Date: 20050106

File: 140-2-24

Citation: 2005 PSSRB 1

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

ROSTRUST INVESTMENTS INC.

Applicant

and

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4266-05, PUBLIC SERVICE ALLIANCE OF CANADA AND TREASURY BOARD (PUBLIC WORKS AND GOVERNMENT SERVICES CANADA)

Respondents

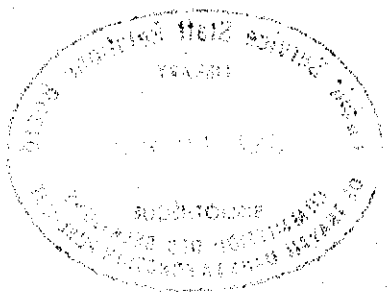
RE: Determination of Successor Rights – Section 49 of the *Public Service Staff Relations Act*

Before: Ian R. Mackenzie, Board Member

For the Applicant: Stuart Aronovitch, Counsel

For the Respondents: Nick E. Milanovic, Counsel for the CUPE; Shannon Blatt, Counsel for the PSAC; and Harvey Newman, Counsel for the Treasury Board (PWGSC)

(Decision rendered based on written submissions.)



[1] Rostrust Investments Inc. ("Rostrust") is the owner of L'Esplanade Laurier, an office complex in downtown Ottawa. Rostrust also provided management and maintenance services until the tenant, Public Works and Government Services Canada (PWGSC), advised that, as of February 29, 2004, it would be taking over these services. The employees of Rostrust are or were represented by the Canadian Union of Public Employees (CUPE) under the *Ontario Labour Relations Act* (*OLRA*).

[2] On June 29, 2004, Rostrust filed this application for the determination of successor rights in relation to these employees. An amended application for a determination of questions relating to the certification of these employees was submitted on July 28, 2004.

[3] The genesis of this application was a grievance filed by the CUPE, the bargaining agent for Rostrust's employees at L'Esplanade Laurier. The grievance was filed pursuant to the collective agreement between the CUPE and Rostrust. A hearing was scheduled before an arbitrator appointed pursuant to the *OLRA*. The Public Service Staff Relations Board (the "Board") has been advised that these proceedings under the *OLRA* were adjourned pending a decision of this Board.

[4] In its application, Rostrust requests that the Board determine the following:

> 1. *Whether PWGSC and/or the Treasury Board of Canada (acting as representative of Her Majesty in Right of Canada) was always the true employer of the Unionized Employees and whether PSAC's certification under the* Public Service Staff Relations Act *always applied to such employees.*
>
> 2. *Whether there has been a transfer of jurisdiction within the meaning of section 49 of the* Public Service Staff Relations Act, *and who is the certified bargaining agent of the group of employees described in the certification issued by the Ontario Labour Relations Board on April 8, 1993,*
>
> 3. *Which of CUPE and PSAC has the rights, privileges and duties in respect of the Unionized Employees, including notably any and all rights under any certification decision and the Collective Agreement, including, without restriction the right to file or proceed with any grievance thereunder, including the Grievance.*

[5] Rostrust, in the initial application, also requested that the Board declare that PWGSC has replaced it as the employer of the unionized employees and make PWGSC the designated employer under the Ontario Labour Relations Board (OLRB) certification. Rostrust also requests an order that it be replaced by PWGSC in the grievance filed by the CUPE.

[6] On October 14, 2004, the Board determined that the application would be determined on the basis of written submissions. Final written submissions were received on October 29, 2004. For the purposes of determining jurisdiction, I have assumed the assertions on the facts in the application to be true. There does not appear to be a dispute among the parties on the overall chronology of events. The background "facts" are taken from the application (on file with the Board) and have been edited for style.

BACKGROUND

Rostrust Investments Inc. is the owner of office towers and a retail complex, known as L'Esplanade Laurier, located in the City of Ottawa (the "Esplanade Building").

The Esplanade Building is comprised, more specifically, of two (2) office towers, a retail complex and three (3) lower levels containing garage and storage space as well as various building systems relating to the property.

PWGSC is the lessee of the entire Esplanade Building, by virtue of a long-term lease agreement (the "Lease") entered into with the previous owner of the Esplanade Building, namely Olympia & York Developments Inc. ("O&Y").

The term of the Lease is from July 1, 1975 to June 30, 2010.

Pursuant to the Lease, PWGSC occupies all of the two (2) office towers located within the Esplanade Building. In fact, PWGSC is the sole tenant of these office towers.

In December 1995, Rostrust Investments Inc. acquired the Esplanade Building and all rights associated with it, including O&Y's rights and obligations under the Lease as well as certain other agreements detailed below.

Among other things, Rostrust Investments Inc. acquired the rights in and to a sub-lease entered into between PWGSC and O&Y (the "Sub-Lease"), pursuant to which PWGSC leased back to O&Y the retail complex and most of the three (3) lower levels, which were the only portions of the Esplanade Building not occupied by PWGSC (the "Sub-Leased Portions"). The term of the Sub-Lease is from July 1, 1975, to June 29, 2010. The Sub-Leased Portions are further sub-leased to PWGSC and to third party lessees, extraneous to the present proceedings. Pursuant to the Sub-Lease, O&Y was required to manage and maintain the Sub-Leased portions.

Contemporaneous with the signature of the Sub-Lease, O&Y and PWGSC entered into a Management Agreement, also effective as of July 1, 1975 (the "Management Agreement") and with a term from July 1, 1975 to June 30, 2010. Pursuant to the Management Agreement, O&Y was required to manage and maintain the two (2) office towers, which are located within the Esplanade Building and occupied by PWGSC. For the purpose of providing the services to PWGSC as required under the Management Agreement and the Sub-Lease, O&Y employed various employees, including a group of unionized employees, who were represented for the purposes of collective bargaining by CUPE, Local 4266-05.

Pursuant to a decision of the OLRB, dated April 8, 1993, the Independent Canadian Transit Union, which later merged with and became part of CUPE, was certified under the *Ontario Labour Relations Act* as the bargaining agent of the following group of employees:

> *...all employees of Olympia & York Developments Limited at L'Esplanade Laurier, in the City of Ottawa, save and except supervisors, persons above the rank of supervisor, office staff, security guards, students employed during the school vacation period and persons for whom any trade union held bargaining rights as of February 5, 1993.*

CUPE (and/or its predecessors) and O&Y entered into a number of collective agreements governing the working conditions of the employees covered by the above-mentioned certification.

In December 1995, Rostrust Investments Inc. acquired the Esplanade Building and all rights associated with it, including the rights in and to the Lease, the Sub-Lease and the Management Agreement; it thus acquired the business previously carried on by O&Y in connection with the Esplanade Building (the "Business"). As such, Rostrust Investments Inc. replaced O&Y under the Management Agreement and thenceforth, with the consent of PWGSC, continued providing the services required under such Agreement. For this purpose, Rostrust Investments Inc. continued to employ most of the employees previously employed by O&Y in connection with the Business, including substantially all of the unionized employees represented by CUPE (the "Unionized Employees"). As the successor employer to O&Y, Rostrust Investments Inc. became bound by the terms of the above-mentioned certification and collective agreement.

As such, Rostrust Investments Inc. and CUPE subsequently entered into a collective agreement effective from July 1, 2002 to June 30, 2005 (the "Collective Agreement"). In this context, Rostrust Investments Inc. operated the Business from December 1995 through to February 29, 2004, at which time PWGSC terminated Rostrust Investments Inc.'s services under the Management Agreement, with the exception of cleaning services which were terminated effective July 31, 2004, thus effectively taking over a substantial part of the Business (i.e. the management of the two (2) office towers).

In this connection, PWGSC invoked Article XIV of the Management Agreement, which reads as follows:

> *XIV(b) Notwithstanding the foregoing paragraph 1 of this Section, Her Majesty shall have and is hereby granted the privilege to exclude from Services from and after the first to any Subsequent Operating Year, one, or more or all of the Services, such privilege to be exercised by giving to the Manager not less than 60 days notice in writing. Upon such exclusion, the excluded item or aspect shall be deemed deleted from this agreement for the remainder of the currency of this agreement, and all terms, covenants and provisions of this agreement, shall from the effective date of exclusion apply.*

In the same letter, PWGSC also notified Rostrust Investments Inc. that, effective August 1, 2004, it would be assuming the responsibility for cleaning the two (2) office towers, therein referred to as the "Non Sub-Leased Premises". In this connection, PWGSC invoked Section III (f) of the Management Agreement, which reads as follows:

> *III(f) Her Majesty shall be entitled to elect to assume responsibility for the cleaning of the Non Sub-Leased Premises and shall, upon making such election, give written notice thereof to the Manager at least six months prior to the date of commencement of any Subsequent Cleaning Year. In such event, all the provisions of this section shall be deemed void as of the date of commencement of next succeeding Subsequent Cleaning Year.*

PWGSC also advised Rostrust Investments Inc. employees, including the Unionized Employees, who numbered ten (10) at the time, that it would be assuming responsibility for services under the Management Agreement as of March 1, 2004, and invited them to apply for continued employment with PWGSC.

After notifying Rostrust Investments Inc. of its intentions, PWGSC directly hired most of Rostrust's employees, including, and in particular eight (8) of the ten (10) Unionized Employees covered by CUPE's above-noted certification and by the Collective Agreement.

While Rostrust Investments Inc. attempted, through various means, including notably negotiation and legal proceedings before the Federal Court of Canada, to retain the right to continue operating all of the Business, such efforts were unsuccessful. (See *Rostrust Investments* v. *Canada*, 2004 F.C. 290.)

