

# NOTICES TO ATTEND & PRODUCE

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## INTRODUCTION

Section 14(2) of the [Labour Relations Code](#) allows the Board to order a person to attend a hearing as a witness, and to produce documents before or at the hearing:

14(2) Subject to subsection (3), the Board may, by order, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record may in civil cases.

Parties use Notices to Attend and Notices to Produce to order people to give oral and documentary evidence. Parties hope the evidence will help their case. The most common types of notices are:

- notice to attend a hearing;
- notice to attend and produce documents at a hearing; and
- notice to produce documents before hearing.

Parties apply under Section 14(2) for a Board order requiring a person to attend or produce. If granted, the Board orders staff to issue a notice. The Board can make these orders on its own motion, but this policy deals only with applications by the parties. The policy describes:

- making the application;
- deciding the application;
- granting the order, issuing the notice, and serving the notice;
- the effect of a hearing adjournment on the notice; and
- enforcement for failure or refusal to attend.

Part III of the Board's [Rules of Procedure](#) and [Information Bulletin #5](#) describe how to serve a notice upon a witness. They also note the conduct money the party must pay to the witness.

## MAKING THE APPLICATION

To apply for a notice, a party must use the Board's form. A party cannot apply for a Notice to Attend until the Board sets a hearing date. The Board must show that date in its Notice to Attend. A party can apply for a Notice to Produce before the Board sets a hearing date.

### ***Notice to Attend***

Notices to Attend are confidential. Neither the party filing the Notice to Attend nor the Board provides information about witnesses to other parties. This prevents another party(s) from identifying and attempting to influence or retaliate against a party's witnesses before the hearing.

If a party applies for several Notices to Attend, the Board often decides them together. The party should stagger the appearance times in the applications. This reduces employer disruption and witness inconvenience on hearing day.

### ***Notice to Produce***

The party applying for a Notice to Produce must serve a copy of the application on the other party(s). Sometimes the applicant does not know who possesses the desired documents. Likewise, they may not know the physical location of these documents. The Board may decide to issue the Notice to Produce in the name of the business itself, or its head officer. If the notice names only the business, the business determines the employee responsible for producing the documents requested.

The Board does not issue a Notice to Produce as part of a party's "fishing expedition." The application must describe documents in a way that allows their identification and isolation. See: [\[Rule 36\(1\)\]](#). "All documents touching upon the matters in question" is not an acceptable description. The volume of documents requested should not be oppressive and must be relevant to the particulars of the application. See: [\[IBEW 424 v. Canem Systems \[1987\] Alta.L.R.B.R. 170\]](#).

## **DECIDING THE APPLICATION**

A panel of the Board may determine Notice to Attend and Produce applications. A Chair or Vice-Chair can decide the application sitting alone. See: [\[Section 9\(10\)\]](#). Typically, an officer will take an application before a Chair or Vice-Chair sitting alone.

### ***Notice to Attend***

These applications can be processed immediately as the other party(s) is not entitled to receive notice of the application. In deciding applications, the Board must be sure not to restrict any evidence that might prove relevant. Only rarely does the Board question the necessity for a particular witness, or series of witnesses. Most often, the Board grants applications.

Sometimes, the Board will determine a person is not a **proper witness**. For example, the person named in a notice application has little knowledge of the matters in issue before the Board. In other cases, the Board does not have the power to compel testimony or the production of documents.

Sometimes a party requests notices for witnesses whose interests lie with an opposing party. That witness will probably tell the opposing party when the notice is served. Because of this, objections by an opposing party in these instances may arise before the hearing. The Board tries to resolve disputes before the date set for the hearing.

### ***Notices to Produce***

The Board's Rules do not recognize a formal examination for discovery process. For this reason, Notices to Produce provide an important means for parties to establish the case set out in their applications. Upon receiving an application, officers normally canvass the other party(s) about whether they will produce the documents voluntarily or object to the production. If there is an objection, the officer sets up a conference call between the parties and a Chair or Vice-Chair to hear and resolve the objection. The Board may ask one or both parties to make submissions by telephone, in person, or in writing. If contested, some notice applications require a regular hearing.

### **GRANTING THE ORDER, ISSUING & SERVING THE NOTICE**

If an order to produce is not contested, the Board marks the request with a stamp which a Chair or Vice-Chair signs. If contested, a notice to produce may be heard by a vice-chair on a conference call. After the Board decides an application for a notice application, the hearing summary shows:

- the decision to grant or refuse the application;
- if granted, any amendment to the form of notice; and
- any conditions imposed as part of the Board's order.

