							✓ [l]
✓	✓	✓		✓			✓		
	✓		✓						
✓	✓	✓	✓	✓ [e]	✓	✓	✓	✓	✓
✓	✓	✓	✓		✓ [g]	[h]	✓	✓	✓
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
✓	✓	✓	✓	✓ [f]	✓	✓ [i]	✓	✓	✓
14	17	18	12	11	6	5	15	8.5	15.5
25	25	25	25	25	25	25	25	25	25
56%	68%	72%	48%	44%	24%	20%	60%	34%	62%
7	3	1	8	9	11	12	6	10	5

### Notes to table 3

- a The British Columbia Labour Relations Board discloses most, but not all, complaints of unfair labour practices (SS. 5, 6, 7, 8, 9, 10, and 11). Time required to process a complaint of unfair labour practice was available for only one on many sections (SS. 6) pertaining to unfair labour practices. However, British Columbia Labour Relations Board was given a score of one for each of the two components.
  - b The British Columbia Labour Relations Board discloses the number of complaints filed by employers and unions in the 2003 fiscal year but it does not disclose how many of those cases were granted. Therefore, the Board received a half score for each one of the two components.
  - c The Alberta Labour Relations Board does not produce its own annual report but, instead, its annual information is published as part of the Alberta Department of Human Resources and Employment annual report and includes only the ALRB's financial information and a business plan. Since the Alberta Department of Human Resources and Employment annual report was available on the Board's website, the Board was given a score of one for this component.
  - d Quebec's Commission des relations du travail (Labour Relations Board) has a real-time tracking system but it is for internal use only. The Board was given a score of one for this component.
  - e The website of the New Brunswick Labour and Employment Board contains the Board's mission statement and contact information only. However, the Board was given them a score of one for this component.
  - f The New Brunswick Labour and Employment Board does not post the Labour Relations Act on its website; it is posted instead on the website of the Department of Training and Employment Development, under whose jurisdiction the Board falls. Nevertheless, the Board was given a score of one of this component.
  - g The Nova Scotia Labour Relations Board does not produce its own annual report but, instead, its annual information is published as part of the annual report of Nova Scotia Environment and Labour. Since the Nova Scotia Environment and Labour's annual report was online, the Board was given a score of one for this component.
  - h Prince Edward Island Labour Relations Board annual report is available upon request and is free of charge. However, since it is not available on the Board's website, the Board was given a score of zero for this component.
  - i The Prince Edward Island Labour Relations Board posts the Labour Relations Act on its website but not any of the Board's rules. Nevertheless, the Board was given a score of one of this component.
  - j The Canadian Industrial Relations Board discloses the total number of certification applications filed in its annual report but not the number granted. Therefore, the Board was given a half score for this component.
  - k In its annual report, the National Labour Relations Board discloses the total number of complaints of unfair labour practices as well as the number of those filed by employers and unions; it does not disclose the number of those complaints granted. Therefore, the Board was given a half score for each of the three components.
  - l The National Labour Relations Board provides the number of complaints pertaining to strikes and lock-outs but not the number of those complaints granted. Therefore, the Board was given a half score for each of the two components.
-

## Indicator 2: Responsiveness to requests for information

The second indicator of the Index of Labour Relation Board Transparency examines how responsive LRBs are to requests for information. Detailed letters requesting specific and itemized information were sent to all of the LRBs. [20] The requests were based on the information not available on their websites and in their annual reports. In other words, the letters or request were used to try to fill the information gaps that existed after the analysis of the websites and annual reports. [21]

The number of pieces of information requested varied across jurisdictions from a high of 19 in Nova Scotia and Prince Edward Island to a low of seven in British Columbia and Ontario. The basic calculation used was the same as that incorporated in the previous indicator: the ratio of questions responded to compared with the total number requested. Note that the number of components obtained through letters was adjusted before being included in the overall Index to reflect its involuntary nature and thus its secondary importance as a measure of transparency. Specifically, the results of this analysis were allocated weights, which were calculated to deflate the effect of this component of the overall index.

### Observations

Table 4 presents the response rate, the number of responses received as a percentage of the queries submitted to each LRB (see Appendix D: Methodology). The Canadian Industrial Relations Board (CIRB) achieved the highest response rate of 94% (figure 5, page 23). New Brunswick's LRB followed closely with a response rate of 92% and, in turn, was followed closely by the LRBs of Manitoba and Alberta, both with response rates of 88%.

The National Labor Relations Board (US) received the lowest non-zero response rate of 21%, evidence of a poor response to the request for information. Alarming, boards in five Canadian provinces—Newfoundland, Saskatchewan, Quebec, Ontario and Prince Edward Island—had response rates of 0.0%, since they did not respond to the letter and failed to provide additional information as requested. In fact, three of these LRBs—those in Newfoundland, Saskatchewan, and Ontario—failed to respond at all.

## Indicator 3: Timeliness of information provided

The third indicator of the Index of Labour Relation Board Transparency assesses the timeliness of the information available from the websites and annual reports of LRBs. The usefulness and applicability of dated information is obviously much less than that of current information.

### Observations

Table 5 contains the results for Indicator 3. Ten [22] of the 12 LRBs examined had up-to-date information on their websites and annual reports. It should be noted that there is substantial lag even for these 10 jurisdictions since 2003/2004 is the reference year rather than the more current 2004/2005, which none of the LRBs would have met. Information available from Prince Edward Island's LRB was two years out of date while that from Ontario's LRB lagged one year.



