

15. Summons to Testify

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This guideline deals with the issuance of a summons requiring a person to testify or to produce documents or other things pursuant to the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation).

The Legislation¹ allows an arbitrator, either at the request of a party, or on his or her own initiative, to issue a summons requiring a person to either attend an arbitration hearing or proceeding and give evidence, or to produce before the arbitrator documents or any other thing relating to the subject matter of the arbitration that the arbitrator considers necessary to give full consideration of the matters before him or her.

The decision to issue a summons is at the discretion of the arbitrator and in determining whether or not to issue the summons the arbitrator will consider the following points:

1. The information sought from the summons must be relevant to the proceedings. A summons cannot be used to go on a fishing expedition for information without any clear relevance to the issue at hand.
2. The summons must not be an abuse of process and cannot be used to harass or annoy a party.
3. The summons cannot be used to interfere with a privilege recognized by law. For example a summons would not be issued to a landlord's lawyer for the purpose of obtaining evidence respecting legal advice given to the landlord.
4. A summons cannot be issued where the witness in question resides outside the Province unless there is an agreement for the reciprocal enforcement of summonses with the jurisdiction where the witness resides.

In determining whether or not to issue the summons, the arbitrator will also weigh the importance of the evidence with the inconvenience to the witness of being summonsed to the hearing. There are also cases where it may not be in the public interest to issue a summons. For example, it may not be in the public interest to summons a police officer to attend and give evidence, and thus take him or her off their regular policing duties where that evidence is not vital to the case or could be put before the arbitrator by other witnesses.

As the arbitrator will normally want to hear details of the evidence that the summonsed witness will give prior to issuing the summons, a summons will not usually be issued prior to the hearing.

¹ *Residential Tenancy Act*, s. 76; *Manufactured Home Park Tenancy Act*, s. 69

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If a summons is issued, the party requesting the summons must comply with the Arbitration Rules of Procedure, and pay any witness fees and conduct money payable under the Rules.² The fees must be paid at the time the summons is served on the party. A witness is not obligated to attend if the required fees are not paid. If the witness fails to attend in accordance with the summons, the onus is on the party requesting the summons to take necessary steps to enforce the witnesses' attendance through the Supreme Court. The arbitrator may, on request, adjourn the hearing to allow this to be done.

² Rule 7.3 and Schedule I of Rules