[7] On February 27, 2004, the CUPE wrote to Rostrust as follows:

> *It has been brought to our attention that Ros Trust* [sic] *Investments is in the process of transferring all or part of its operations presently located at the Esplanade Laurier to the Public Works and Government Services Canada.*
>
> *In anticipation of this transfer, the Government of Canada staff has been conducting job interviews with your employees, members of CUPE Local 4266.*

> *In some cases, these interviews have led to formal job offers that have not only detailed alternative working conditions, compensation and benefits from those listed in the CUPE/Ros Trust* [sic] *Collective Agreement but also detailed requirements for CUPE members to pay union dues to the Public Service Alliance of Canada (PSAC).*
>
> *The Canadian Union of Public Employees has been certified the official bargaining agent for your employees located at Esplanade Laurier under the authority of the Labour Relations Act of Ontario. The parties have a legal and binding collective working agreement that would be extended to any successor employer until such time that the Labour Board of Ontario rules otherwise.*
>
> *The actions of both Ros Trust* [sic] *Investments and the Public Works Department are inappropriate, presumptuous and lack respect for the Canadian Union of Public Employees and its members.*
>
> *We would therefore put you on notice that we expect the membership of our Local 4266 to remain under the protection of the existing collective agreement between the parties, or any successor employer and that union dues will continue to be checked off and submitted as in the past to the Canadian Union of Public Employees.*
>
> *We will remain available to discuss these matters.*

SUBMISSIONS

[8] All parties made submissions on the basis of the alleged facts contained in the application. The full submissions of the parties are on file with the Board. The submissions below have been edited for style only.

For Rostrust

From December 1995 to February 29, 2004, the applicant provided the management and maintenance services required under the Management Agreement, and supplied the personnel required to perform those services. During this period, the applicant thus acted as an agent of PWGSC (the Treasury Board of Canada). Furthermore, at all relevant times, PWGSC (the Treasury Board of Canada) acted, in many important respects, as the true employer of the applicant's staff, both unionized and non-unionized. For example, the bulk of the salaries of these persons was paid for by PWGSC, which also closely monitored their work, among other things. In fact, PWGSC had a full-time team on site, which oversaw the work of the applicant's local management. In addition, representatives of the Treasury Board of Canada would also direct the work of the applicant's personnel.

As of March 1, 2004, PWGSC effectively took over and has continued to operate a substantial part of the Business.

As such, PWGSC became the sole employer and successor to the applicant, in particular, as regards the Unionized Employees and the Collective Agreement.

Given all of the foregoing, the operations of the Business are governed by the provisions of the *Public Service Staff Relations Act (PSSRA).*

It is further submitted that, in light of the facts mentioned above, the Business was indeed covered by the provisions of the *PSSRA* even before its transfer to PWGSC, particularly during the period from December 1995 to February 29, 2004.

Given the role and duties of the applicant and previously of O&Y under the Management Agreement, the Business was, during such period, at the very least a federal undertaking.

The PSAC is the certified employee organization of several groups of employees employed by PWGSC (the Treasury Board of Canada), including employees engaged in property maintenance and management, such as those engaged in connection with the Business.

As set out more fully below, the applicant has been advised that PWGSC has *de facto* attempted to have the PSAC replace the CUPE as the representative of the Unionized Employees.

In any event, it appears that the Unionized Employees, most of whom continued to be employed by PWGSC, are contemplated by the PSAC's certification under the *PSSRA*, and were indeed covered by same even prior to the transfer of the Business.

In a letter dated February 27, 2004, addressed to the applicant, the respondent CUPE acknowledged that it was aware of several important facts, including notably the following:

> *- that all or part of the applicant's operations located at the Esplanade Building were being transferred to PWGSC;*
>
> *- that PWGSC was conducting job interviews with and offered to hire CUPE'S members who were employed in connection with such operations; and*
>
> *- that PWGSC was requiring that union dues be paid to the respondent PSAC.*

In its letter, the CUPE also reminded the applicant that it had been certified to represent the applicant's Unionized Employees, and, in reference to the Collective Agreement, stated as follows:

> *The parties have a legal and binding collective working agreement that would be extended to any successor employer until such time as the Labour Board of Ontario rules otherwise.*
>
> [...]

> *We would therefore put you on notice that we expect the membership of our Local 4266 to remain under the protection of the existing collective agreement between the parties, or any successor employer and that union dues will continue to be checked-off and submitted as in the past to the Canadian Union of Public Employees.*

Despite the content of its above-mentioned letter, the CUPE has done nothing to preserve its apparent rights as the bargaining agent of these employees or to ensure the transfer of its certification, the Collective Agreement or, most importantly, its members' employment thereunder to PWGSC, which is clearly the sole employer and successor to the applicant.

Without limiting the generality of the foregoing, the CUPE has not filed any successorship application or taken any other measures to assert, vis-à-vis PWGSC, its apparent rights as the certified bargaining agent of these employees, nor to protect its members' rights to continued employment pursuant to the Collective Agreement or otherwise.

In this regard, rather than instituting proceedings to assert its members' rights to continued employment with PWGSC, the CUPE instead filed, as against the applicant, a grievance dated March 31, 2004 (the "Grievance"), on behalf of all the Unionized Employees, including those who continued to work for PWGSC without any interruption whatsoever.

Pursuant to the Grievance, the CUPE claims from the applicant notice, severance pay and/or termination pay under the Collective Agreement, as though all of the Unionized Employees were terminated by the applicant, which is adamantly denied.

The CUPE has not, however, sought to obtain the reinstatement of the two (2) Unionized Employees who were not hired by PWGSC.

To the applicant's knowledge, the PSAC has not filed or attempted to file any grievance or other legal proceeding aimed, *inter alia*, at protecting the rights of the Unionized Employees or obtaining the reinstatement of the two (2) Unionized Employees who were not hired by PWGSC or to ensure the recognition of its certification or collective agreement vis-à-vis such employees.

Hence, two (2) of the Unionized Employees have lost their jobs and related benefits under the Collective Agreement, without either the CUPE or the PSAC attempting to grieve such loss or assert whatever rights these individuals may have against the successor employer, namely PWGSC.

The facts outlined above give rise to a number of legal and practical issues that concern all of the parties named herein, as they affect the respective rights, duties and obligations of these parties in respect of the Unionized Employees and in respect of the Grievance, in particular.

For example, in light of these facts, the following issues, in particular, shall need to be determined:

- whether CUPE's certification has been transferred to PWGSC;
- were the Unionized Employees covered by the PSAC's certification prior to March 1, 2004 and, in particular, from December 1995 to February 29, 2004, and/or are they now covered by such certification;
- who, among the CUPE and the PSAC, has the right to act as the bargaining agent of the Unionized Employees, including the exclusive right to file and/or proceed with grievances on behalf of the Unionized Employees;
- who, among the CUPE and the PSAC, has the duty to represent the rights and interests of the Unionized Employees;
- which collective agreement, if any, applies to the Unionized Employees.

Depending on the answers to these questions, the CUPE may have lost or may never have had the right to file or proceed with any grievance relating to the employment or termination entitlements of the Unionized Employees, notably as they may arise from the transfer of a substantial part of the Business to PWGSC, including, in particular, the right to proceed with the Grievance.

Indeed, if PWGSC was the true employer of the Unionized Employees all along (i.e. from December 1995 to February 29, 2004), the Unionized Employees will have been covered by the PSAC's certification issued under the *PSSRA*.

In such event, the Union would never have had the right to represent the Unionized Employees or to file the Grievance, among other things.

Furthermore, as the applicant has been replaced by PWGSC, as the operator of a substantial part of the Business, and since PWGSC has become the sole employer of the Unionized Employees, the applicant believes that, as of March 1, 2003, it ceased to have any further duties or obligations toward the Unionized Employees, whether under the Collective Agreement or otherwise, and that PWGSC acquired all such duties and obligations.

These issues are currently in dispute, and have therefore created a situation of legal uncertainty and ambiguity as to the respective rights and obligations of the parties, notably in respect of the Grievance and the subject matter thereof.

It is therefore in the interest of all of the parties hereto, as well as that of the Unionized Employees, that these issues be resolved and that the PSSRB determine the following questions prior to the hearing on the Grievance:

a) What rights, privileges and duties, as the case may be, have been retained by the CUPE in respect of the Employees, and, in particular:

   (i) whether the CUPE has or ever had the right to proceed with the Grievance;

   (ii) whether the CUPE ever had or has now the right to act as the representative of the Unionized Employees, notably in connection with the Grievance or otherwise;

(iii) whether the CUPE has a duty to assert the rights of the Unionized Employees under the Collective Agreement, including the right to continued employment under the Collective Agreement;

(iv) whether these rights, where applicable, can or must be asserted against PWGSC or alternatively against the applicant.

b) What rights, privileges and duties, as the case may be, have been retained by the applicant in respect of the Unionized Employees, and, in particular, in respect of the continuation or cessation of their employment in the portion of the Business acquired by PWGSC or under the Collective Agreement.

c) What rights, privileges and duties, as the case may be, have been acquired by the PSAC in respect of the Employees, and, in particular, in respect of the continuation or cessation of their employment in the portion of the Business acquired by PWGSC or under the Collective Agreement. In particular, but without restricting the generality of the foregoing, has the PSAC's certification in respect of PWGSC already applied to the Unionized Employees for the period of December 1995 to February 29, 2004, and has it continued to apply to them following the transfer of the portion of the Business mentioned above.

d) Whether PWGSC was always the true employer of the Unionized Employees.

e) What rights, privileges and duties, as the case may be, have been acquired by PWGSC in respect of the Employees and, in particular, in respect of the continuation or cessation of their employment in the portion of the Business acquired by PWGSC or under the Collective Agreement.