Table 4: Information provided by Labour Relation Boards in response to requests [a]

	BC	AB
Governance		
1 Biographies of board members	—	—
2 Information on balance of representation of a Labour Relations Board	—	—
3 Balance sheet and income statement	✓	—
4 Information on goals and performance measures as guidelines for assessing performance		—
5 Real time tracking system		—
6 Average annual cost per disposed case	✓ [b]	
Information relating to specific provisions in the labour legislation		
7 Total number of certification applications, processed and granted	—	—
8 Time required to process a certification application	—	✓
9 Number of certification applications based on a secret-ballot vote, processed and granted	—	—
10 Total number of decertification applications, processed and granted	—	—
11 Time required to process a decertification application	—	✓
12 Total unfair labour practices complaints, processed and granted	—	—
13 Time required to process an unfair labour practice complaint	—	✓
14 Unfair labour practice complaints filed by employer, processed and granted	[c]	—
15 Unfair labour practices complaints filed by union, processed and granted	[c]	—
16 Total strike complaints, processed and granted	—	—
17 Time required to process strike complaints	✓	✓
18 Total lock-out complaints, processed and granted	—	—
19 Time required to process a lock-out complaint	✓ [d]	✓
20 Total number of successor employer applications, processed and granted	—	✓
21 Time required to process successor employer applications	—	✓
Summary Information		
Number of components received	4	7
Number of components requested	7	8
Response rate (percentage)	57%	88%
Rank	6	3

✓ indicates that a Labour Relations Board provided the requested information;

— indicates that the information was not requested.

Sources: see p. 42. Notes: see p. 22.

SK [e]	MB	ON [e]	QC [e]	NB	NS	PE [e]	NF [e]	CIRB	NLRB (US)
—	—	—		✓ [f]			—	—	—
—	—	—		—	✓	—	—	—	—
—	—	—	—	—	—		—	—	—
—	—	—	—	—	—	—	—	—	—
			—		[g]			✓ [i]	
	✓	—		—					
—	—	—	—	—	✓ [h]		—	✓ [j]	—
	—	—	—	✓			—	✓	—
	—	—		✓	✓ [h]		—	✓	—
—	—	—		—	✓ [h]		—	✓	—
	—		—	✓			—	✓	
—	—	—		—	✓		—	✓	[l]
	—	—	—	✓				✓	—
	✓			✓	✓			✓	[l]
	✓			✓	✓			✓	[l]
—	✓	—		✓	✓			✓	[m]
—	✓			✓				✓ [k]	
	✓	—		✓	✓			✓	[m]
	✓			✓	✓			✓ [k]	
—	—	—		—	✓		—	✓	✓ [n]
	—		—	✓				✓	✓ [n]
0	7	0	0	12	11	0	0	15.5	2
11	8	7	13	13	19	19	10	16.5	9.5
0%	88%	0%	0%	92%	58%	0%	0%	94%	21%
8	3	8	8	2	5	8	8	1	7

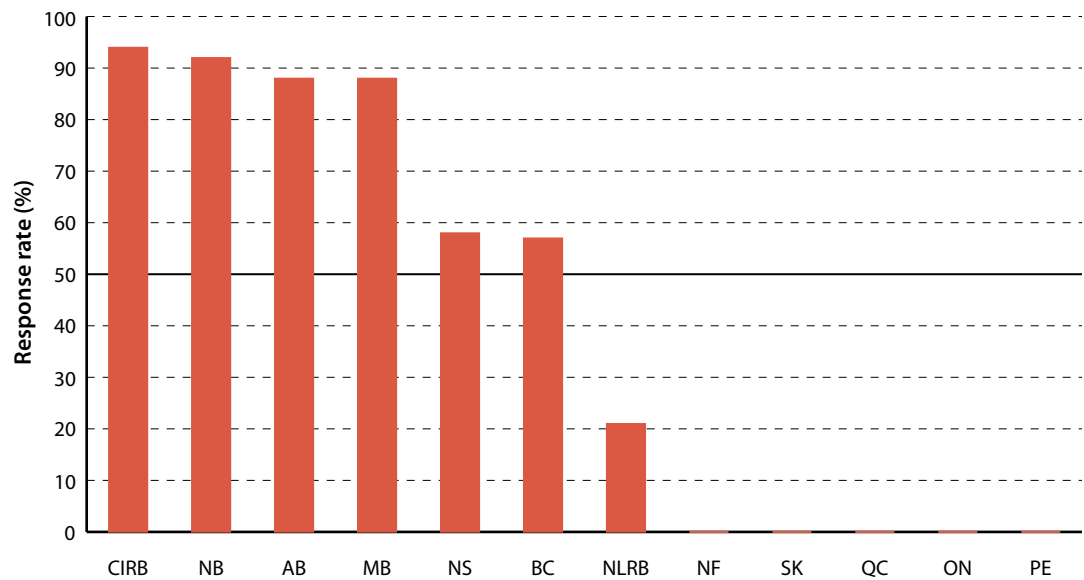
**Notes to table 4**

- a Some of the questions sent to Labour Relations Boards were requests for clarification of information already available on websites or in annual reports and thus we do not consider those components to be obtained through letters. The components were considered to be obtained from websites or annual reports.
- b British Columbia's Labour Relations Board informed us that they would be able to provide us with this information if we clarified what we meant by "case." This was interpreted to mean that they have the information available to compute the component and thus they received a score of one.
- c British Columbia's Labour Relations Board was given a half score for each of the questions about complaints of unfair labour practices filed by employers and by unions since the number of such complaints filed was on its website but the number granted was not.
- d The British Columbia Labour Relations Board did not provide the average time to process lock-out complaint but noted that its staff is looking at whether they can provide us with the requested number. This was interpreted to mean that the Board has this information and thus we have given them a score of one for the component.
- e The Labour Relations Boards of Saskatchewan, Ontario, and Newfoundland never responded to our letters and thus they received a score of zero for each of the components requested. Quebec's Commission des relations du travail (Labour Relations Board) informed us that the information we were requesting is not readily available and that they do not have necessary resources to respond to our requests. The Board received a score of zero for each of the components requested. Prince Edward Island's Labour Relations Board informed us that staff do not have time to respond to our request. The Board received a score of zero for each one of the components requested.
- f The New Brunswick Labour and Employment Board provided us with biographies of most, but not all, of its Board members. The Board received a score of one for this component since it offered to provide us with the remaining biographies in a reasonable amount of time.
- g Nova Scotia's Labour Relations Board did not have a real-time tracking system at the time of the study but plans to implement a new, electronic case-management system sometime in 2005.
- h Information about certification and decertification was not obtained through the formal letters but through the Nova Scotia Environment and Labour Library. This was not an additional information request. Since certification and decertification information is not available on the Nova Scotia Labour Relations Board's website or in its annual report, the information was interpreted as obtained through letters.
- i The Canadian Industrial Relations Board has a case-management system but it is for internal use only. The Board was given a score of one for this component.
- j The number of applications for certification filed is available in the Canada Industrial Relations Board Performance Report but the number of those applications granted was not. Therefore, the CIRB received a half score for this question.
- k The Canadian Industrial Relations Board provided us with the average time to process both strike and lock-out complaints rather than providing us with the average processing time for each group of complaints. Nevertheless, the Board was given a score of one for each of the two components.
- l Complaints of unfair labour practices filed by employers and unions as well as the total number of such complaints were considered as partial questions since the number of complaints filed were in the National Labour Relations Board's annual report. The number of those complaints granted was not in the Board's annual report and thus were requested through the letter. These three partial

