

## 15. Summons to Attend or Produce Evidence

Oct-15

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*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.*

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This Policy Guideline addresses the issuance of a summons and the payment of compensation.

### A. LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation)<sup>1</sup> empower the director to establish and adopt Rules of Procedure for the conduct of dispute resolution proceedings.

The Legislation<sup>2</sup> allows the director's delegate ("the director"), either on the request of a party or on their own initiative, to issue a summons requiring a person to attend a hearing and give evidence or to produce documents or any other thing relating to the subject matter of the dispute.

The director has the authority to make any order necessary to give effect to the rights, obligations and prohibitions under the Legislation<sup>3</sup>. The director may make orders regarding the payment of witness compensation under this authority.

### B. CONSIDERATIONS

The decision to issue a summons is at the discretion of the director. In determining whether or not to issue the summons the director 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 or to seek information that is suspected to exist.
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 of British Columbia.

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<sup>1</sup> *Residential Tenancy Act*, s. 9; *Manufactured Home Park Tenancy Act*, s. 9.

<sup>2</sup> RTA, s. 76; MHPTA, s. 69.

<sup>3</sup> RTA, s. 62(3); MHPTA, s. 55(3).

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In determining whether or not to issue the summons, the director 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 them off their regular policing duties where that evidence is not vital to the case or could be put before the director by other witnesses.

As the director may wish to hear details of the evidence that the summonsed witness will give prior to issuing the summons, a summons may or may not be issued prior to the hearing.

A party requesting a summons must do so in accordance with Rule 5.3 [*Application for a summons*] of the Residential Tenancy Branch Rules of Procedure. The party requesting the summons is responsible for serving the summons on the witness and must serve the other parties with that evidence and submit it to the Residential Tenancy Branch within the timeframes established for exchange of evidence in Rule 3 [*Serving the application and submitting and exchanging evidence*] or as ordered by an arbitrator.

If the director issues a summons on their own initiative, the director will serve the summons on the witness and serve each party with any evidence provided by the witness.

When the director issues a summons, the summonsed person is the witness of the party requesting the summons and the party will be bound by that witness's testimony.

### **C. COMPENSATION**

When the director issues a summons on their own initiative, compensation is not required.

If a summons is issued on the request of a party, that party must comply with the Rules of Procedure, and pay the reasonable costs of giving that evidence under Rule 5.5 [*Witness compensation*].

For the production of documentary evidence, reasonable costs may include:

- the costs of printing or copying materials; and/or
- the costs of producing photographs; and/or
- the costs of submitting digital evidence; and/or
- the costs of mailing the documentary evidence to the party who requested the summons.

Most dispute resolution hearings are held by telephone conference call on a line that is toll-free from anywhere in Canada or the United States of America. In the event that a witness must incur long distance telephone charges because they are outside of this

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zone, the party requesting the summons must reimburse the witness for their long-distance costs.

For a teleconference hearing, the reasonable costs of giving evidence may include:

- the costs of reproducing documentary or digital evidence; and/or
- long-distance telephone charges if the witness must incur long distance charges because they are outside the toll-free calling zone.

In the event of an in-person hearing and when the hearing is held at a place and time that will result in additional costs for the witness, the party requesting the summons must pay those reasonable costs.

For in-person hearings, the reasonable costs of giving evidence may include:

- the costs of reproducing documentary or digital evidence;
- road toll fees or ferry fares when the hearing is held at a place where the witness must pay road tolls or ferry fares;
- overnight accommodation rate as set out in the allowance available under the BC Government Employees Business Travel Accommodation Listing in the event an overnight stay is required to attend an in person hearing (see <http://csa.pss.gov.bc.ca/businesstravel/>).

The compensation must be paid when the party requesting the summons receives receipts from the party being summonsed. When the party being summonsed has a low income, they may be prepaid once they have provided documentation of anticipated expenses to the party requesting the summons.

If there is a dispute over the amount of compensation or witness prepayment, the parties may ask the Residential Tenancy Branch to resolve their dispute.

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 director may, on request, adjourn the hearing to allow this to be done.

### D. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
A	new	Sets out the director's authority to make orders regarding compensation	2015-10-26
B, after list	am	Replaced text implying it is normal to hear details of the evidence with possibility that the decision maker may or may not wish to hear details or the reasons for the summon	2015-10-26
B, after list	new	Establishes responsibilities of the party requesting the summons	2015-10-26

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B, after list	new	Establishes process when the director issues a summons of their own initiative	2015-10-26
C	am	Reflects Rule 5.5 of the new Rules of Procedure	2015-10-26
C	new	Establishes that parties who cannot agree on the amount of witness compensation may resolve their dispute on the amount through the Residential Tenancy Branch	2015-10-26

Change notations

am = text amended or changed

del = text deleted

new = new section added