For the Respondent, the CUPE

The respondent, the CUPE, submits that, even if the facts are accepted by the PSSRB as being true, this matter be dismissed as not demonstrating a *prima facie* case. The applicant, Rostrust Investments requests the PSSRB to determine whether there has been a transfer of jurisdiction among employee organizations in the present matter pursuant to section 49 of the *PSSRA*. Among other things, section 49 provides, in part, as follows:

> *Where by reason of a merger or an amalgamation of employee organizations or a transfer of jurisdiction among employee organizations, otherwise than as a result of revocation of certification, an employee organization succeeds another employee organization that, at the time of the merger, amalgamation or transfer of jurisdiction, is a bargaining agent, the successor shall be deemed to have acquired the rights, privileges and duties of the predecessor, whether under a collective agreement, arbitral award or otherwise.*

In *Ontario Hydro Employees Union, National Union of Public Service Employees, C.L.C. v. The Hydro-Electric Power Commission of Ontario* 57 CLLC 18,080 (O.L.R.B.) at p. 1654, the Ontario Labour Relations Board has noted that a transfer of jurisdiction takes place when one parent body assigns control over one of its subordinates to another parent body. To be absolutely clear, the CUPE and the PSAC have not assigned any rights to

one another in any way shape or form, nor have these trade unions had any discussion to do so nor do we have any settled plans to meet and discuss such a transfer. In this connection, the applicant has not conjured up one iota of a fact that might meet the definition of a transfer of jurisdiction, so that this application cannot succeed even if all of the facts presented are considered to be accurate. In *Ship Repair Machinists and Mechanics Union (Atlantic)* v. *International Assn. of Machinists and Aircraft Workers, Local 1723,* PSSRB File Nos. 125-2-67 and 140-2-12 (1996) (QL) at paragraph 17, the PSSRB itself has noted that a transfer of jurisdictions implies an internal union matter being implemented among employee organizations. Again the PSAC and the CUPE have made no such arrangement between themselves concerning the bargaining rights involved in this matter. Consequently, no *prima facie* case exists in this matter and the CUPE respectfully requests that this matter be dismissed in its entirety.

Alternatively, it is not abundantly clear how Rostrust Investments presumes to file a trade union successorship claim in the first place given that it is not itself an employee organization pursuant to the *PSSRA* or any other entity provided the ability to file such an application. Any transfer of jurisdiction is a private consideration between the parties or individuals involved in the internal union affairs of a bargaining agent(s) and a provincially-constituted employer cannot trigger the application of section 49 by way of an application raising various and sundry questions with the PSSRB. The CUPE submits the applicant has no standing to bring such a claim before the PSSRB and that this matter should be dismissed in its entirety.

In the further alternative, the respondent submits that the legal subject matter encompassed by section 49 is not concerned with a provincially-situated trade union attempting to preserve its bargaining rights upon the disposition of a business. For clarity, despite much of the subject matter of the present application, section 49 does not address the rights of trade unions upon the alteration of *employer* structures. Rather, section 49 focuses upon a trade union's bargaining rights upon *trade union reorganization.* However, despite the formal focus of this provision being upon the succession of *trade union* rights, the applicant has pleaded, among other things, at paragraph 37 of the application, that PWGSC is "clearly the successor" to Rostrust Investments. Moreover, the applicant, at paragraphs 47 to 54, requests the PSSRB to determine a variety of questions traditionally connected to a sale of business application such as the rights, duties and obligations that have been acquired by PWGSC. The applicant has also raised a list of questions at paragraph 52 through 54 that concerns the outstanding grievance arbitration between the applicant and the CUPE set to address the termination and severance pay claims against Rostrust Investments arising out of the collective agreement and the *Ontario Employment Standards Act, 2000.*

Not only does section 49 not contemplate such questions, these matters fall well outside the PSSRB's jurisdiction to consider. Submissions, such as those noted at paragraph 52, where the applicant queries the PSSRB about the CUPE's right to proceed with its grievance arbitration clearly exceed the PSSRB's jurisdiction. The CUPE submits such a question arises squarely from a provincial labour statute (as well as a collective agreement and Ontario's employment standards legislation) and is firmly situated in the exclusive jurisdiction of a provincially-appointed arbitrator. Pursuant to Rule 8(1) of the *Regulations and Rules of Procedure of the PSSRB, 1993,* the application ought to be dismissed.

At the time of the disposition of the applicant's business to PWGSC, a statutory mechanism would need to exist in order for PWGSC to become a successor employer

for collective bargaining purposes with the CUPE. However, to the extent that the various queries raised by the applicant touch upon the successorship issues between *employers* that operate in separate federal and provincial jurisdictions, it is the submission of the CUPE that the PSSRB is without any clear jurisdiction in the *PSSRA* to address such a matter. It is well-established that a Labour Relations Board has jurisdiction to declare a sale of business has taken place pursuant to its sale of business provisions where both the seller and purchaser of the business fall within the same jurisdiction. Absent clear statutory authority in section 48.1 of the *PSSRA*, no successor rights bridge exists between federal and provincial entities in this matter. Unfortunately, the *PSSRA* does not possess such a statutory mechanism that could squarely address the concerns pleaded by the applicant and section 49 does not hold out an alternative route to address these same concerns. If the successorship provisions operated to bridge collective bargaining rights from a provincial jurisdiction to the federal public service, the CUPE itself may have made such an application before the PSSRB.

In a nutshell, the various queries the applicant requests the PSSRB to consider either touches upon the CUPE's grievance, which falls within the provincial jurisdiction, or the application presumes to invite the PSSRB, a federal body, to impose itself into the respondent's representative rights granted by the Ontario Labour Relations Board. No statutory or constitutional device permits the PSSRB to act in that manner. In any event, this application ought to be dismissed as being beyond the PSSRB's jurisdiction to consider in the first place. Consequently, the CUPE submits that the PSSRB should dismiss this application from the outset, in its entirety, as the application itself is *ultra vires* of the *PSSRA*.

For the Respondent, the PSAC

It is the position of the PSAC that the application by Rostrust is misfounded in both fact and law, and should be summarily dismissed by the PSSRB.

While the PSAC reserves the right to make full submissions in response in the event that the PSSRB is not inclined to dismiss the application summarily, we can advise for present purposes that our position is founded, *inter alia*, upon the following:

1. There has been no merger, amalgamation or transfer of jurisdiction concluded as between the CUPE and the PSAC, such as to attract the application of section 49 of the *PSSRA* or otherwise.

2. As the application flows in its entirety from the erroneous premise that a merger, amalgamation or transfer of jurisdiction has occurred, the application is accordingly unfounded in its entirety.

3. It is our present understanding that there is no mechanism for successorship of bargaining rights from provincial jurisdiction to the jurisdiction of the *PSSRA*. The PSSRB is therefore without jurisdiction in this matter.

For the Respondent, the Treasury Board (PWGSC)

For want of jurisdiction, we request that the PSSRB dismiss the application on a preliminary basis without the need for further processing or scheduling of a hearing in this matter, pursuant to Rule 8(1) of the *Regulations and Rules of Procedure of the PSRRB, 1993.*

The remedies sought by Rostrust in its amended application reveal the true nature of the application. The application seeks relief that is beyond the jurisdiction of the PSSRB. We note as one example that the applicant has asked the PSSRB to "replace" Rostrust Investments Inc. as the designated employer on a certification order issued by the Ontario Labour Relations Board. It is clearly beyond the jurisdiction of the PSSRB to amend a provincial certification order.

Even if the facts alleged by the applicant are taken to be true, the applicant has still not established a basis on which the PSSRB could take jurisdiction or recognize that Rostrust has standing before the PSSRB under either section 49 or section 41 of the *PSSRA.*

REPLY SUBMISSIONS

For Rostrust

We will begin by summarizing the submissions of the other parties:

1. The term "transfer of jurisdiction" does not contemplate a situation such as the one put before the PSSRB, but is rather limited to internal union affairs involving some form of agreement or arrangement between unions.

2. The Applicant in the present case is not an employee organization "or any other entity provided the ability to file such an application", and hence has no standing to bring such an application before the PSSRB.

3. The *PSSRA* does not contemplate, nor provide any mechanism for the preservation of bargaining rights involving the transfer of an undertaking from the provincial to the federal sphere, nor does it provide any statutory mechanism that could squarely address the concerns pleaded by the Applicant. Consequently, the PSSRB is without jurisdiction in this case.

We will address each of these submissions individually below.

We wish to begin, however, by emphasizing that the PSSRB is vested with broad powers to attain the objects of the *PSSRA*, and that the application raises issues that transcend section 49 and which call upon the PSSRB to exercise its general jurisdiction under the *PSSRA.*

The PSSRB's general powers are set out notably in subsection 21(1) of the *PSSRA*, which reads as follows:

> ***21. (1)*** *The Board shall administer this Act and exercise such powers and perform such duties as are conferred or imposed on it by, or as may be incidental to the attainment of the objects of, this Act including, without restricting the generality of the foregoing, the making of orders requiring compliance with this Act, with any regulation made hereunder or with any decision made in respect of a matter coming before it.*

Simply put, the *PSSRA* has among its objects, the establishment of a mechanism to determine the rights and duties of trade unions and employer organizations in the public service and to protect the rights of employees to be represented by a duly certified employee organization.

