

ENFORCEMENT OF DIRECTIVES

Directives issued by the Labour Relations Board may be enforced by an affected party as if they are Court orders. They may also be enforced by the Attorney General through prosecution.

This policy discusses:

- prosecutions;
- enforcement through filing in the Court of Queen's Bench;
- applications to file directives;
- how to file a directive; and
- notice of directives.

PROSECUTIONS

It is an offence under the *Labour Relations Code* to fail to comply with a directive of the Board. See: [[Sections 158-161](#)]. A conviction carries a maximum fine of \$10,000 for organizations and \$5000 for individuals. The same penalty applies to a person who “fails to comply with any provision of this Act.” See: [[Section 161](#)].

It is also an offence to commence or cause an illegal strike or lockout. See: [[Section 159, 160](#)]. Individuals who cause an illegal stoppage may be fined up to \$10,000. The organization causing the stoppage may be fined up to \$1000 per day of stoppage.

Section 162 of the Code requires the Minister consent to any prosecution under these sections. In practice, consent is rarely sought and even more rarely given. Ministers usually consider that the damage to a bargaining relationship caused by a prosecution outweighs its benefits.

The Board has no role in a prosecution under Division 25 of the Code. A party seeking consent to prosecute applies directly to the Minister. If the Minister gives consent to prosecute, the Attorney General undertakes the prosecution. Violation of the Code or a Board directive is a summary conviction offence for which the [Provincial Offences Procedure Act](#) sets the procedure. A charge proceeds in Provincial Court, where the Crown must prove guilt beyond a reasonable doubt.

These penal sanctions mean that parties are under an immediate obligation to obey a directive of the Board. Counsel therefore may not ethically advise a client to ignore or defy a Board directive.

ENFORCEMENT BY FILING

Board directives are usually enforced by filing them with the Court of Queen's Bench. A directive filed with the Court remains an order of the Board, but a party can enforce it like an order of the Court itself. Court orders may be enforced in several ways. In labour relations disputes, the most important way is by contempt proceedings. Wilful disobedience of a Court order may be contempt of Court. Depending on the circumstances, the contempt may be civil or criminal contempt. See: [*UNA v. Attorney-General (Alberta)* [1992] Alta.L.R.B.R. 137 (S.C.C.)]. Contempt is punishable by fines or, in extreme cases, imprisonment.

The Board does not take the initiative in obtaining a Court order or a finding of contempt. The Board examines requests to file its directives and, if the directive is filed, leaves the party complaining to seek the proper order from the Court.

The act of filing a Board directive with the Court is significant because a Court cannot find a party in contempt for any disobedience of an unfiled directive. A party must also have notice that the Board directive has been filed and has become an order of the Court before the Court will find it in contempt. See: [*UNA 79 v. General Hospital (Grey Nuns) of Edmonton* [1990] Alta. L.R.B.R. 78 (C.A.)].

APPLICATIONS TO FILE DIRECTIVES

The Board may file its directive with the Court under Section 18(6) of the [Code](#):

18(6) If any directive or order made by the Board is not complied with, the Board may, on the request of an employer, employers' organization, employee, trade union or other person affected by the directive or order, file a copy of the order or directive with the clerk of the Court and upon being filed the directive is enforceable as a judgment or order of the Court.

Section 18(6) is the only procedure by which a party can have the Board file a directive issued outside a cease-and-desist proceeding. Section 18(6) requires a request by an affected party and a finding that the Board's directive has not been obeyed.

A party applies for a Section 18(6) filing by letter to the Director of Settlement. The application sets out any particulars of the other party's non-compliance. Sometimes the other party will admit their non-compliance and the Board may file the directive without a hearing. Usually an evidentiary hearing is necessary to show non-compliance. If the applicant demonstrates on a balance of probabilities that the respondent has not complied with the directive, the Board may file the directive.

An expedited filing procedure exists for directives issued in cease and desist proceedings. The Board may file a directive or interim directive respecting picketing, an illegal strike or an illegal lockout under Section 88(2) of the [Code](#):

88(2) Notwithstanding section 18(6), the Board may file a copy of a directive or interim directive referred to in subsection (1) with the Court and thereupon the directive is enforceable as a judgment or order of the Court.

The Board may file a directive under Section 88(2) on its own motion. It may do so without proof of non-compliance. The Board normally processes directives dealing with strikes, lockouts or picketing under Section 88(2). Section 88(2) was enacted specifically because the regular filing procedure was inappropriate to cease and desist proceedings.

The filing of a directive is discretionary. The Board may exercise its discretion to:

- file the directive immediately;
- direct filing on a fixed time or date, or upon the happening of some other event;
- adjourn the question of filing to a fixed time or date, or pending some other event;
- defer filing upon conditions;
- defer filing but promise immediate filing upon request of the complainant; and
- decline to file the directive.

The act of filing a directive exposes the affected party to contempt proceedings. For the sake of procedural fairness, the Board tries to give the affected party an opportunity to argue whether the Board should file the directive. The hearing into non-compliance serves that purpose in a Section 18(6) proceeding. In a Section 88(2) filing, the easiest way to give a respondent procedural fairness is to raise the issue at the hearing after the declaration issues.

It is especially difficult to observe procedural fairness in an expedited filing procedure where some parties are unknown or unrepresented. The best example is “hit and run” picketing by unidentified persons. The Board approaches these difficult cases individually. It tries to provide a reasonable opportunity for affected persons to appear and state their case, without ignoring the urgent nature of the proceedings. One method the Board has used is to post notices at and around the site of the alleged violation. The notices state that a directive has issued and the Board will file it at a certain time and date. They invite parties to contact the Board if they object to the directive being filed. If a party responds, the Chair or a Vice-Chair assesses the response and decides whether a panel needs to convene.

