



Practice Direction #12

Summonses and Production of Documents

1.0 This Practice Direction

- explains how to request a summons for a witness
- identifies the factors the WSIAT reviews when deciding whether to issue a summons
- explains how to request documents from parties or a summons for documents
- does not apply to applications to determine the right to sue (review Practice Direction #17 – Right to Sue Applications)

2.0 Summons for a Witness

- 2.1 A summons is a document that requires a person to attend a hearing to give evidence on a certain date. The summons takes effect when it is served on the witness.
- 2.2 The summons will have the time and place that the witness is required to attend. The summons requires a witness to re-attend until their testimony is no longer required by the Vice-Chair or Panel.

3.0 Requesting a Summons for a Witness

- 3.1 A party to an appeal may request a summons.
- 3.2 A summons request must be made on the Hearing Ready Form.
- 3.3 The party requesting the summons must include why it is required on the Hearing Ready Form.

4.0 Reviewing the Request for a Witness

- 4.1 WSIAT staff review all summons requests and determine if the WSIAT will issue a summons. All requests are reviewed based on the facts of the case. When reviewing a request, the WSIAT considers whether
- the evidence is relevant to the issues in dispute
 - the evidence is significant to the issues in dispute
 - the evidence can be obtained from other sources
 - the proposed witness can be compelled by law to give evidence in the proceedings
 - a summons is required to compel attendance
 - the witness requires the summons to get time off work
- 4.2 During the review, WSIAT staff may ask the party requesting the summons to provide a brief statement about
- why the testimony is necessary for the appeal
 - if the witness is willing to attend
- 4.3 If the WSIAT agrees to issue the summons, the party requesting the summons will be asked to provide the witness'
- name
 - current address
 - telephone number
- 4.4 The witness' address must be specific so the WSIAT can locate the person to serve the summons. The WSIAT cannot serve a summons to addresses that only contain post office boxes or rural routes. WSIAT staff will notify the requestor if the address information is not correct. The WSIAT will not try to locate the witness if a specific address is not given or if the address is not correct unless directed by a Vice-Chair or Panel.
- 4.5 The WSIAT will prepare the summons and arrange for it to be served. The WSIAT will get an affidavit of service from the process server.
- 4.6 If the WSIAT decides not to issue the summons, the party may raise it with the Vice-Chair or Panel at the hearing.

5.0 Enforcement

- 5.1 If the WSIAT is not able to serve a summons, the Vice-Chair or Panel assigned to the appeal may proceed to hear the case. Then, they will decide if the witness' testimony is necessary.
- 5.2 If the witness was served with a summons and does not attend the hearing, the Vice-Chair or Panel may
- go ahead without the evidence of the witness if it is not necessary
 - continue with the hearing and decide if the evidence or witness is necessary
 - decide whether to take steps against the person who did not attend

6.0 Conduct Money

- 6.1 Conduct money is money paid to a witness to cover expenses to attend a hearing.
- 6.2 The WSIAT will pay conduct money to a witness in line with Tariff A of the *Rules of Civil Procedure*. The conduct money will be provided with the summons.
- 6.3 For information about other expenses the WSIAT will pay to attend a hearing, review Practice Direction #39 – Fees and Expenses.

7.0 Production and Summons of Documents

- 7.1 When parties have documents relevant to an appeal, they must share them with all parties during the disclosure period.
- 7.2 If documents are not shared or cannot be obtained by the parties, WSIAT staff will work with the parties to get them. If the parties or the WSIAT cannot get the documents, a request may be sent to the Vice-Chair Registrar, or a Vice-Chair or Panel, for instructions. The Vice-Chair Registrar, or a Vice-Chair or Panel, may issue a production order or a summons for the production of documents.
- 7.3 The Vice-Chair Registrar, or a Vice-Chair or Panel, will give instructions about a summons for documents, if one is issued. The summons will identify a person to bring the documents to a pre-hearing conference

- 7.4 The Vice-Chair Registrar, or a Vice-Chair or Panel, may consider the following factors
- a. reasons for any refusal to provide documents
 - b. submissions of parties
 - c. if the document is relevant and necessary to the issues in dispute
 - d. if the information can be obtained from other sources
 - e. privacy considerations
 - f. legal rules of evidence

8.0 References and Resources

8.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 131 (the WSIAT can determine its own practice and procedure), 132 (the WSIAT's powers regarding proceedings), 133 (payment of expenses) and 180 (rules regarding the compellability of witnesses)

Rules of Civil Procedure Tariff A

8.2 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#8 – Disclosure

#17 – Right to Sue Applications

#33 – Role of the Vice-Chair Registrar at the WSIAT

#36 – Delivery and Filing Documents

#39 – Fees and Expenses