questions were considered as one-and-a-half questions when the Index of Labour Relations Board Transparency was computed.

- m Strike and lock-out complaints were considered as partial questions since the number of strike and lock-out complaints “filed” were in the National Labour Relations Board’s annual report. The number of those complaints granted was not in the Board’s annual report and thus we requested them through the letter. These two partial questions were considered as one question when the Index of Labour Relations Board Transparency was computed.
- n The National Labour Relations Board informed us that we needed to fill out a formal Freedom of Information Request in order to obtain the total number of successor employer applications and the average time for processing these applications. This was interpreted to mean that the NLRB has the information available and thus it received a score of one for each of the two components.

Figure 5: Responsiveness to requests for information



Sources: see p. 42. The formula used to calculate each indicator may be found in Appendix D, p. 33.

Table 5: Timeliness of information provided

	Latest year [1] for which information is available	Number of years by which information lags
British Columbia	2002 [2]	0
Alberta	2003/2004	0
Saskatchewan	2003/2004	0
Manitoba	2003/2004	0
Quebec	2003/2004	0
New Brunswick	2003/2004	0
Nova Scotia	2003/2004	0
Newfoundland	2003	0
Canada Industrial Relations Board	2003/2004	0
National Labor Relations Board (US)	2003/2004	0
Ontario	2002/2003	1
Prince Edward Island	2001/2002	2

Sources: see p. 42.

#### Notes to table 5

- 1 For most LRBs, the fiscal year is not a calendar year. In Canada, the fiscal year, if different from the calendar year, ends on March 31. In the United States, the fiscal year ends on September 30. The reference year is 2003/2004.
- 2 Note that the British Columbia Labour Relations Board has not published an annual report for the fiscal year 2003. However, most of the components that are usually reported in the annual report are available on its website and thus BC's LRB did not lag in providing the information.



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## Conclusion

Labour Relations Boards in Canada and the United States exert a great deal of authority and power in determining whether or not employees are collectively represented and the subsequent relations between employers and collective representatives (unions). It is, therefore, critical that LRBs operate in an open and transparent manner. This study is the first we know of that attempts to quantify the transparency of LRBs.

### Overall results for the Index of Labour Relations Board Transparency

Overall, the results indicate that LRBs in all 12 jurisdictions (10 provincial, two national) have room to improve their voluntary disclosure and dissemination of information in an accessible and timely manner.

LRBs from western Canadian provinces dominate the top of the overall Index. Alberta and Manitoba have the most transparent LRBs in Canada and the United States, with British Columbia following closely. There is relatively large gap between the LRB of British Columbia in third place and the LRB of New Brunswick and the NLRB in the United States, which ranked fourth.

Unfortunately, four of the 12 LRBs—those of Quebec, Ontario, Nova Scotia, and Prince Edward Island—failed to receive scores above 5.0. In addition, the LRB of Saskatchewan and the Canadian Industrial Relations Board both received scores that only narrowly exceeded 5.0. Equally as worrying is that the LRBs of Canada's two most populated provinces, Quebec (ranked 9th) and Ontario (ranked 10th) performed poorly.

### Future Research

This paper is a snap shot of the transparency of Labour Relations Boards in Canada and the United States, which are responsible for private-sector labour legislation. The next step is to collect historical data on the transparency, structure, and governance of LRBs and to link the data to their performance and efficiency. In addition, it is important to explore what determines the transparency of LRBs, asking why some LRBs are more transparent than others.

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## Appendix A: Components of the Index of Labour Relations Board Transparency

To assess the degree of transparency of each Labour Relations Board, the study used 25 pieces of information (“components”) pertaining either to the general level of transparency and openness of the LRB or to specific provisions in the respective labour relations acts that are applicable to all of the Labour Relations Boards. The list of the 25 components and a brief description of each is presented below.

### Governance

The following six components relate to the governance of Labour Relations Boards. These components capture the Labour Relations Boards’ disclosure policies, its basic financial information, and whether they have real-time tracking systems.

- 1 Biographies of board members: If a Labour Relations Board discloses the biographies of its members, it gets a score of one; otherwise, it receives a score of zero.
- 2 Information on balance of representation of a Labour Relations Board: If a Labour Relations Board discloses which of its members are representative of employers and which are representative of employees, it receives a score of one; otherwise, it gets a score of zero.
- 3 Balance sheet and income statement: If a Labour Relations Board discloses its balance sheet or income statement, it receives a score of one; otherwise, it gets a score of zero.
- 4 Information on goals and performance measures as guidelines for assessing performance: If a Labour Relations Board provides information about its goals and performance measures, it receives a score of one; otherwise, it receives a score of zero.
- 5 Real-time tracking system: If a Labour Relations Board has a real-time tracking system, it gets a score of one; otherwise, it receives a score of zero.
- 6 Average annual cost per disposed case: If a Labour Relations Board discloses its costs per case, it receives a score of one; otherwise, it receives a score of zero.

