

#5 NOTICES TO ATTEND

I. INTRODUCTION

The *Labour Relations Code* and the *Public Service Employee Relations Act* authorize the Board to order the attendance of witnesses or the production of documents necessary to a hearing. The Board does so by issuing an order under section 14 of the Code. Usually this order will authorize the issuance of one of three types of notice:

- Notice to attend at a hearing,
- Notice to attend and produce documents at a hearing, or
- Notice to attend and produce documents for examination prior to hearing.

This bulletin sets out the procedures parties use to obtain an order for such notices; the limitations upon their use; service of notices and conduct of money; and non-compliance with a notice.

II. APPLICATION

Parties must apply for an Order to issue a Notice to Attend on the application form provided by the Board. A party can combine several requests for notices in one application for a section 14 order. *See: Rules of Procedure, Rule 4.*

A party may request a Notice to Attend and a Notice to Produce for the same person in one application. However the requesting party must complete a separate form (page2-LRB15) for each request.

The Board has different procedures for the two notices. A party requesting a Notice to Produce must serve a copy of the application on the other party(s). This differs from a Notice to Attend as the other party(s) is not entitled to receive notice of the application.

The Board will not reveal the names of persons issued with notices to attend until the hearing begins.

The Board issues section 14 orders to allow parties to establish facts which they allege in support of their case.

The Board will only make section 14 orders in relation to a case pending before it. The application, complaint or reference in that pending case must have alleged facts which, if proven, could give rise to relief under the Code or the Act.

The application must contain a statement of the reasons why the party requires the notice. This helps the Board to decide whether, in light of the facts alleged in the application, to grant the order and issue the notice. *See: Rules of Procedure, Rule 36(1)(a).*

If the Board grants a section 14 order, as requested or in modified form, it will prepare the necessary notices to the witnesses. These notices will specify the time and place of the hearing, or the time prior to hearing for the production of documents. The notice to witness will also specify the scope of documents the witness must produce.

A party seeking any other form of order under section 14 should apply to the Board in writing. The Board will decide the request after giving notice to the other party.

III. NOTICES TO ATTEND

Notices to attend must name a person, not a job title.

In some cases, an applicant knows that someone in a union, company, or other entity has the necessary information but does not know that person's identity. In these cases, the Board may direct the notice to a named person in overall charge. The applicant must satisfy the Board that it has made reasonable efforts to determine the identity of the proper witness.

In some cases the Board receives requests for notices to attend for a significant number of witnesses. These requests for notices to attend should propose to stagger the appearance times, in reasonable relation to the anticipated length of each witness' testimony, to minimize disruption to the employer's operations and inconvenience to the witnesses.

IV. NOTICE TO ATTEND AND PRODUCE

The Board can direct an individual or an organization to attend and produce documents.

A party may request production of documents either at a hearing or at some other time and place. *See: Rules of Procedure, Rule 36(2), (3).*

The person seeking the notice must provide enough details of the documents or class of documents sought that the person receiving the notice can identify and isolate those documents without undue difficulty. For example, the Board will not normally authorize a notice for "all documents in your possession touching the matters in question". However, the proposed notice need not describe the documents sought in absolutely specific terms. *See: Rules of Procedure, Rule 36(1)(b).*

Where the notice directs production at a time and place other than at the hearing, it normally directs the receiver's attendance at a Board office at a specified date and time. The party requesting such a notice should suggest appropriate dates, places, and times for attendance.

A party in receipt of documents pursuant to a Notice to Attend and Produce shall treat the documents and any information contained therein as confidential pursuant to Board Rule of Procedure 36.7 and 36.7.

V. DISPOSITION BY THE BOARD

A request for Notice to Attend/Produce can be decided by a panel of the Board or the Chair or Vice-Chair sitting alone. *See: Section 9(10).*

Where the Board is not satisfied that it should issue a section 14 order as requested, it may:

- refuse to issue the order or impose conditions on or modify the form of authorized notices, or
- invite submissions from the parties and any persons concerned on the propriety of issuing the order. Submissions may be in writing, in person, or by telephone conference call.

The Board decides disputes about the attendance of a witness or the production of certain documents, if they arise once a notice is served. Whenever possible the Board will decide such disputes before the scheduled hearing date. *See: Lori Shoemaker v. Calgary Regional Health Authority et al. [1997] Alta.L.R.B.R. LD-035.*

VI. PROCESSING AND SERVICE

If the Board grants an order authorizing the issuance of one or more notices, the Board will prepare those notices and forward them to the requesting party. It is up to the party to make any special arrangements for pick-up or delivery.

Parties are responsible to serve their own notices. Neither the Board nor its officers undertake to serve an issued notice.

A party directing a notice to an individual must personally serve the notice on that individual. A notice to produce documents directed to an organization can be served on the organization in the same way as any other document. *See: Rules of Procedure, Rule 36(2), (4).*

A party serving a notice must pay conduct money to the witness unless the witness waives their entitlement. Conduct money consists of a modest attendance fee and payment for reasonable transportation, food and lodging expenses. The amounts payable for conduct money are set out in the Board's Rules of Procedure. They must also appear in a Witness Information Notice printed on the back of the Notice to Attend. The party calling a witness may make their own arrangements by agreement. *See: Rules of Procedure, Rule 36(5).*

Conduct money must be paid in advance in cash or a form readily convertible to cash unless the witness agrees otherwise. Any dispute over the payment of proper conduct money is referred to the Director of Settlement for decision.

The Board does not require that a party serve a notice on its witness a specific number of days before a hearing. If a witness does not attend in response to a notice, the Board will consider the amount of advance notice given to the witness in deciding whether to adjourn its proceedings or seek a court order compelling attendance.

The Board will not reveal the names of persons issued with notices to attend until the hearing begins.

VII. NON-COMPLIANCE

If a person or persons served with a notice fail to attend, the Board may enforce the notice by seeking a Court order directing compliance with the Board's order. Parties requesting enforcement of a Board order must prove to the Board the proper service of the notice and payment of conduct monies. *See: Section 14(3).*

See also:

Information Bulletins 1 and 4

Rules of Procedure

IBEW Local 424 v. Canem Systems Ltd. et al. [1987] Alta. L.R.B.R. 170

UFCW Local 280P v. Gainers Inc. [1986] Alta. L.R.B.R. 743, [1986] 5 W.W.R. 667, 87 CLLC 14,005 (Alta. C.A.)

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