If the Board grants an application, Board staff issue three copies of the notice under original signature. See: [*Standard Letters/Documents, Chapter 32(b)*]. The officers, Director/Manager, Chair, Vice-Chair and legal counsel may sign the notice.

Board staff advise the applicant when the notices are ready for pick-up. The applicant must make the arrangements. The applicant needs an original copy to serve upon the witness. Faxing a copy provides the applicant with information, but does not help in serving the witness. A Notice to Attend or Notice to Produce must be personally served on the witness. See: [[Rule of Procedure 36\(2\)](#)]. The Board does not mail notices to the applicant unless asked to do so. This means that parties normally come to the office to pick-up the notice(s). The party, **not the Board**, serves the notice. A Board officer **must not** undertake to do so, unless directed by the Board.

If a witness fails to attend, the party must prove they served the notice. Proving service satisfies the Board that the witness knew of the order to attend. The Board may allow an adjournment and provide another opportunity for the party to call the witness to give evidence. Or, if the party requests, the Board may decide to seek court enforcement of the notice.

Without evidence that the party served the notice and paid conduct money, the Board is reluctant to grant an adjournment for an absent witness. For this reason, parties may wish to serve all witnesses whose evidence is crucial to their case. For friendly witnesses, parties often choose not to serve the notice and pay conduct money. The party knows the witness and accepts that person's word that he or she will attend. A party should serve any witnesses that are not friendly, and those that must satisfy their employer they must attend.

## **ADJOURNMENTS: EFFECT ON NOTICES TO ATTEND**

Parties serve Notices to Attend so persons named in them know they must attend a Board hearing. The notice states the date and time the hearing is scheduled to commence. Hearings may last more than one day. At the end of each hearing day, the Board sets the date and time the hearing is to continue. It is not normally necessary for a party to file new applications for Notices to Attend; the notice compels the witness to present themselves at a particular time and “continuing until such time as these matters are concluded”. Cautious counsel sometimes file new applications regardless.

Normally, the Board panel advises those present at the time of adjournment of the date and time at which the hearing will continue. The panel should also advise of any continuing obligation of witnesses, to attend and give evidence. This could include a witness whose testimony is still in progress, or a witness asked to appear that day, but who has yet to testify.

An **adjournment sine die** means the Board and parties did not specify a date to continue. Once set, the parties must serve witnesses with new notices. Once again, the party requests notices with new dates. A new application is unnecessary if the original order shows that the order extends to adjournments.

## **ENFORCEMENT OF NOTICES TO ATTEND AND PRODUCE**

Under Section 14(3) the Board can ask the court to enforce a notice, if a person fails to attend or produce documents.

14(3) If any person fails to comply with a Board order made under subsection (2), or conducts himself or herself in a manner that may be in contempt of the Board or its proceedings, the Board may apply to the Court for an order directing compliance with the Board's order, or restraining any conduct found by the Court to be in contempt of the Board or its proceedings.

The Board will not apply to the court unless the party whose witness did not attend asks the Board to do so. The Board may first ask the party to serve a new notice in the manner the Board directs. This may satisfy the Board the witness is refusing to attend.

If a witness does not attend, a party may ask the Board to grant an adjournment or seek court enforcement. The Board may decide to direct another method of service, continue the hearing without the evidence, or seek court enforcement. The parties present evidence to help the Board decide. Parties make submissions about whether service and payment of conduct money was done properly, and any prejudice to a party's case without the evidence of that witness.

If the party served the notice properly, the Board considers any prejudice to the party's case without that witness. The Board can grant an adjournment if satisfied there is prejudice. The Board may also allow an adjournment if the party made reasonable but unsuccessful efforts to serve the witness. The Board must believe the witness's evidence is necessary to a full and proper inquiry.

If the Board decides to ask the court to enforce the Notice to Attend, Board legal counsel makes the application. The Board asks the court to order that the witness comply with the Board's Notice to Attend. If granted, the Board files the court's order with the court clerk. The Board gives copies to the party wanting the witness to attend. The party must serve the court order on the witness.

If the person again fails or refuses to attend, the party can start contempt of court proceedings.

A similar process applies to a person's failure to obey a Notice to Produce.