### Information relating to specific provisions in the labour relations laws

The following 15 indicators pertain to specific provisions in the labour relation laws applicable to each one of the 12 Labour Relations Boards in Canada and the United States. This section measures whether Labour Relations Boards keep track and disclose information about their decisions and orders, and the average time it takes to process applications and complaints. A Labour Relations Board receives a score of one for each of the components it discloses; otherwise, it receives zero. Note that average time to process the applications and complaints listed below does not refer to the legislated time-frames, which are mainly applicable to certification and decertification applications, but rather to the actual time it takes for a LRB to process such applications and complaints.

Note that the following components refer to “processed” rather than “filed” applications and complaints. The number of filed applications or complaints refers to those received in a given year. Processed application and complaints, on the other hand, refer to those applications and complaints that have been dealt with in a given year. Therefore, the number of filed and processed applications and complaints is not the same in cases where an LRB is experiencing a backlog. For the purposes of computing the Index of Labour Relations Board Transparency, we used processed applications and complaints as our first option. In cases where the number of processed application and complaints was not disclosed, we used filed applications and complaints instead.

- 
- 7 Total number of certification applications, processed and granted.
  - 8 Time required to process a certification application (either average or median time).
  - 9 Number of certification applications based on a secret-ballot vote, processed and granted. Secret-ballot votes are mandatory for all certification applications in some jurisdictions. If that is the case, then the total number of certification applications processed and granted during the fiscal year is used. If secret ballot vote is mandatory only in certain circumstances, then the number of applications certified using the secret ballot vote is used.
  - 10 Total number of decertification applications, processed and granted.
  - 11 Time required to process a decertification application (either average or median time).
  - 12 Total number of unfair labour practices complaints, processed and granted.
  - 13 Time required to process an unfair labour practice complaint (either average or median time).
  - 14 Total number of unfair labour practice complaints filed by employers, processed and granted.
  - 15 Total number of unfair labour practices complaints filed by unions, processed and granted.
  - 16 Total number of strike complaints (complaints alleging illegal strike), processed and granted.
  - 17 Time required to process strike complaints (either average or median time).
  - 18 Total lock-out complaints (complaints alleging illegal lock out), processed and granted.
  - 19 Time required to process a lock-out complaint (either average or median time).
  - 20 Total number of successor employer applications, processed and granted.
  - 21 Time required to process successor employer applications (either average or median time).

#### Accessibility of Information

The following four indicators measure how quickly and easily an individual can find information about a Labour Relations Board.

- 22 Availability of a website: If a Labour Relations Board has a website, it receives a score of one; otherwise, it receives zero.
- 23 Availability of the most recent annual report: If the most recent annual report is available on a Labour Relations Board's website, it receives a score of one; otherwise, it receives zero.
- 24 Availability of "Contact Us" page: If a Labour Relations Board has a "Contact Us" page or if it posts its telephone and fax numbers, and e-mail and postal addresses, it receives a score of one; otherwise it receives zero.
- 25 Availability of Labour Relations Act, Regulations, and the Labour Relations Board's rules on its website: If a Labour Relations Board posts the Act over which it has jurisdiction and its own rules regarding its procedures, it receives a score of one; otherwise, it receives zero.

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## Appendix B: Jurisdiction of Labour Relations Boards

### National Labor Relations Board (US)

- National Labor Relations Act

### Canada Industrial Relations Board

- Part I (Industrial Relations), and certain provisions of Part II (Occupational Health and Safety) of the Canada Labour Code

### British Columbia Labour Relations Board

- Labour Relations Code

### Alberta Labour Relations Board

- Labour Relations Code
- The Public Service Employee Relations Act
- The Police Officers Collective Bargaining Act

### Saskatchewan Labour Relations Board

- The Trade Union Act
- The Construction Industry Labour Relations Act, 1992
- The Health Labour Relations Reorganization Act

### Manitoba Labour Board

- The Labour Relations Act
- The Pay Equity Act
- The Workplace Safety and Health Act
- The Essential Services Act
- The Public Schools Act
- The Elections Act
- The Victims' Rights Act
- Employment Standards Code (the Board has adjudicative responsibility to deal with referrals from the Employment Standards Division of the Department of Labour and Immigration)

### Ontario Labour Relations Board

- Ambulance Services Collective Bargaining Act, 2001, S.O. 2001, c.10
- Colleges Collective Bargaining Act, R.S.O. 1990, c.C. 15
- Community Small Business Investment Funds Act, S.O. 1992, c. 18
- Crown Employees Collective Bargaining Act, S.O. 1993, c. 38
- Education Quality Improvement Act, S.O. 1997, c.31
- Employment Standards Act, R.S.O. 1990, c. E. 14
- Environmental Bill of Rights Act, S.O. 1993, c.28
- Environmental Protection Act, R.S.O. 1990, c.E. 19
- Fire Protection and Prevention Act, S.O. 1997, c. 4
- Hospital Labour Disputes Arbitration Act, R.S.O. 1990, c.H. 14
- Labour Relations Act, 1995, S.O. 1995, c. 1
- Occupational Health and Safety Act, R.S.O. 1990, c.O. 1
- Public Service Act, R.S.O. 1990, c.P. 47
- Public Sector Dispute Resolution Act, 1997, S.O. 1997, c.21

- Public Sector Labour Relations Transition Act, 1997, S.O. 1997, c. 21
- Smoking in the Workplace Act

**Commission des relations du travail, Québec (Quebec Labour Relations Board)**

- Code du travail (Labour Code)

**New Brunswick Labour and Employment Board**

- Industrial Relations Act
- Public Service Labour Relations Act
- Employment Standards Act
- Pension Benefits Act
- Human Rights Act (the Board acts as a Board of Inquiry)
- Fisheries Bargaining Act

**Nova Scotia Labour Relations Board**

- Trade Union Act (Part I and II)

**Prince Edward Island Labour Relations Board**

- Labour Act

**Newfoundland and Labrador Labour Relations Board**

- Labour Relations Act
- Public Service Collective Bargaining Act
- Fishing Industry Collective Bargaining Act
- Teachers Collective Bargaining Act
- Interns and Residents Collective Bargaining Act
- Occupational Health and Safety Act
- Labour Standards Act

Sources: see p. 42.