One of the fundamental tenets of the *PSSRA*, as is the case with modern labour legislation in general, is the recognition of one employee organization to act as the exclusive bargaining agent of a group of employees. This principle is recognized notably under section 41 of the *PSSRA*, which, in addition to section 49, is invoked in the amended application.

Thus, pursuant to section 21(1) of the *PSSRA* the PSSRB has broad jurisdiction to render any decision with respect to any matter arising under the *PSSRA* or as may be incidental to the attainment of the objects thereof. This includes, *inter alia*, the determination as to who, among trade unions, shall be recognized as the exclusive bargaining agent of a group of employees covered by the *PSSRA*. As illustrated in the amended application and as set out below, this is essentially what the applicant has requested that the PSSRB do in the present case.

As such, and notably for the reasons set out below, it is respectfully submitted that the questions raised in the amended application fall clearly within the scope of the *PSSRA* and hence squarely within the jurisdiction of the PSSRB.

The amended application states that PWGSC was, at all relevant times prior to the transfer of the Business (as such term is defined in the application), the true employer of the Unionized Employees (which term is also defined in the application), who were apparently covered by a provincial certification issued to the CUPE. The amended application also states that these same employees were, however, contemplated by a certification issued to the PSAC under the *PSSRA*, insofar as the PSAC was certified to represent employees engaged in the same activities on behalf of PWGSC.

Notwithstanding the foregoing, the CUPE has purported to represent these employees and to file grievances on their behalf. Yet, pursuant to subsections 41(1) and (2) of the *PSSRA*, these rights are given exclusively to an employee organization that is certified under the *PSSRA*, which in this case would be the PSAC, and not the CUPE.

As such, it is the submission of the applicant that, insofar as PWGSC was the true employer of these employees, only the PSAC could legally act as their representative and file grievances on their behalf.

More specifically, and in light of this situation, the amended application requests that the PSSRB make certain determinations involving, in particular, the application of section 41 of the *PSSRA*, including notably the following:

1. Were the Unionized Employees covered by the PSAC's certification prior to March 1, 2004 (i.e. the date on which the Business was transferred), particularly from December 1995 to February 29, 2004 (see notably paragraph 59 of the amended application).

2. Did the PSAC or the CUPE, either before or after March 1, 2004, have the exclusive right to represent these employees.

The applicant respectfully submits that it has a clear interest in having the PSSRB determine these questions, as it has been named as a party to the purported grievance filed by the CUPE, which, depending on the answers to these questions, may never have had the right to file same or, more generally, to act as the "certified" bargaining agent of the Unionized Employees who are contemplated by such grievance.

Moreover, section 41(4) of the *PSSRA* specifically enables an employer to file an application submitting to the PSSRB any question as to "any right or duty of the previous bargaining agent or the new bargaining agent" arising by reason of the application of subsection (2) or (3) of section 41 of the *PSSRA*.

Thus, aside from the potential application of section 49 of the *PSSRA*, which we will address herein below, the amended application raises a number of issues that the PSSRB has jurisdiction, and indeed a duty, to decide.

Consequently, even if the PSSRB lacks jurisdiction in respect of the questions relating to section 49 of the *PSSRA*, which is denied, it would nevertheless have jurisdiction to seize itself of the amended application and to hold an evidentiary hearing with respect to same, which hearing is again requested by applicant.

As for the issues and submissions relating specifically to section 49 and to the PSSRB's alleged lack of jurisdiction in this matter, as pleaded by the other parties hereto, we wish to respond, on a preliminary basis, as follows.

The submissions of the CUPE, the PSAC and the Treasury Board

SUBMISSION #1: The term "transfer of jurisdiction", as contemplated under section 49 of the *PSSRA* does not contemplate a situation such as the one put before the PSSRB, but is rather limited to internal union affairs involving some form of arrangement between unions.

The applicant respectfully submits that the interpretation of section 49 proposed by the other parties is overly narrow and fails to recognize the realities of labour relations, where, among other things, relations between the parties, including relations between competing trade unions, are not always amicable or collaborative. The interpretation proposed by these parties also ignores the phenomenon of outsourcing, which has become increasingly prevalent in today's economy and particularly within the workings of the Government of Canada.

The term "transfer of jurisdiction" is not defined in the *PSSRA*, nor are its constituent terms, namely "transfer" and "jurisdiction". Given that the term "transfer of jurisdiction" has, however, been used in the labour relations statutes enacted under other Canada jurisdictions, the PSSRB has considered the interpretation given to such

term under these statutes, including the *Canada Labour Code* (see notably *Ship Repair Machinists and Mechanics Union (Atlantic)* v. *International Assn. of Machinists and Aircraft Workers, Local 1723,* PSSRB File Nos. 125-2-67 and 140-2-12 (1996) (QL)).

These provisions and the term "transfer of jurisdiction" have been given a much broader interpretation than that proposed by the CUPE, in particular. For example, the Canada Labour Relations Board (as it was then known), in the case of *C.B.R.T.* v. *C.B.R.T., Canadian Telecommunications Division,* 40 di 136, recognized, in applying the former section 143 of the *Canada Labour Code* (now section 43), which is similar to section 49 of the *PSSRA*, that such provisions must take into account the often conflictual relationships involved in the industrial relations world, and thus may apply even in the absence of any agreement or arrangement between trade unions. In this regard, the Canada Labour Relations Board stated the following:

> *The normal circumstances of a transfer of union jurisdiction or a successorship under section 143 occur where there is a clearly expressed voluntary agreement between unions. But the world of industrial relations, fraught with human conflict, often encounters the abnormal circumstances. For this reason Parliament has equipped the Board with the authority to fulfill its intent in unusual as well as normal circumstances. It authorized the Board under section 118(p) "to decide for all purposes of this Part any question that may arise in the proceeding..." including whether "(vii) any person or organization is a party to or bound by a collective agreement". To reinforce this omnibus and incidental authority of the Board, section 121 was enacted.*
>
> > ***121.*** *The Board shall exercise such powers and perform such duties as are conferred or imposed upon it by, or as may be incidental to the attainment of the objects of, this Part including, without restricting the generality of the foregoing, the making of orders requiring compliance with the provisions of this Part, with any regulation made under this Part or with any decision made in respect of a matter before the Board.*

It is respectfully submitted that the term "transfer of jurisdiction", as contemplated under section 49 of the *PSSRA*, can and indeed should be interpreted in the same fashion, so as to take into account and be applied to instances where, like in the present case, the interests and positions of different trade unions may conflict, and also to situations that are unusual or atypical.

It is further submitted that the provisions of the *PSSRA*, notably section 21(1) thereof, which is almost identical to the provision invoked by the Canada Labour Relations Board in the above-cited case, indeed empower the PSSRB to apply section 49 of the *PSSRA* as well as other provisions thereof to such situations, including the present one.

In addition to proposing such a narrow and sterile interpretation of section 49 of the *PSSRA*, the CUPE suggests further that the applicant has "not conjured up one iota of fact that might meet the definition of transfer of jurisdiction". This allegation seems to gloss over the facts alleged by the CUPE itself in its letter to the applicant dated February 27, 2004, notably that there was a transfer of operations involving the

applicant and PWGSC, and that the transferring employees had been requested to pay union dues to the PSAC, which was ostensibly being treated as the successor trade union.

These facts, along with the other facts mentioned in the amended application, including notably the CUPE's inaction following the issuance of such letter, do indicate that there is a factual basis on which the PSSRB may conclude that there was a transfer of jurisdiction as between the CUPE and the PSAC, as contemplated under section 49 of the *PSSRA*.

In light of the above, the applicant respectfully submits that there are sufficient grounds and allegations of fact contained in the amended application, and at the very least a *prima facie* case, on which the PSSRB may exercise its jurisdiction to determine whether a "transfer of jurisdiction" within the meaning of section 49 of the *PSSRA* has taken place. A hearing should therefore be held so that the parties may adduce evidence as to the relevant elements and make more detailed submissions with respect to same.

SUBMISSION #2: The applicant in the present case is not an employee organization "or any other entity provided the ability to file such an application", and hence has no standing to bring such an application before the PSSRB.

Subsection (2) of section 49 provides specifically that an "employer" or "any other person concerned" may apply to the PSSRB to determine what rights, privileges and duties have been retained by the relevant parties. Clearly, in the present case, the applicant would qualify as an "employer" and/or a "person concerned" with such issues, notably as they have been framed in the amended application.

Indeed, by way of example, the Canada Labour Relations Board, in the *C.B.R.T. v. C.B.R.T., Canadian Telecommunications Division* case (*supra*) above, recognized that the employer will have "legitimate interests" in respect of the types of issues that are typically considered under such provisions.

It is respectfully submitted that, in the present case, the applicant has a clear and legitimate interest in having the PSSRB determine, among other things, whether and at what point there was a transfer of jurisdiction between the CUPE and the PSAC and whether the CUPE or the PSAC ever had the right to represent the Unionized Employees, or to file a grievance on their behalf, as the CUPE has purported to do.

Again, and contrary to what is submitted by the CUPE, the PSSRB clearly has jurisdiction to determine these, as well as the other questions raised in the applicant's amended application.

SUBMISSION #3: The *PSSRA* does not contemplate, nor provide any mechanism for the preservation of bargaining rights involving the transfer of an undertaking from the provincial to the federal sphere, nor does it provide any statutory mechanism that could squarely address the concerns pleaded by the applicant. Consequently, the PSSRB is without jurisdiction in this case.

