

# Guideline

## Interpretation of “Notice” under Section 27(4) and Section 27(14)

The Surface Rights Board (“the Board”) will calculate notice dates for Surface Leases and Right of Entry Orders the same, whether these were made or commenced before or after July 1, 1983.

The date that “notice” is required to be given by the operator under s.27(14) will be every 5 years from the 4<sup>th</sup> anniversary of the date the surface lease commenced or the right of entry order was made.

## Background

Questions have arisen for Surface Lease and Board Order compensation reviews about the proper calculation of notice dates under s.27(4) and s.27(14) of the *Surface Rights Act* (“the Act”), where the surface lease or right of entry order was made before July 1, 1983.

A significant amount of time is spent at Compensation Hearings on the correct interpretation of these sections of the Act.

The Board has conducted a review of s.27 of the *Act* resulting in this Guideline.

## Effect of Issuance of this Guideline

The Board may issue Guidelines in order to give additional guidance to stakeholders to:

- resolve any ambiguity in the law;
- resolve inconsistency in decision-making; or
- establish legal interpretations as preferred positions.

While this Guideline is not law, it reflects the Board’s interpretation of the law and how the Act will be applied on a consistent basis by the Surface Rights Board and Surface Rights Board staff.

Although not binding, Board members are expected to follow the guidelines, unless compelling or exceptional reasons exist to depart from them.

A Board member must explain in his or her reasoning why he or she is not following this guideline when, based on the facts or circumstances of the case, they would otherwise be expected to follow them.

Guidelines remain in effect unless and until the Board expressly revokes them. The Board will continue to monitor the review of Surface Rights Board decisions by the Courts. In the event that this Guideline becomes inconsistent with a subsequent Court decision, the guideline will either be revised in order to be consistent with the Court decision, or revoked.

### **Purpose of Section 27:**

The purpose of s.27 of the *Surface Rights Act* is to provide a mechanism for the annual compensation provisions in a Surface Lease or Board Order to be renegotiated every five years. An operator is required to give notice to a lessor/respondent in accordance with s.27(4) and s.27(14).

This Guideline outlines the approach that the Surface Rights Board will take in determining when notice should be given by the operator to the lessor or the respondent where the term of the surface lease commenced or the right of entry order was made before July 1, 1983.

### **General Principles**

- The legislature, as expressed in s.27 intended to allow for regular compensation reviews every 5 years.
- The intent of s.27 is to give parties adequate opportunity to negotiate the amount of compensation.
- The negotiation period contemplated by s.27(6) and s.27(8) should be the same whether the surface lease or right of entry order was pre 1983 or post 1983.
- The reference to July 1, 1987 should not create a compensation review scheme that is overly complicated.
- It should be simple for operators and landowners to calculate the notice and review periods and comply with the legislative requirements.

### **Interpretation of “Notice” under Section 27(4) and Section 27(14)**

As July 1, 1987 has passed, all Surface Leases and Right of Entry Orders will now be dealt with in the same manner by the Board, whether these were made or commenced before or after July 1, 1983.

Accordingly, the date that “notice” is required to be given by the operator under s.27(14) will be every 5 years from the 4<sup>th</sup> anniversary of the date the surface lease commenced or the right of entry order was made.

Section 27(4) provides when the first “notice” from the operator is to take place:

**27(4)** *An operator shall give a notice to the lessor or respondent, as the case may be,*

*(a) on or within 30 days after the 4th anniversary of the date the term of the surface lease commenced or the right of entry order was made, as the case may be, where the term of the surface lease commenced or the right of entry order was made on or after July 1, 1983, or*

*(b) where the term of the surface lease commenced or the right of entry order was made before July 1, 1983, on or within 30 days after July 1, 1987.*

The reference to the 4<sup>th</sup> anniversary is not expressed in s.27(4)(b), but it is implied from reading the section as a whole.

July 1, 1987 has passed and the Surface Leases and Board Orders that commenced before July 1 1983 have had an opportunity for the first review after July 1987. Accordingly, all Surface Leases and Right of Entry Orders will now be dealt with in the same manner by the Board, whether they were made or commenced before or after July 1, 1983.

Section 27(14) outlines the ongoing requirement for the Operator to give Notice:

*27(14) The operator shall give a notice that complies with subsection (5) to the other party on or within 30 days after every 5th anniversary date after the date notice should have been given under subsection (4) for as long as the surface lease or right of entry order, as the case may be, is in effect and subsections (6) to (13) apply to that notice.*

The ongoing 5 year compensation review period can be interpreted from the specific language of the statute. Section 27(4) provides when the first notice takes place (on the 4<sup>th</sup> anniversary) the logical intent of “every 5<sup>th</sup> anniversary” in s.27(14) was to continue this process every 5 years.