## Appendix C: Powers of, and appointments to, Labour Relations Boards



<b>Jurisdiction</b>					
British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Quebec
<b>Labour legislation considered</b>					
Labour Relations Code	Labour Relations Code	The Trade Union Act	The Labour Relations Act	Labour Relations Act, 1995	Code du travail (Labour Code)
<b>Agency responsible for the enforcement of labour legislation</b>					
British Columbia Labour Relations Board	Alberta Labour Relations Board	Saskatchewan Labour Relations Board	The Manitoba Labour Board	Ontario Labour Relations Board	Commission des relations du travail (Labour Relations Board)
<b>Are Board's decisions final?</b>					
Yes	Yes	Yes	Yes	Yes	Yes
<b>Can the Board itself change or amend its decision, order, directive or declaration of ruling either at the request of one of the</b>					
Yes	Yes	Yes	Yes	Yes	Yes
<b>Are the Board's orders enforceable in courts?</b>					
Yes	Yes	Yes	Yes	Yes	Yes
<b>Can Board decisions be appealed to courts?</b>					
No [a]	No [a]	No [a]	No [a]	No [a]	No [a]
<b>Who appoints Board members?</b>					
Lieutenant Governor in Council	Lieutenant Governor in Council	Lieutenant Governor in Council	Lieutenant Governor in Council	Lieutenant Governor in Council	Government of Quebec
<b>Duration of appointments</b>					
Chair, not less than 5 years; Vice-chair(s): 3 years [b]; other Board members: 2 years [b]	Chair and vice-chairs: not more than 5 years; other Board members: not more than 3 years	Chair and vice-chairs: not more than 5 years; other Board members: not more than 3 years	Chair-person and vice-chair(s): not more than 7 years and not less than 5; other Board members: not more than 5 years and not less than 2	Each Board member: 3 years [c]	Each Board member: 5 years
<b>Can Board members be reappointed?</b>					
Yes [b]	Yes	Yes	Yes	Yes [c]	Yes

Notes: see p. 32.

New Brunswick	Nova Scotia	Prince Edward Is.	Newfoundland	Canada	United States
Industrial Relations Act	Trade Union Act	Labour Act	Labour Relations Act	Canada Labour Code	National Labor Relations Act
New Brunswick Labour and Employment Board	Nova Scotia Labour Relations Board	Prince Edward Island Labour Relations Board	Newfoundland Labour Relations Board	Canada Industrial Relations Board	National Labor Relations Board and the General Counsel
Yes	Yes	Yes	Yes	Yes	No
<b>parties involved or at its own initiative?</b>					
Yes	Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes	Yes
No [a]	No [a]	No [a]	No [a]	No [a]	Yes
Lieutenant Governor in Council [d]	Governor in Council	Lieutenant Governor in Council	Lieutenant Governor in Council	Governor in Council, on the recommendation of the Minister of Labour	President, with consent of the Senate
Chair-person: not more than 5 years; Vice-chairs and other members: not more than 3 years [d]	Not specified [e]	Each Board member: not more than 3 years	Chairperson and vice-chair(s): 5 years; other Board members: 2 years	Chairperson and vice-chairs: not more than 5 years; other Board members: not more than 3 years	Board members: 5 years; General Counsel: 4 years [f]
Yes [d]	Yes [e]	Yes	Yes	Yes	Yes

### ***Notes to Appendix C***

- a** The decisions of Labour Relations Boards in Canada cannot be reviewed by courts, in their respective jurisdiction, in a traditional sense (i.e., courts cannot review facts, call witnesses, etc.). In general, the courts in Canada, either through the labour legislation or their own power, can review a LRB's decision to determine if it has acted within its jurisdiction or has failed to observe a principle of justice. The Manitoba Labour Relations Act and the Canada Labour Code specify that the courts in their respective jurisdictions can review a case upon which a LRB has given a decision but only to determine if the Board failed to observe a principle of natural justice or otherwise acted beyond, or refused to exercise, its jurisdiction. Similarly, the Quebec Labour Code indicates that decisions of the Commission des relations du travail (Labour Relations Board) can be reviewed by Quebec courts to determine if the Board has acted within its jurisdiction. The courts in the remaining provinces have the power to review a Board's decision, not through the power given to them by provincial labour legislation but rather through their own power, to determine if the Board has acted within its jurisdiction, refused to exercise its jurisdiction, or failed to observe a principle of natural justice.
  - b** There is nothing in British Columbia's Labour Relations Code about the term of appointment of Vice-chairs or other Board members, or about reappointments of Board members. The general rule is that Vice-chairs are appointed for a term of three years, other Board members are appointed for a two years, and each Board member is eligible for reappointment.
  - c** There is nothing in Ontario's Labour Relations Act, 1995, about the term of appointment of Board members or their reappointment. The general rule is that each member is appointed for a term of three years and each Board member is eligible for reappointment.
  - d** The structure of the New Brunswick Labour and Employment Board is specified in the Labour and Employment Board Act rather than the Industrial Relations Act.
  - e** The Trade Union Act of Nova Scotia does not specify the term for which the members of the Labour Relations Board are appointed and thus it is left to the discretion of the Governor in Council. Note that though there is nothing in the Trade Union Act about reappointment of Board members, it is common practice to reappoint Board members whose terms have expired.
  - f** The last (fifth) member of the National Labour Relations Board is appointed for a term of two years.
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## Appendix D: Methodology

The Labour Relations Board Transparency Index is based on three indicators: 1: Voluntary disclosure of information via website or annual report; 2: Responsiveness to requests for information; 3: Timeliness of information provided. In order to evaluate the information provided through the websites and annual reports, and the responsiveness to formal requests for information through letters, the study considered 25 pieces of information (components). Initially, 39 components were considered but not all were applicable to all jurisdictions. For each of the components, a LRB received a score of 1.0 if it disclosed the information and a 0.0 (zero) if the information was not available. Note that the cut-off for up-dating data was July 1, 2005.