This submission obviously does not take into account the elements added to the applicant's initial application. In particular, this submission does not take into account the contention that the applicant's operations may, all along, have been governed by the provisions of the *PSSRA*, since, as of December 1995, PWGSC was the true

employer of the Unionized Employees. It is further submitted, notably at paragraph 23 of the amended application, that the applicant was an agent of the Crown in virtue of the Management Agreement.

The factual allegations relating to these contentions are set out notably at paragraphs 22 and 27 of the amended application, and should, for the process of the preliminary decision requested by the other parties hereto, be assumed to be true. The essence of these allegations is that, at all relevant times, PWGSC was the true employer of the Unionized Employees, and that, consequently, only the PSAC (to the exclusion of the CUPE) could legally act as the bargaining agent of such employees.

It is respectfully submitted that the identification of the true employer, where such employer may be governed by the provisions of the *PSSRA*, which is what is at issue here, is undoubtedly within the scope of the PSSRB's jurisdiction. Indeed, the PSSRB exercised its jurisdiction to determine such a question in the case of *Public Service Alliance of Canada and Treasury Board*, PSSRB File Nos. 147-2-31, 169-2-447 (1988) (QL). In that case, the PSSRB had to determine whether educators provided through a private company, otherwise governed by provincial labour laws, should be considered as employees of the Government of Canada (in that case Correctional Service Canada), under the regime of the *PSSRA*, where such employees were provided to teach at a correctional facility in Cowansville, Quebec.

In that case the PSSRB applied the well-established case law and principles recognizing the possibility for the recipient of the contracted services to be considered as the true employer of the individuals actually providing the services. This case law and the guiding principles established therein were later reaffirmed by the Supreme Court of Canada in the seminal case of *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015. Applying these principles, the PSSRB concluded that it was indeed the Government of Canada, and not the company supplying the employees, which was the true employer of the educators in question. As such, the PSSRB determined that a group of employees, which had been previously appeared to be governed by the labour laws of the province of Quebec, were covered by the regime established under the *PSSRA*.

In addition to this type of situation, which is raised in the amended application and over which the PSSRB clearly has jurisdiction, it is respectfully submitted that the PSSRB's jurisdiction, and the regime established under the *PSSRA* may also extend to cover the employees of parties who are agents of the Government of Canada (as is also alleged to be the case in the present matter). Indeed, one of the core functions of PWGSC is to manage and maintain properties that are occupied by the Government of Canada. In the present case, pursuant to the Management Agreement, these services were, however, contracted out to the applicant, who thus acted for and on behalf of the Crown, as its agent.

Further, by providing such core services to PWGSC, the applicant may be seen as a "vital", "essential" or "integral part" of PWGSC's operations, and hence, in this context, be subject to the same labour relations regime as that applying to PWGSC. It is respectfully submitted that, by analogy, the principles established in the jurisprudence in this regard, including notably the landmark case of *Northern Telecom Limited v. Communications Workers of Canada et al.*, [1980] 1 S.C.R. 115, as they relate to the notion of a "federal undertaking", would apply *mutatis mutandis* to a provider of services to the Crown, and hence to the relationship that existed between PWGSC and the applicant.

In view of the above, the amended application raises various ways in which the applicant and its employees may have become subject to the regime established under the *PSSRA*, all of which may be considered and determined by the PSSRB within the mechanisms available under the *PSSRA*; whether under sections 41 or 49, under section 21 or otherwise.

We respectfully submit that it is clear from the above that, regardless of whether or not the applicant ultimately prevails on the merits of its application, the PSSRB does have jurisdiction to deal with the questions raised therein. It is also clear that the applicant has a definite and legitimate interest and sufficient standing to have these issues determined by the PSSRB.

We also wish to emphasize and respectfully submit that, in submitting such questions to the PSSRB, the applicant is not asking that the PSSRB rule on the merits or on the admissibility of the grievance mentioned therein or that it usurp the jurisdiction of a grievance arbitrator. Rather, the applicant is merely asking that the PSSRB determine, in strict accordance with the provisions of the *PSSRA*, who among the CUPE and the PSAC had, during the relevant periods, the exclusive right to act as the certified bargaining agent of the Unionized Employees, and to file grievances on their behalf. While the PSSRB may not impose its views on a grievance arbitrator, its determinations in this regard will certainly be relevant to any ruling later made by a grievance arbitrator seized with such a grievance.

In light of the foregoing, it is respectfully submitted that the submissions of the CUPE, the PSAC and the Treasury Board of Canada are ill-founded in fact and in law. Among other things, these parties propose an application of the *PSSRA*, which is far too narrow and which does not take into account the realities of modern government in Canada, where more and more services traditionally provided by government employees are being contracted out to private companies; nor do they recognize (as the PSSRB did in the above-cited case of *Public Service Alliance of Canada* and *Treasury Board (supra)*, and as the Supreme Court did in the case of *Pointe-Claire (City) v. Quebec (Labour Court) (supra)*), that the traditional legal notions of "employee" and "employer" have evolved so as to reflect such realities and the complicated relationships that have emerged as a result.

For the Respondent, the CUPE

The applicant has now made an additional submission suggesting that section 41 applies to this matter. It is generally alleged that prior to the transfer that PWGSC was already the true employer (and had been the true employer since at least December 1995). Furthermore, the applicant asks that the PSSRB designate it as the employer on a provincial labour board certificate. Among other things, the applicant also asks that it determine whether the CUPE has the right to proceed with its grievance arbitration and whether it has any rights pursuant to a *provincially* based collective agreement and Labour Board certification. The applicant asserts that the PSSRB has jurisdiction via section 41 of the *PSSRA* to determine these matters.

The CUPE submits that any certification application made by Rostrust is obviously stale and would serve no labour relations purpose whatsoever. The applicant has consistently recognized the Ontario Labour Relations Board certificate since it was issued, negotiated an initial agreement, paid wages to its employees pursuant to the collective agreement and negotiated collective agreements with the CUPE, or its predecessor, repeatedly since 1993. Rostrust only now claims the true employer has

been PWGSC since 1995. In addition, Rostrust asks the PSSRB to now determine the rights the CUPE possesses in its provincially based grievance arbitration and requests the PSSRB to amend the parties to the Ontario Labour Relations Board certificate. The CUPE submits the PSSRB has no jurisdiction to comply with the request of Rostrust.

The applicant relied upon section 41 of the *PSSRA* to claim jurisdiction for this application. Setting aside the matter that Rostrust is purporting to make an application concerning the certification of employees, which have never been certified by the PSSRB, and seeks to amend a provincial certificate to do so, section 41 only applies to employees organized under the *PSSRA*. To be clear, the employees in question were never organized under the *PSSRA* so that section 41 does not apply to this matter in the first place and the PSSRB maintains no jurisdiction to amend any rights the CUPE has in the Province of Ontario.

The applicant relies upon section 41(4) to make this application which allows in part the "employer or the previous or the new bargaining agent" to make an application to the PSSRB to determine any right or duty of the affected bargaining agents. Not one of those parties has launched this application. The *PSSRA* defines employer as "Her Majesty in right of Canada". Rostrust is obviously not Her Majesty in right of Canada under the terms of the *PSSRA* and the PWGSC has not launched any application pertaining to section 41. The PWGSC has requested the PSSRB to dismiss this matter, not to proceed with the application. Even if one were to accept Rostrust's own submissions, only the PWGSC being the alleged "true employer" might be able to bring this application but not Rostrust as it claims now not to be the actual employer and the PWGSC is specifically designated by the *PSSRA* as being the only employer in this application. The CUPE submits Rostrust has no standing to bring an extremely stale claim that some other entity is really the employer of the employees the CUPE had legally represented for years. Furthermore, the applicant does not even attempt to explain the reason for such an extensive delay. What reason could now exist to file such an application other than to further Rostrust's own interest in another legal venue? The CUPE further submits that this amended application is an abuse of process as it is an attempt to have another administrative tribunal prevent the hearing of its claims for reasons not directly connected to any labour relations difficulty between the parties under the *PSSRA*. The application ought to be dismissed from the outset for the reasons stated above. In summary, Rostrust has no standing to bring the application and any claim regarding the true employer is untimely. Finally, no jurisdiction exists for the PSSRB to determine these matters, as section 41 does not apply to employees or an employee organization certified under the Ontario Labour Relations Board.

With respect to the submission that the CUPE utilizes the term "transfer of jurisdiction" in an overly narrow manner, we submit that the definition utilized is the understanding of the law utilized by administrative tribunals across Canada and is utilized and adopted by Mr. George Adams in Canadian Labour Law (2nd eds., Aurora: 2004) at 14-26 to 14-27. The case law example relied upon by Rostrust; C.B.R.T. 40 di 136, does not stand for the proposition that the Board may freely disregard the wishes of the trade unions involved in such a matter. That case is distinguishable from the present matter. A representation vote was ordered among trade unions competing to represent employees, which had been ordered in the context of an application brought by a trade union to abandon its rights after a failed merger between trade unions that co-existed in the same federal jurisdiction. The applicant has not cited any authority that is even remotely similar to these facts that

would justify departing from the current law concerning the term transfer of jurisdiction the CUPE has cited in its July 9, 2004 correspondence.

With respect to Rostrust's reply concerning standing, the CUPE submits that Rostrust is not an employer as defined by the PSSRB. To reiterate, the PSSRB defines employer as "Her Majesty in right of Canada". Rostrust is not an employer under section 49 of the *PSSRA* and the PWGSC, the PSAC and the CUPE have not launched any application pertaining to section 49. Rather, Rostrust is a private sector corporation. Rostrust is also obviously not a natural person who might have a legitimate legal interest in this matter and as such could not have brought this complaint. To the contrary, the CUPE submits this application is an abuse of process and not a *bona fide* application filed to resolve some legal dispute falling under the jurisdiction of the *PSSRA*. It is an attempt to avoid a properly convened labour arbitration in the provincial sphere. It is also an attempt to alter the certification of a competent provincial labour tribunal. As such, Rostrust has no standing in this matter to bring an application pursuant to section 49 and no jurisdiction exists which might provide Rostrust the remedies they are seeking at the PSSRB.

