

## PRACTICE DIRECTION 13: Summonses

**13.1 OVERVIEW:** The Tribunal may issue summonses under a variety of legislative provisions, the more common of which relate to the Tribunal's enforcement powers under Section 64 of the *Land Use Act* and Section 48 of *EMPCA*. For information regarding those summonses please refer to *Practice Direction 14*. This Practice Direction refers to the issuance of summonses for discovery of information and evidence in normal planning appeals pursuant to the power set out in Section 20 of the *Appeal Tribunal Act*.

**13.2 AIMS OF SUMMONSES:** A summons may seek the production of documents, the attendance of a witness or both.

**13.2.1 Summons for the production of documents:** Any application for a summons for the production of documents must:

- (a) Be in writing,
- (b) Specify the documents applied for or, alternatively, the class of documents required - with clear submissions demonstrating that the documents are relevant to the proceedings before the Tribunal, and
- (c) Identify the person or organisation that possesses or has custody of the documents and the address of that person or organisation.

**13.2.2 Summons for the attendance of a witness:** Witnesses may be called for one of two reasons. Firstly, they may have authored a document which a party wishes to produce in evidence and, therefore, the author of the information must attend to be questioned about its contents. Secondly, a person may have witnessed events or have factual information which is not contained in documentary evidence.

Any application for a summons for witnesses to give evidence about a pre-existing document must:

- (a) Be in writing,
- (b) Give the full name and address of the person to be served with the summons,
- (c) Attach the document which the witness has produced, and
- (d) Include submissions demonstrating why the document is relevant to the proceedings.

Any application for a summons for witnesses to give evidence about information within their knowledge must:

- (a) Be in writing,
- (b) Give the full name and address of the person to be served with the summons,
- (c) Provide written submissions detailing the information that you say the witness possesses, and
- (d) Include submissions demonstrating why the information is relevant to the proceedings.

It is preferable that arrangements be made with the witness in question for them to prepare a written statement of the information within their knowledge. If, however, that is not possible, it may be necessary for a deposition hearing to occur – see *Practice Direction 13.5*. If a witness who is attending to give evidence agrees, once a summons has been issued, to prepare a written statement of their evidence, you must ensure that statement is provided to all other parties in accordance with the Tribunal's procedures and timetable for exchange of evidence.

The Tribunal will not issue a summons for an expert witness to prepare an opinion or statement of evidence about the subject of the proceedings. The Tribunal will only issue a summons in relation to pre-existing work that has been undertaken by an expert witness.

Any application for a summons should be made as early in the proceedings as possible. Disclosure of all evidence, including those witnesses who will be giving evidence at a hearing, must occur on the same timetable as the exchange of all evidence for the full hearing. As such, if a witness will require a deposition hearing, then an application for a summons should be made well before the exchange dates for evidence.

**13.3 RESPONSIBILITIES FOR SERVICE:** It is the responsibility of the party who made an application for the summons to serve that summons upon the witness in a timely manner. A person who is the subject of a summons must be given sufficient notice in relation to the return date of the summons. A person who has applied for and received a summons should serve it upon the Respondent to that summons as quickly as practicable.

In order to serve a summons, you may:

- (a) Give it directly to the person, or
- (b) Leave it at, or post it to, the person's residential or postal address – or address of business/employment, whichever is last known to the server of the summons.

**13.4 EXPENSES OF WITNESSES:** Under Section 36 of the *Appeal Tribunal Act*, a witness who is summonsed is entitled to be paid allowances and expenses for that attendance. The person who applied for and received the summons is liable for those expenses.

**13.5 DEPOSITION HEARINGS:** Where application is made for persons to attend the Tribunal to be questioned about information within their knowledge, it may be necessary for a deposition hearing to take place if that person cannot or will not provide a written statement of the information within their knowledge. A deposition hearing must occur well in advance of the full hearing. In making an application for a summons to issue for a witness to attend to give evidence, you should advise the Tribunal whether a deposition hearing would be necessary. A deposition hearing permits the person who sought the summons being allowed to question the witness, and for that evidence to be recorded and transcribed. The cost of transcription of the evidence is to be paid by the person who applied for and received the summons. The other parties to the proceedings will be afforded an opportunity to consider the information that was given in the deposition hearing and, if necessary, the witness may be recalled for cross-examination. The recalling of the witness for cross-examination would occur at the full hearing of the Tribunal into the merits of the matter. The person who

applied for the witness to give evidence would be liable for all expenses of that witness attending the Tribunal.