### **Indicator 1: Voluntary disclosure of information via website or annual report**

This indicator was computed as the number of components available on a Labour Relations Board's website or in its annual report as a percentage of the total number of components (25). Note that each of the 25 components was equally weighted even though some are more important than others. Since applying artificial and subjective weights to certain components would reduce the objectivity of the index substantially, we use equal weights.

### **Indicator 2: Responsiveness to requests for information**

The remaining components not found on a Labour Relations Board's website or in its annual report were requested in a letter to the LRB. (Note that we also requested additional components shown in Appendix E, if applicable). Responsiveness to requests for information was computed as the number of responses received as a percentage of questions asked, considering only the 25 components applicable to all Labour Relations Boards. The number of components provided in response to request were given less weight than the number of components counted as voluntarily disclosed for Indicator 1.

### **Indicator 3: Timeliness of information provided**

This indicator measures how recent the information on a Labour Relations Board's website and annual report is. Timeliness was calculated as the number of years the information on the LRBs' websites and annual reports lagged the reference year of 2003/2004. Setting the reference year at 2003/2004 was a generous provision, given that the current standard for public companies is 2004/2005.

## Index of Labour Relations Board Transparency

The overall index was computed as follows:

$$\left[ \frac{\text{number of components voluntarily disclosed} + \left( 1 - \frac{\text{number of components requested}}{25} \right) \times \text{number of components obtained}}{25} \right] \times \frac{1}{(1 + \text{number of years information lags})} \times 10$$

The overall Index of Labour Relations Board Transparency measures the expected (or present) value of the 25 components. This means that the information obtained through letters carry less weight than those obtained from a Labour Relations Board’s website or annual report. There are two reasons for giving less weight to components obtained through letters. First, information on a Labour Relations Board’s website or in its annual report can be had at once. Note that each Labour Relations Board except New Brunswick and Prince Edward Island posts its annual report on its website. Second, requesting information through letters is time consuming and imposes a time lag, which in some cases is quite significant.

The weight given to information received through letters was computed as one minus the number of components requested through letters as a percentage of the total number of components (25). That is, the weight given to components obtained through letters depends negatively on the percentage of components requested through letters. The more components obtained through letters, the lower the weight given to letter responses.

Lastly, the components from the websites and annual reports and those obtained through letters were deflated (adjusted) by the results of Indicator 3. That is, the older the information obtained either through the website, annual report, or letters, the lower the overall results. For instance, Ontario and Prince Edward Island’s Labour Relations Boards have the oldest information (2002/2003 and 2001/2002, respectively) among the 12 jurisdictions. To reflect the datedness of their information, the results of the LRBs of Ontario and Prince Edward Island were deflated by 0.5 and 0.33, respectively.

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## **Appendix E: Components not applicable to all Labour Relations Boards**

The 14 components listed in table E are not applicable to all Labour Relations Boards and thus are not included in the calculation of the overall Index of Labour Relation Board Transparency. For instance, some LRBs do not charge fees (see component 14) for filing any applications and thus whether or not those LRBs voluntarily disclose their fee schedules is not applicable. Similarly, some LRBs do not have remedial power (i.e., power to certify a union without a secret-ballot vote if an employer commits an unfair labour practice) and thus they are unable to provide the number of cases processed, and number of cases granted, pertaining to remedial certification.

The average time to process the applications and complaints listed below does not refer to the legislated time-frames but rather to the actual time it takes for a LRB to process such applications and complaints.

Notes to table E (p. 36–37) include specific information about the 14 indicators across the 12 jurisdictions.



Table E: Components not applicable to all Labour Relations Boards

	BC	AB
<b>Information relating to specific provisions in the labour legislation</b>		
1 Total number of certification applications based on cards, processed and granted	—	—
2 Total number of remedial certification applications, processed and granted	✓	—
3 Time (either average or median) required to process remedial certification applications	☐ [a]	—
4 Total number of “duty of fair representation” complaints, processed and granted	✓	☐
5 Time (either average or median) required to process “duty of fair representation” applications	✓	☐
6 Total number of “technological change” complaints, processed and granted	☐	—
7 Time (either average or median) required to process “technological change” complaints	☐ [a]	—
8 Total number of “reinstatement of workers” complaints, processed and granted [g]	☐ [b]	☐
9 Time (either average or median) required to process a “reinstatement of workers” complaint	☐ [a]	☐
10 Total “replacement of workers” complaints, processed and granted	✓	☐
11 Time (either average or median) required to process a “replacement of workers” complaint	☐ [a]	☐
12 Total number of arbitration applications, processed and granted	—	—
13 Time (either average or median) required to process arbitration applications	—	—
<b>Accessibility of information</b>		
14 Availability of fee schedule	✓	—

Sources: see p. 42.

☐ indicates that the information was obtained through a letter sent to a Labour Relations Board requesting components not found on its websites or in its annual reports.

### Notes to table E

- a** The British Columbia Labour Relations Board did not provide us with the average processing time for remedial certification, technological change applications, and complaints about reinstatement and replacement of workers. The LRB informed us that staff are working to see if they can respond to these requests. This was interpreted to mean that the information is available and, thus, the LRB was given a score of one for each of the four components.
- b** The British Columbia Labour Relations Board did not provide us with the number of “reinstatement of workers” complaints. They informed us that they could provide us with the information by running a further report through their computer system. This was interpreted to mean that they have the information available and thus the LRB was given a score of one for this component.
- c** Refers to arbitration applications pertaining to first collective agreement applications.
- d** The Canadian Industrial Relations Board provided us with the number of “Duty of Fair representation” complaints filed but not the number of those granted. Therefore, the Board was given a half score for this component.