Finally, with respect to our submission that no mechanism exists to address the present application, Rostrust, after approximately nine years have passed, is attempting to argue that the PWGSC has, at all material times been the true employer of the CUPE members. If this submission were accurate, one might wonder what was being disposed of between Rostrust and PWGSC, if PWGSC employed the affected persons in the first place? Notwithstanding such questions, the application to bring the claim forward is untimely. It is an attempt to, in a *post ad hoc* rationalization, undo the legal relationship the parties have existed with for many years without Rostrust once previously mentioning such affairs were improper to the CUPE or that the true legal relationship was governed by another labour relations regime. Even if Rostrust could bring such a claim years after abiding by, and amiably participating in, a provincial labour law context, they must be said to have waived any such application by the passage of time and the parties' detrimental reliance upon the silence, by conduct and words, of the applicant.

For the Respondent, the PSAC

In its amended application Rostrust takes the extraordinary position that although it or its predecessor employer (O&Y) became subject to a certification order of the Ontario Labour Relations Board (OLRB) in April, 1993, and although Rostrust itself has attorned to the jurisdiction of that tribunal and its certification order since December, 1995 (and conducted labour relations thereunder), it somehow possesses the right to challenge, some eleven (11) years later, the OLRB's finding that it had jurisdiction over the labour relations of the applicant. Even more astonishingly, Rostrust takes the position that it is entitled to raise that challenge before the PSSRB. The proper time at which to challenge the certification order of the OLRB was 1993. The proper forum in which to challenge the certification order of the OLRB was the OLRB itself, or Ontario's Divisional Court on an application for judicial review. The PSSRB is not the proper forum in which to challenge the finding of the OLRB by way of raising a largely unparticularized allegation that PWGSC and Treasury Board were in fact the true employer of the employees of the applicant. It is the submission of the PSAC that the applicant is barred by principles of prejudicial delay and is also estopped from raising the allegation that the true employer is any party other than itself.

It appears to the PSAC that the application of Rostrust is brought in bad faith and for an improper purpose, namely that of evading its legal obligations in respect of the employees represented by the CUPE and the collective agreement entered into with that trade union, under the laws of Ontario. It strikes as rather odd, and perhaps contextually quite significant in interpreting the purpose that underlies Rostrust's application, that is only subsequent to the termination of the contractual relationship between PWGSC and Rostrust, that the latter entity has sought to thrust its legal obligations onto the party that terminated its relationship with Rostrust. One might reasonably speculate that Rostrust's dissatisfaction with the termination of that relationship, which it admits it opposed by various means including court action, underlies in part its efforts to assign liability to PWGSC. If this is the case, then the application is yet still further brought in bad faith and for an improper purpose.

The PSAC maintains that at all material times, Rostrust was the employer of the employees subject of the CUPE grievance. It is the PSAC's submission that at no time prior to the actual hiring of the former employees of Rostrust by PWGSC did any relationship of employer-employee ("true employer") exist as between PWGSC and the employees employed by Rostrust. No indicia of a true employer circumstance were present, and the PSAC submits that Rostrust has not established a *prima facie* case that such a relationship existed at any time. Rather, they have made a bald assertion, wholly unsupported by particulars.

The PSAC has been certified as bargaining agent for numerous groups of employees of Treasury Board and separate employers whose labour relations are governed by the *PSSRA*. At such time as the former employees of Rostrust became employed by PWGSC/Treasury Board, those employees assumed positions that fall within the scope of the PSAC's bargaining rights and certifications. It was not until that time that PWGSC stood in the position of employer of those persons, and not until that time that the *PSSRA* became applicable to the employment of those persons.

It is the position of the PSAC that there is no existing legal mechanism, statutory or otherwise, by operation of which bargaining rights provided by and under provincial labour relations jurisdiction could "flow through" to the jurisdiction of the *PSSRA*. Where legislation is intended to permit cross-jurisdictional transfers as between provincial and federal jurisdictions, specific provisions are enacted for that purpose and speak in precise detail to the circumstances in which such transfers will be acknowledged at law. Examples of this occurring can be found in section 44(3) of the *Canada Labour Code* and in section 37.2 of the *Trade Unions Act* of Saskatchewan. No such provision exists in the *PSSRA*. The proposition advanced by Rostrust, that bargaining rights may have continuity as between the jurisdiction of Ontario's *Labour Relations Act*, 1995 and the *PSSRA* is an impossible one.

Rostrust suggests that section 41 of the *PSSRA* can somehow clothe the PSSRB with jurisdiction to grant the remedies sought in its application. The PSAC submits that this cannot be so. Subsection 41(1) speaks to the consequences of the granting of an application for certification brought under the *PSSRA*. Subsections 41(2) and 41(3) speak to the consequences of the granting of a displacement application for certification brought under the *PSSRA*. Section 41 thus does not in any fashion have application to the circumstances of the present case, as no application for certification (original or displacement) has been brought before the PSSRB by the PSAC or the CUPE, in respect of the employees formerly employed by Rostrust.

Subsection 41(4) provides standing to "the employer" and to the previous or new bargaining agent to make application to the PSSRB, subsequent to a successful displacement application, in order to determine any question as to any right or duty of a bargaining agent. Notwithstanding the complete inapplicability of section 41 to the instant case as pleaded above, and notwithstanding the fact that no application has been brought pursuant to subsection 41(4) by a bargaining agent, it would nevertheless be the case that if Rostrust were somehow correct that PWGSC/Treasury Board were the true employer of the employees employed by Rostrust, then Rostrust would have no standing to make application pursuant to subsection 41(4). This is further reinforced by the fact that the *PSSRA* clearly defines "employer" (in section 2) to mean "Her Majesty in right of Canada" as represented by either Treasury Board or a separate employer within the meaning of the *Act*. There is thus no theory upon which Rostrust could be found to have standing to make application pursuant to section 41.

As is the case with section 41 of the *PSSRA*, standing to make application is provided to "the employer", which means and can only mean "Her Majesty in right of Canada" as represented by either Treasury Board or a separate employer within the meaning of the *Act*. There is therefore no basis upon which Rostrust has standing to make application pursuant to section 49(2) as "employer" for purposes of the *Act*.

Rostrust suggests that it may have standing to make application pursuant to section 49 as "any person...concerned". The PSAC denies this, and submits that within the framework and context of section 49 of the *PSSRA*, "person" means a natural person. The PSAC would go further and state that in the context of the *PSSRA*, "person" is intended to mean only such natural persons as are subject to the jurisdiction of the *Act* (namely employees, or natural persons employed in the Public Service who might not meet the definition of employee as set out in section 2 of the *Act)*. Rostrust is neither an employee nor a person employed in the public service, and accordingly, it cannot have standing to bring an application under section 49.

In addition, and as submitted previously in this matter, it is the PSAC's position that no merger, amalgamation or transfer of jurisdiction has occurred as between the PSAC and the CUPE. Accordingly, the application of section 49 is not attracted.

It is the PSAC's submission that in the absence of an agreement or arrangement as between employee organizations regarding their respective responsibilities and authorities, section 49 of the *Act* can have no application and the PSSRB (or any entity) is without jurisdiction to invoke that section. In support of this proposition, the PSAC relies upon the decision of the PSSRB in the matter of *Ship Repair Machinists and Mechanics Union (Atlantic)* v. *International Assn. of Machinists and Aircraft Workers, Local 1723,* PSSRB File Nos. 125-2-67 and 140-2-12 (1996) (QL). It is worth quoting at length from that decision:

> *17. The Board is also of the view that section 49 of the Act cannot avail the applicant in the circumstances of this case. This provision, which is submitted "Successor Rights", addresses "a merger or an amalgamation of employee organizations or a transfer or jurisdiction among employee organizations..." There is no dispute that the physical relocation of the employees from Dartmouth to Halifax does not give rise to a merger or an amalgamation; the applicant's contention is that this "transfer of personnel" resulted in a "transfer of jurisdiction from IAM, Local 1723*

to the Applicant Union". With all due respect, the Board fails to see how this relocation of some employees could give rise to a transfer of legal authority such as contemplated by section 49. A merger or amalgamation implies the implementation of restructuring decisions taken by employee organizations or their constituents; the application of the ejusdem generic rule of interpretation would suggest that a "transfer of jurisdiction" has a similar meaning. I believe this interpretation is supported by other labour boards. For example, in the United Food and Commercial Workers' Union and Waterloo Spinning Mills Ltd., *[1984] O.L.R.B. Rep. 542 at page 557 the Ontario Labour Relations Board stated the following: "We might observe at this point that we do not think anything turns on the fact that the transaction with the U.F.C.W. was framed as a merger rather than a transfer of bargaining jurisdiction... If a merger is a fundamental change in the nature of the organization, a transfer of jurisdiction must be too." See also* Re Gill Lumber Chipman (1973) Ltd. And United Brotherhood of Carpenters & Joiners of America *(1973), 42 D.L.R. (3d) 271 (C.A.) where in the context of an employer transfer of a business the court stated that: (at p. 274) "Transfer" as a verb means "to make over the legal title or ownership of to another". As a noun, it means the making over of such title or ownership. Of particular interest is a decision of the Canada Labour Relations Board in* I.B.E.W. v. C.A.C.A.W. *(1991), 86 di 59, 92 C.L.L.C. 16,012. In that case the applicant sought a declaration under section 43 of the* Canada Labour Code *(which is virtually identical to section 49 of the PSSRA) that there had been a merger between itself and the respondent employee organization in respect of a particular bargaining unit of employees; the respondent denied that a merger had taken place and maintained that the Board had no jurisdiction to make the declaration sought by the applicant. In dismissing the application the Canada Board made the following observations:*