HOW TO FILE A DIRECTIVE

Where to File

Alberta is divided into 11 judicial districts. The Board may file a directive in any judicial district and the filed order will be effective province-wide.

The Director of Settlement, in consultation with Legal Counsel, decides in which judicial district to file a Board Directive. For the sake of convenience the Board will almost always file its directive in either Edmonton or Calgary.

What to File

When filing a directive with the Courts, the following issues need to be addressed:

- original or certified true copies;
- cover page;
- action numbers; and
- filing fees.

Original or Certified True Copies

Any time the Board creates a document, a question may arise whether a copy of the document is an accurate and authentic, or “true”, copy of the original. A directive filed with the Court must be **either an original or a Board-certified “true copy”**.

An original directive is one appearing over an original signature of the Chair or Vice-Chair. Any number of originals of the directive may be created, so long as each directive bears an original signature. Whenever the Board issues a directive, staff produce one extra original. They keep it on file in case the directive must be filed with the Court.

If an original is not available for filing, the Board may create *certified copies* of the original. Section 18(3) of the [Code](#) provides:

18(3) A copy of an order, having endorsed on it a certificate purporting to be signed by an officer stating that the copy is a true copy, shall be received in any court as prima facie proof of the order and its contents, without proof of the appointment or signature of the officer.

Any officer of the Board may create a certified copy by endorsing the following form of certificate on the copy and signing it:

By my authority under section 18(3) of the Labour Relations Code, I certify that this document is a true copy of the [directive/interim directive/order] of the Labour Relations Board dated [date].

(Printed Name)

Officer, Labour Relations Board

The certificate should appear at the bottom of the text of the Directive, below or next to the signature of the Chair or Vice-Chair. Officers should not sign the above certificate without comparing the copy to the original and satisfying themselves that the copy is accurate.

Cover Page

To file a directive with the Court, Board staff enclose the directive between a cover page and a back page (“backer”). This conforms to Court practice and shows that the document is now a document of the Court of Queen’s Bench.

The cover page identifies the Action Number, the Court and judicial district in which the document is filed, the nature of the proceeding, and the parties. It identifies the filed document as a “Directive (or Interim Directive) of the Labour Relations Board”.

The backer contains the same information plus the name, address and telephone number of counsel for the Board.

To prepare a Board directive for filing, simply insert the full text of the Directive between the cover and backer. The backer faces outward.

Action Numbers

Every document filed with the Court of Queen’s Bench must have an Action Number. The Clerk of the Court assigns the Action Number when the initiating document in a proceeding is filed.

When the Board files a directive, the Directive itself is the initiating document. Staff leave a blank space for the Action Number on the directives taken to the Courthouse. The accepting Clerk will write in the correct number.

Filing Fees

The Court levies a fee for filing the first document in a proceeding. Filing of all other documents in the proceeding is free. **The Court does not assess filing fees against provincial government departments and agencies, including the Board.** The staff person filing a directive may have to remind the Clerk that the Board is exempt from fees.

How to File

When the Board files a directive, a staff person takes the original directive or a Board-certified copy and several ordinary photocopies to the Courthouse. They take the directive to the office of the Clerk of the Court. In Edmonton the Clerk’s office is on the ground level of the Law Courts Building, just past the elevators. In Calgary the office is on the First (mezzanine) Level. Both offices are large open areas with several wickets marked “Court of Queen’s Bench—Document Filing”, or to that effect.

Court clerks normally handle a narrow range of traditional Court documents. For them, the filing of a Board directive is a rare event. Inexperienced clerks may be unsure of their authority to file the document. A person filing a directive should take a copy of the [Labour Relations Code](#) to the Courthouse. If the clerk doubts their authority to file, the staff person should direct the Clerk to Section 18(6) or 88(2).

The Clerk's office will keep the original and will stamp the remaining copies "Filed". The Clerk's office may also create its own certified copies of the original filed with it. A Clerk-certified copy is proof that the text of the certified copy matches the text of the document filed with the Court.

Again, the Court does not charge government agencies for certified copies. Staff request one Clerk-certified copy to keep on the Board file as proof it filed the directive. They request additional Clerk-certified copies if the parties require it. It is a good idea to obtain a Clerk-certified copy for the party who sought the filing.

After the Clerk files the directive, the staff member brings the stamped, filed copies back to the Board offices. They place one certified copy on the file and distribute copies to the parties. Parties seeking filing normally want the filed copies back quickly. They are encouraged to send a courier or staff member to pick up the filed directives. If necessary the Board will send them their copies by rush courier.

NOTICE OF FILING

The Board tries to give reasonable notice that it has filed its directive with the Court. It gives a certified copy of the filed directive to the complainant. It sends ordinary copies of the filed directive to all counsel and any unrepresented party who appeared at the Board's hearing.

A cover letter accompanies the directive. The cover letter advises that the directive is filed and is now enforceable as a Court Order. It tells the applicant what has been done to give notice of the filing. It also cautions the applicant that formal service of the filed directive is its own responsibility.

Where Notices of the directive have already been posted, the Board updates the notices to advise readers that it has filed the directive. It adds the warning "**This order has been filed in the Court of Queen's Bench as Action No. _____. It is now enforceable as an Order of the Court**".

Where illegal job action is widespread and severe the Board may make special arrangements to notify participants that it has filed its Directive. For example, in the 1988 province-wide illegal strike by the United Nurses of Alberta, the Board advertised the filing of its directives. These measures are exceptional and are done only on instruction of the Board's Chair.