SK	MB	ON	QC	NB	NS	PEI	NF	CIRB	NLRB (US)
	✓	—		☐ <sup>a</sup>	—		—	☐ <sup>a</sup>	—
—	☐ <sup>a</sup>	—	—	☐ <sup>a</sup>	☐ <sup>a</sup>	—	—	☐ <sup>a</sup>	☐ <sup>a</sup> [e]
—	☐ <sup>a</sup>	—	—	☐ <sup>a</sup>	☐ <sup>a</sup>	—	—	☐ <sup>a</sup>	☐ <sup>a</sup> [e]
✓	✓			—	—	—	✓	☐ <sup>a</sup> [d]	✓ [f]
	✓		✓	—	—	—			
✓	☐ <sup>a</sup>	—	✓	☐ <sup>a</sup>	—	—	—	☐ <sup>a</sup>	—
✓	☐ <sup>a</sup>	—	✓	☐ <sup>a</sup>	—	—	—	☐ <sup>a</sup>	—
✓	☐ <sup>a</sup>			☐ <sup>a</sup>	☐ <sup>a</sup>		—	☐ <sup>a</sup>	✓
	☐ <sup>a</sup>		✓	☐ <sup>a</sup>	☐ <sup>a</sup>		—	☐ <sup>a</sup>	
	☐ <sup>a</sup>	—	—	☐ <sup>a</sup>	—		—	☐ <sup>a</sup>	☐ <sup>a</sup> [e]
	☐ <sup>a</sup>	—	—	☐ <sup>a</sup>	—		—		☐ <sup>a</sup> [e]
—	✓	✓ [c]	—	—	☐ <sup>a</sup>	—	—	☐ <sup>a</sup>	☐ <sup>a</sup> [e]
—	✓		—	—		—	—	☐ <sup>a</sup>	☐ <sup>a</sup> [e]
—	✓	—	—	—	—	—	—	—	—

✓ indicates that the information was available either on a Labour Relations Board’s website or in its annual report.  
 — indicates that the information was not applicable to the jurisdiction in question.

- e The National Labour Relations Board informed us that we need to fill out a formal Freedom of Information Request in order to obtain total number of remedial certification applications, replacement workers complaints and arbitration applications as well as the average time to process them. This was interpreted to mean that the LRB has the information available and it therefore received a score of one for each of the six components.
- f The National Labour Relations Board in its annual report disclosed the number of “Duty of Fair Representation” complaints filed but not the number of those granted. Therefore, the Board was given a half score for this component.
- g Refers to the number of complaints alleging violation of the right of striking or locked-out workers to be reinstated after the resolution of the dispute.

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## Appendix F: Adjusting the Index of Labour Relations Board Transparency

One of the interesting questions raised by some of the reviewers was how, and to what extent, the inclusion of components that were not applicable to every Labour Relations Board (Appendix E) would influence the scores and rankings. Table F shows the revised scores for all three indicators of the Index as well as a revised overall score. The most striking aspect of the revised scores is how little the rankings actually change. LRBs of six jurisdictions—Alberta, New Brunswick, British Columbia, Newfoundland, Quebec, and Canada—show a change in rank: the LRBs of Alberta and New Brunswick drop two positions; the CIRB drops one position; the LRBs of Newfoundland and Quebec advance one position while British Columbia’s LRB advances two positions. Tellingly, the scores of all of the LRBs except Quebec are lower: four of the 12 LRBs did not receive a score of 5.0 on the adjusted Index.

There also some changes in the scores and rankings for the first two indicators. For example, in Indicator 1: Voluntary disclosure, Newfoundland’s LRB and the NLRB showed the largest changes, three positions in rank: Newfoundland’s LRB moved up from 6<sup>th</sup> to 3<sup>rd</sup> and the NLRB (US) moved down from 5<sup>th</sup> to 8<sup>th</sup>. The ranking of Alberta’s LRB changed by two positions, decreasing from 3<sup>rd</sup> to 5<sup>th</sup>.

Similarly, there were no significant changes in the rankings for Indicator 2: Responsiveness. The CIRB’s ranking moved down by three positions while the LRBs of British Columbia, New Brunswick and Manitoba moved up by one. The ranking of one jurisdiction (Nova Scotia) moved down by one position. The remaining seven LRBs had no change in their rankings.

Indicator 3: Timeliness was unaffected by the addition of new components and there was no change in the rankings.

Table F: Adjusted Index of Labour Relations Board Transparency

	Overall		Indicator 1 Voluntary disclosure		Indicator 2 Responsiveness				Indicator 3 Timeliness	
	Score (out of 10.0)	Rank (out of 12)	Percentage of components disclosed	Rank (out of 12)	Number of Components Requested	Number of Components Received	Percentage response	Rank (out of 12)	Number of years information lags	Rank (out of 12)
MB	8.2	1	59%	3	16	15	94%	2	0	1
BC	8.2	1	64%	1	13	10	77%	5	0	1
AB	7.8	3	55%	5	14	13	93%	3	0	1
NLRB (US)	6.0	4	49%	8	18	8	44%	7	0	1
NF	5.9	5	59%	3	11	0	0%	8	0	1
NB	5.4	6	32%	9	22	21	95%	1	0	1
SK	5.3	7	53%	6	16	0	0%	8	0	1
QC	5.0	8	50%	7	16	0	0%	8	0	1
CIRB	3.8	9	22%	10	29.5	26	88%	4	0	1
ON	3.1	10	61%	2	12	0	0%	8	1	11
NS	2.9	11	19%	11	25	16	64%	6	0	1
PE	0.6	12	17%	12	24	0	0%	8	2	12

Sources: see p. 42.