> *It seems to us that Parliament intentionally left the matter of mergers, amalgamations and transfers of jurisdiction among trade unions as private contract considerations between the parties involved. These are internal union matters in which the Board cannot and ought not to interfere. We agree with counsel for CACAW that section 43 as it is presently worded deems that successor rights have been acquired and that the Board's jurisdiction has been restricted to questions about what these rights consist of. It does without saying that the Board may, in a preliminary way, look to the circumstances to confirm that the prerequisites of a merger, amalgamation or a transfer of jurisdiction have occurred; however, such a decision would not be protected by the Board's*

> *privative clause in the event of judicial review in that it is outside of the Board's primary jurisdiction (see* U.E.S. Local 298, v. Bibeault, *[1998] 1 S.C.R. 1048).*
>
> *18. The Board has not been referred to, nor has it been able to find, any jurisprudence which would support the contention that section 49 has application in the circumstances of this case, but is, where a so-called transfer of jurisdiction is not reflective of any agreement or arrangement between the trade union entities concerning their respective responsibilities and authority. In the Board's view, the purpose of section 49 is to allow the Board to give recognition for collective bargaining purposes to such agreements or arrangements: in their absence, the Board has no jurisdiction under this provision. The Board believes that section 49 was not intended to confer on the Board authority to intervene in disputes between employee organizations as to their respective jurisdiction over union members.*
>
> [Emphasis added]

On the basis of the PSSRB's previous reasoning then, the PSAC submits that in the face of both the PSAC's and the CUPE's denials that any merger, amalgamation or transfer of jurisdiction has occurred, the PSSRB is without jurisdiction pursuant to section 49, and the application by Rostrust must therefore fail.

For all of the foregoing reasons, it is the PSAC's submission that the application of Rostrust should be dismissed summarily, without further processing or the conduct of a hearing. The application is brought in bad faith and for an improper purpose, the application is misfounded in fact and law, the applicant lacks standing and in all respects the applicant seeks remedies that are beyond the PSSRB's jurisdiction. As one glaring example, the applicant has asked the PSSRB to amend a provincial certification order.

Further Reply Submission for Rostrust

To simplify and summarize what is being submitted by the applicant, there are essentially two (2) main questions that have been put to the PSSRB by the applicant in this case. They are as follows:

1. Whether the PSAC, as opposed to the CUPE, should be recognized, under the *PSSRA*, as the certified bargaining agent of the group of employees involved in building maintenance at the L'Esplanade Laurier property.

2. Whether there has been a transfer of jurisdiction among employee organizations within the terms of Section 49 of the *PSSRA*.

These questions fall squarely within the jurisdiction of the PSSRB notably pursuant to sections 41 and 49 of the *PSSRA*.

At all relevant times, our client had, and still has, sufficient interest and standing to file its application herein and to have the PSSRB address the above and related questions. Not only was the applicant an agent of Her Majesty in Right of Canada and an employer, within the meaning of the *PSSRA*, but it is a concerned "person". In this regard, we respectfully submit that the respondent's suggestion that the term "person" contemplates only a natural person is entirely unsupported and is inconsistent with the spirit and intent of the *PSSRA*. This term should therefore not be given such a narrow interpretation, as proposed by the respondents.

The respondents also suggest that the application has been brought in bad faith and for an improper purpose, and that, in any event, the applicant has waived its right to assert the position it has advanced in the present proceedings. This is adamantly denied.

In this regard, the PSSRB should consider, *inter alia*, the fact that the applicant's relationship with PWGSC and with the employees engaged in providing services exclusively to the latter at L'Esplanade Laurier was not static, but rather evolved over time. As such, following the applicant's acquisition of the business as described in the application, and still after any decision of a provincial labour relations board purporting to recognize the transfer of the certification and/or collective agreement to the applicant under provincial legislation, the parties' relationship remained an evolving one.

In particular, with the passage of time, PWGSC's control over the employees increased, and it exercised more and more control over their work. In the last couple of years of this relationship, PWGSC had instructed the applicant to bring on new staff to service PWGSC's needs and the latter paid for the relevant wages. In this context, PWGSC implemented additional measures to monitor and control the work in question.

While we can only speculate, it may be that PWGSC preferred to establish the tripartite relationship described in the amended application, where a third party like the applicant would appear to be the employer of the employees working for PWGSC. Among other potential benefits that may have been perceived, this arrangement would ostensibly eliminate the need for PWGSC to bargain and interact with a powerful union such as the PSAC in connection with these employees.

However, the parties' arrangements could not, in these circumstances, oust the jurisdiction of the PSSRB, nor the application of the *PSSRA* respect of the employees in question. In this connection, the applicant takes note of the PSAC's admission, in its submission, to the effect that the positions assumed by the employees in question fall within the scope of its bargaining rights and hence, under the jurisdiction of the *PSSRA*. Our submission is that, despite any appearances, this was the case even prior to the transfer of the business to PWGSC.

We also wish to point out that the CUPE's allegations of "detrimental reliance" are completely unsupported and are rather surprising, coming from a party who has done nothing, since the transfer of the business, to preserve its bargaining rights in respect of these employees through any mechanism whatsoever.

We also remind the PSSRB that, upon the transfer of the business, the CUPE, despite its threat to the contrary, acquiesced in the transfer of the bargaining agent role to the PSAC. Surely, this would fall within the notion of a "transfer of jurisdiction" within the

terms of section 49 of the *PSSRA* even under the narrow interpretation advocated by the respondents.

Finally, we respectfully submit that the basis of the application is not to amend or to challenge a provincially-issued certification or to encroach upon the jurisdiction of a provincially appointed labour tribunal or grievance arbitrator, as suggested in various ways by respondents. Indeed, a careful review of all of the questions and conclusions of the application, as amended, would demonstrate clearly that this is not the case.

For example, there should be no doubt, in light of the facts exposed by the applicant, that the PSSRB has clear jurisdiction to answer the questions and to make the determination, as requested in the application.

There are real and legitimate purposes for the applicant to request that the PSSRB exercise its jurisdiction in connection with these issues. For example, but without restricting the generality of the foregoing, a determination as to whether PWGSC was at all relevant times the true employer of the employees in question (who continued working for PWGSC after the removal of the applicant from the tripartite relationship) would have an impact on the issues raised by the CUPE in its grievance. While this question may have broad ramifications, it remains within the jurisdiction of the PSSRB to determine. There is nothing dubious or improper about the applicant's wanting to have this, as well as other related questions, answered by the PSSRB.

REASONS FOR DECISION

[9] This application arose out of the termination of a service contract under the lease agreement between Rostrust and PWGSC. In effect, PWGSC took over responsibility for the maintenance of L'Esplanade Laurier and many of the former employees of Rostrust were hired pursuant to the *Public Service Employment Act* (*PSEA*) to perform either the same or similar duties.

[10] I have concluded that this "contracting-in" of maintenance services does not constitute a transfer of jurisdiction under the *Public Service Staff Relations Act* (*PSSRA*). In its amended application, Rostrust alleges that its employees were always employees of PWGSC based on the control that PWGSC exercised over these employees. I have concluded, based on the decision of the Supreme Court of Canada in *Canada (Attorney General) v. Public Service Alliance of Canada*, [1991] 1 S.C.R. 614 (commonly known as *Econosult*), that these employees were not employees of the Treasury Board until such time as they were appointed pursuant to the *PSEA*.

[11] The applicant has requested the following relief:

1. A determination as to whether PWGSC and/or Treasury Board was always the true employer of the L'Esplanade Laurier employees and whether the PSAC's certificate has always applied to these employees.

2. A determination as to whether there has been a transfer of jurisdiction within the meaning of section 49 of the *PSSRA*.
3. A determination as to which of the CUPE and the PSAC has the rights, privileges and duties in respect of the employees, including the rights under any certification decision and the collective agreement, including the right to proceed with a grievance under the collective agreement.
4. A declaration that PWGSC has replaced Rostrust as the employer under the collective agreement.
5. A declaration that PWGSC replace Rostrust as the designated employer under the OLRB certification of the L'Esplanade Laurier employees.
6. A declaration and order that Rostrust be replaced by PWGSC as the named employer under the grievance.
7. An order suspending the grievance hearing or an order that the CUPE hold the hearing in abeyance pending the decision of the Board.

[12] The grievance hearing referred to in the application was a grievance before an arbitrator appointed under the *Ontario Labour Relations Act* (*OLRA*). The CUPE agreed to suspend the grievance hearing, so the relief requested with regard to the suspension of that hearing is moot. In any event, this Board has no jurisdiction over proceedings governed by the *OLRA*.

[13] Part of the relief requested by Rostrust includes replacing it with PWGSC as the employer under the CUPE collective agreement, the OLRB certificate and the grievance. The certificate, collective agreement and grievance are all governed by the *OLRA*. This Board is without jurisdiction over these matters.

