



# Energy Resource Appeal Tribunal

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## Requesting an Order for a Witness to Attend an Oral Hearing

The parties (and any intervener allowed to present evidence) must decide what witnesses they want to present at a hearing. They must arrange for the person to attend the hearing. This involves asking the potential witness, as early as possible in the hearing process, to voluntarily attend the hearing.

### What if a person refuses to be my witness?

The Energy Resource Appeal Tribunal (the “Tribunal”) can order a witness to attend a hearing, using power given to it in [section 34\(3\)\(a\) of the Administrative Tribunals Act](#). This order is sometimes called a “summons”.

When the Tribunal orders a witness to attend a hearing, the person who asked for the order must generally pay any witness fees and expenses as set out in [Schedule 3 of Appendix C of the BC Supreme Court Civil Rules](#). The Tribunal can, in any given case, order that the person does not have to pay any witness fees or expenses.

### How do I apply for an order requiring a person to attend a hearing?

The Tribunal’s [Rule 18](#) and [Rule 26](#) describe how you must ask for an order requiring someone to attend a hearing. Your request must be made in writing, at least **60** days before the hearing, if possible. Your request must contain:

- the witness’ name and address;
- a brief summary of what you expect the witness to say, why it is relevant to the appeal, and why it is necessary for the panel to hear;
- how you asked the witness to voluntarily attend the hearing;
- if you asked for an order less than 60 days before the hearing, why you had to do so; and
- a list of any documents or other things the witness must bring to the hearing.

If you do not want to pay witness fees and expenses, you should ask the Tribunal to order this and explain why you want the Tribunal to make this order.

The Tribunal will consider several factors when deciding whether to issue an order. It will consider whether you asked the witness to voluntarily attend the hearing and whether you need the witness to attend to get information that will support your case. It will also

consider whether the witness is reasonably likely to be able to give the information you want. The Tribunal will also consider whether that information is relevant to the appeal. The Tribunal may consider factors that it finds relevant, including whether you unreasonably delayed asking for the order.

If the Tribunal issues the order, **you are responsible for delivering it to the witness.**

### How and when do I serve an order to attend a hearing?

The Tribunal's [Rule 26](#) explains how you can serve a witness with an order. You can hand it to them or leave it at their usual residence, but you must give them a reasonable amount of time before they are scheduled to attend the hearing. You can have someone else serve the witness for you, or you can do it yourself.

### Do I need to prove that the order was served?

You may need to prove you served the order if the witness does not attend the hearing. Whoever serves the order should be able to describe (in person or in writing):

- when and where they delivered the order;
- what they did with it (hand it to someone, leave it in a mailbox, etc.); and
- if they handed the order to the witness, how they knew it was the witness.

### Objecting to an order

Under [Rule 26](#), a witness ordered to attend a hearing can ask the Tribunal to cancel or change the order. They can ask this before or during the hearing. If they persuade the Tribunal they do not have information that is relevant, that the Tribunal lacks the power to make them testify, or that they cannot attend the hearing without significant hardship, the Tribunal may cancel or change the order.

### Failure to comply with an order for attendance at a hearing

Under [section 34\(4\) of the Administrative Tribunals Act](#), the Tribunal can apply to the Supreme Court for an order directing a person obey an order from the Tribunal. An order from the Court can be enforced by sheriffs.

### Contempt

If a witness who is ordered to attend a hearing does not obey the order, or if they refuse to be sworn or affirmed as a witness or to answer questions, the Tribunal can apply to the

Supreme Court, to have that person committed for contempt. If the Court agrees, the witness maybe held in contempt by the Court, as though they disobeyed an order or judgment of the Court. For more information, see [section 49\(1\) of the \*Administrative Tribunals Act\*](#).

### **What if one of my confirmed witnesses does not show up at the hearing?**

If one of your witnesses does not show up, let the panel know. During the hearing, you can ask the panel to issue an order requiring the witness to come. The panel will want confirmation that the witness agreed to attend at the date and time that was arranged. You will also need to meet all the other requirements for a pre-hearing order (described above).