#### **Note to table F**

The Adjusted Index of Labour Relations Board Transparency includes all 39 components initially considered but which are not applicable to each Labour Relations Board. It was computed using the same methodology as was used to compute the Index of Labour Relations Board Transparency except that it is based on more components. Since not all of the 39 components are applicable to each Labour Relations Board, the scores are computed as a percentage of total number of components applicable to the LRB of each province.

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## Notes

- 1 Note that US labour legislation explicitly prohibits collective agreements to require American employees in an organized workplace to become union members or pay full union dues while Canadian labour legislation does not. In addition, legal cases in Canada have determined that all workers covered by a collective agreement must pay full dues whether they are members of the union or not. See Clemens and Karabegović, 2005 and Taras and Ponak, 2001 for more information.
- 2 Note that the importance or influence of Labour Relations Boards is directly related to the proportion of the labour force that is covered by such laws. See table 1 and figure 1 for private-sector unionization rates.
- 3 Note that this study measures transparency exclusively and does not attempt to assess the performance, efficiency, structure, or governance of LRBs.
- 4 Some Labour Relations Boards, in addition to covering private-sector labour relations legislation, also cover a number of other labour-related laws. For instance, the Ontario Labour Relations Board has jurisdiction over 16 pieces of labour legislation (see Appendix A for further details) whereas LRBs in British Columbia, Quebec, and Prince Edward Island as well as the NLRB in the United States deal exclusively with private-sector labour relations laws.
- 5 For studies on transparency and fiscal performance, see Alt and Lasses, 2003; on transparency in the financial markets, see Bloomfield and O'Hara, 1999; Kane, 2001; Vishwanath and Kaufmann, 2001; Rafferty and Tomljanovich, 2002; and Stasavage, 2003.
- 6 See Karabegović et al., 2004b and Department of Justice Canada, 2005 for further details.
- 7 Even though there is nothing in the Prince Edward Island Labour Act about remedial certification, the Prince Edward Island Labour Relations Board has the remedial power as a result of a recent decision by the Prince Edward Island Supreme Court (see *Polar Foods v. Labour Relations Board et al.*, GSC-18588, 2002 PESCTD 56).
- 8 For a list of provincial and federal Labour Relations Boards' websites, see <[http://www.cirb-ccri.gc.ca/links/index\\_e.asp](http://www.cirb-ccri.gc.ca/links/index_e.asp)>.
- 9 Note that the federal legislation, the Canada Labour Code, applies to the Northwest Territories, Nunavut, and the Yukon. The Parliament of Canada has given these three jurisdictions powers that are almost identical to those given to the provinces to legislate their own labour matters, except for those industries that fall under the federal jurisdiction. To date, none of the three jurisdictions has adopted its own labour laws and, thus, the Canada Labour Code (Part I) is applicable to all three jurisdictions as well (Human Resources Development Canada, 2005).
- 10 American states, like Canadian provinces, have full jurisdiction over public-sector labour relations laws.
- 11 In addition, those employees and employers in the United States involved in surface transportation (i.e. trains) and the airline industry are covered by the Railway Labor Act.
- 12 Note that "applications" are called "petitions" in the United States.
- 13 Presidential appointment of NLRB members in the United States is considered by many to politicize the process. For example, Delorme et al. (1981) found that the party of administration appointing a NLRB member and the member's own political affiliation have an impact on their



voting decisions. Similarly, Cooke and Gautschi (1982) found that presidential appointments have a significant impact on the NLRB's decisions on complaints of unfair labour practices. Finally, Cooke and Gautschi argued that "[i]nterpretation of facts and law governing union-management relations is therefore dependent in part on the make-up of the Board" (1982: 549).

- 14 As one of our reviewers pointed out, one might think of unionization rates as an outcome of labour relations laws and the enforcement of such laws. That is, the influence of LRBs depends not only on the rate of unionization but also on the ability of LRBs themselves to influence the rate of unionization.
  - 15 This is not to suggest that LRBs cannot have an enormous impact at the margin. Obviously, decisions by LRBs, even in jurisdictions with a low rate of unionization can affect the functioning of a labour market materially. In general, however, one will observe larger effects from LRB decisions in jurisdictions with higher rates of unionization than in jurisdictions with lower rates of unionization.
  - 16 For further information on the causes of the differences in unionization rates between Canada and the United States, see: Taras, 1997; Taras and Ponak, 2001; Karabegović et al., 2004b; and Clemens and Karabegović, 2005.
  - 17 For a more detailed discussion of the methodology incorporated in this study, please see Appendix D: Methodology, page 33.
  - 18 Initially, the study considered 39 indicators but, since not all of these components were applicable to all the jurisdictions, the list of indicators was reduced to 25. For further information on the additional 14 indicators, please see Appendix E.
  - 19 The actual formula was 1 minus the number of questions sent divided by the total number of questions (25).
  - 20 Letters sent to each LRB and their responses are available upon request.
  - 21 One of our reviewers mentioned that some of the LRBs might be more inclined to respond to letters from an organization (i.e., The Fraser Institute) than they would be if an individual requested information. This might be true for some LRBs but the same argument can be made in the reverse.
  - 22 Note that British Columbia's LRB received a score of 10.0 as well even though it has not published the 2003 report at the time of this study. This was because most of the information that they usually provide was available on their website for the fiscal year 2003.
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## Sources

Labour Relations Boards websites, a list of provincial Labour Relations Boards, and the Canadian Industrial Relations Board

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Website of the National Labor Relations Board

<<http://www.nlr.gov/nlr/home/default.asp>>.

*British Columbia Labour Relations Board 2002 Annual Report*

<<http://www.lrb.bc.ca/reports/>>.

*Alberta Human Resources and Employment Annual Report 2003/2004*

<<http://www3.gov.ab.ca/alrb/annualreport.html>>.

*Saskatchewan Labour Relations Board Annual Report 2003-2004*

<<http://www.sasklabourrelationsboard.com/annual-report.htm>>.

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<<http://www.gov.mb.ca/labour/labbrd/publicat.html>>.

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