[14] Although not part of the relief requested, it is suggested in the original and amended applications that the maintenance operations at L'Esplanade Laurier were "a federal undertaking". It is not clear from the application or the submissions what the relevance of this assertion is to the application. Also, this is an assertion not supported by any evidence. If a business is determined to be a "federal undertaking", the business is subject to federal rather than provincial jurisdiction. Such a find would, however, result in the application of the *Canada Labour Code* (*CLC*) to the business and not the *PSSRA*. Consequently, the Board is without jurisdiction to determine the validity of these assertions, as determining whether a business is a "federal undertaking" is in the jurisdiction of the Canada Industrial Relations Board.

[15] In its submissions, Rostrust has suggested that it is open to the Board to use its general powers under section 21 of the *PSSRA* to address the issues raised by the application. Section 21 provides:

> ***21.*** *(1) The Board shall administer this Act and exercise such powers and perform such duties as are conferred or imposed on it by, or as may be incidental to the attainment of the objects of, this Act including, without restricting the generality of the foregoing, the making of orders requiring compliance with this Act, with any regulation made hereunder or with any decision made in respect of a matter coming before it.*

[16] Firstly, section 21 was not asserted in either the original or the amended application. As a general principle, the parties should not be permitted to amend applications through their submissions. In any event, the Supreme Court has held that similar "general powers" provisions do not confer autonomous powers on the Board to remedy situations for which there are specific powers prescribed elsewhere (*Syndicat des employés de production du Québec et de l'Acadie v. Canada (Labour Relations Board)*, [1984] 2 S.C.R. 412).

[17] The PSAC and the CUPE have alleged that Rostrust has made this application "in bad faith and for an improper purpose". I have come to no conclusion on the allegation, as there is a lack of an evidentiary foundation to come to such a conclusion.

Who is the "true employer"?

[18] Rostrust alleges that the L'Esplanade Laurier employees were always employees of PWGSC and/or Treasury Board and were always subject to the certificate issued to the PSAC by the Board. These employees have been treated as employees of Rostrust and governed by a collective agreement negotiated with the CUPE since 1993. Rostrust acquired the building complex in December of 1995. There has been a delay of close to nine years by Rostrust in raising this issue. It is inappropriate for an employer to wait for such an extended period before raising an issue that goes to the very heart of the relationship between union and management.

[19] The allegation is also a direct challenge to the OLRB certificate for these employees. It is not within the jurisdiction of this Board to determine the appropriateness or the legality of a certificate issued by the OLRB.

[20] Rostrust has referred to section 41 of the *PSSRA* in its amended application. Section 41 sets out the effect of certification and provides in subsection 4 for the determination of any questions relating to the effects of certification by way of

application by the employer or by the new or previous bargaining agent. "Employer" is defined in the *PSSRA* (in subsection 2(1)) as "Her Majesty in right of Canada as represented by ... the Treasury Board" for those parts of the public service specified in Part I of Schedule I of the Act. Rostrust does not meet this definition of "employer" under the *PSSRA*. Consequently, Rostrust does not have the standing to make an application under section 41 of the *PSSRA*.

[21] In any event, since the decision of the Supreme Court of Canada in *Econosult* (*supra*), it has been clear that only employees appointed pursuant to the *PSEA* can be considered employees under the *PSSRA*:

> *21. ....In the absence of a definition of "employee", it could be argued that the Board could determine who is an employee on the basis of tests that are generally employed in labour matters. These tests are customarily employed to resolve a dispute as to whether a person is an employee or an independent contractor. The express definition of "employee", however, shows a clear intention by Parliament that it has decided the category of employee over which the Board is to have jurisdiction. It is restricted to persons employed in the Public Service and who are not covered by the Canada Labour Code. The Board's function... is not to determine who is an employee but rather whether employees who come within the definition provided, are included in a particular bargaining unit.*
>
> [...]
>
> *24. ...A finding that they are employees of the Government of Canada simpliciter would clearly exceed the authority conferred by ...* [the Act] *and would fly in the face of s. 8 of the* [Public Service] Employment Act *which expressly reserves this power to the Public Service Commission.*
>
> *25. In the scheme of labour relations which I have outlined above there is just no place for a species of de facto public servant who is neither fish nor fowl ...*
>
> [...]
>
> *27. Those who are authorized to bring disputes before the Board are employees, employee organizations and employers as defined in the legislation which clearly confines the ambit of these disputes to the Public Service. No purpose is served by extending its jurisdiction to employees outside the Public Service who have recourse to other labour relations legislation, either federal or provincial.*

[22] Accordingly, the applicant's submissions that PWGSC directed it to hire additional employees, paid the salaries of those employees and closely monitored and directed their work are not relevant. I therefore rule that the employees at L'Esplanade Laurier, prior to March 1, 2004, were not employees of PWGSC or Treasury Board.

Has there been a transfer of jurisdiction pursuant to section 49 of the *PSSRA*?

[23] Section 49 of the *PSSRA* reads as follows:

> *49.(1) Where, by reason of a merger or an amalgamation of employee organizations or a transfer of jurisdiction among employee organizations, otherwise than as a result of a revocation of certification, an employee organization succeeds another employee organization that, at the time of the merger, amalgamation or transfer of jurisdiction, is a bargaining agent, the successor shall be deemed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement, arbitral award or otherwise.*
>
> *(2) Where, on a merger, amalgamation or transfer of jurisdiction referred to in subsection (1), any question arises concerning the rights, privileges and duties of an employee organization under this Act or under a collective agreement or arbitral award in respect of a bargaining unit or an employee therein, the Board, on application to it by the employer or any person or employee organization concerned, shall determine what rights, privileges and duties have been acquired or are retained.*
>
> *(3) Before making a determination under subsection (2), the Board may make such inquiry or direct that such representation votes be taken among the employees to be affected by the determination as the Board considers necessary, and in relation to the taking of any such vote the provisions of subsection 36(3) apply.*

[24] The respondents submit that Rostrust does not have standing to make such an application. An application under section 49 can be made by an employer, an employee organization or a person "concerned". Rostrust is not an employer under the *PSSRA*, as it does not meet the very particular definition of "employer" under the *PSSRA* (subsection 2(1)). This leaves open the question of whether Rostrust is a "person concerned". The manner in which section 49 is worded leads to a circular approach to standing. In order to have standing, there must first be a merger, amalgamation or transfer of jurisdiction. Once that fact has been established, a person "concerned" can bring an application. For the reasons set out below, I have

concluded that there has not been a "transfer of jurisdiction". I therefore do not need to decide whether Rostrust is a "concerned" person, as contemplated by section 49.

[25] In *Ship Repair Machinists and Mechanics Union* (*supra*), the Board was faced with the situation of employees being relocated from one side of the Halifax harbour to the other. It was alleged that this relocation placed them within the traditional jurisdiction of a different union local (and, therefore, within the jurisdiction of a council of employee organizations). In denying the application, the Board succinctly described the purpose of section 49:

> *The Board has not been referred to, nor has it been able to find, any jurisprudence which would support the contention that section 49 has application in the circumstances of this case, that is, where a so-called transfer of jurisdiction is not reflective of any agreement or arrangement between the trade union entities concerning their respective responsibilities and authority. In the Board's view, the purpose of section 49 is to allow the Board to give recognition for collective bargaining purposes to such agreements or arrangements; in their absence, the Board has no jurisdiction under this provision. The Board believes that section 49 was not intended to confer on the Board authority to intervene in disputes between employee organizations as to their respective jurisdiction over union members.*

[26] The Board explained its reasoning as follows:

> *There is no dispute that the physical relocation of the employees from Dartmouth to Halifax does not give rise to a merger or an amalgamation; the applicant's contention is that this "transfer of personnel" resulted in a "transfer of jurisdiction from IAM, Local 1723 to the Applicant Union". With all due respect, the Board fails to see how this relocation of some employees could give rise to a transfer of legal authority such as contemplated by section 49. A merger or amalgamation implies the implementation of restructuring decisions taken by employee organizations or their constituents; the application of the* ejusdem generis *rule of interpretation would suggest that a "transfer of jurisdiction" has a similar meaning....*

[27] In this case, there is no dispute between bargaining agents but rather a dispute between a former employer and bargaining agents. However, the principles remain the same. Rostrust has argued that the CUPE's acquiescence to the PSAC gaining bargaining rights reflects an agreement or arrangement between the bargaining agents. Given that there are no provisions for successor rights when a formerly provincial

activity becomes governed by the *PSSRA* regime (as there is under the *Canada Labour Code* in subsection. 44(3)), it is understandable that the CUPE would "acquiesce" to the change in jurisdiction. Such a failure to take action, in this context, is not an indication of an agreement or arrangement between bargaining agents.

[28] Rostrust also relied on the decision of the CLRB in *C.B.R.T.* (*supra*), to support its submission that in some cases the lack of a voluntary agreement between bargaining agents could still justify intervention by the Board. The situation in *C.B.R.T.*, (*supra*), was described by the CLRB as "unusual circumstances". In that case, a merger agreement between two bargaining agents had gone sour. In such an "abnormal" situation, the CLRB found it appropriate to intervene. An end to a contractual relationship, however, is not an "abnormal" or "unusual" circumstance, and the decision in *C.B.R.T.* (*supra*) can be easily distinguished on that basis.

[29] In the absence of an agreement or arrangement between trade unions concerning their respective responsibilities or authority, the Board does not have jurisdiction. The situation here is not a "transfer of jurisdiction", as contemplated by section 49. What happened at L'Esplanade Laurier was the termination of a contractual relationship and the subsequent hiring of former employees of the contractor. Section 49 was never intended to govern such situations.

[30] Accordingly, the application is dismissed.

Ian R. Mackenzie,
Board Member

OTTAWA, January 6, 2005.