



# The Ontario Special Education (English) Tribunal

**Subject:** PRACTICE DIRECTION – ISSUING A SUMMONS

**Date of Issue:** April 2008

**Dates of Amendments:** April 2009, January 2011

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**NOTE:** Practice Directions support the Tribunal's *Rules of Procedure*. In particular, they set out procedures to achieve uniformity in practice. In addition, they tell parties what the Tribunal expects of them and what the parties can expect of the Tribunal. In the event of an inconsistency with the *Rules*, the *Rules* govern.

## INTRODUCTION

In accordance with Section 12 of the *Statutory Powers Procedure Act (SPPA)*, the Tribunal has the authority to issue a summons upon the request of one of the parties before it.

A summons is a legal document that requires a person to attend a hearing as a witness and to bring any documents or things specified in the summons.

## PRACTICE DIRECTION

The following steps are to be followed when a party has decided to have a witness summoned:

### Step 1: Deciding Who Needs a Summons

- If a party wants someone to give evidence at a hearing as a witness, he/she should ask that person if he or she is willing to attend. If the person agrees, there is no need to issue a summons.
- A summons will be required when:
  - a party has a particular witness who refuses to attend to give evidence at a hearing; or
  - a party has a particular witness who requires an official document to get time off work to attend the hearing.

## **Step 2: Request for Summons**

Once the party has identified a witness who requires a summons, the party can complete a *Request for Issuing a Summons*. This form is available on the Tribunal's website [www.oset-tedo.ca](http://www.oset-tedo.ca) or the party can request it from the Secretary. The party will complete this form fully and accurately and send it to the Tribunal not less than fifteen(15) days prior to the commencement of the hearing. (Fax 416-326-5135 or E-mail to the Secretary)

The party requesting the summons should also explain briefly:

- the relationship of the person to be summoned to the matter before the Tribunal;
- the issues and the evidence that the person is to address;
- the relevance of that evidence to the issues before the Tribunal; and
- the documents and things the witness shall bring to the hearing.

## **Step 3: Issuing the Summons**

The Panel Chair will review the request. The Tribunal will only issue a summons if the Panel Chair is satisfied that what the witness will say, or the documents that the witness will bring to the hearing are relevant to decide the issues. If the Panel Chair is not satisfied, the Panel Chair may arrange for a teleconference with the parties to discuss the relevance of the summons.

When a *Request for Issuing a Summons* is approved by the Panel Chair, the Party will be notified by the Tribunal and sent a completed *Summons* form to be served on the witness.

## **Step 4: Delivering the Summons to the Witness**

The *SPPA* specifies, that “the summons shall be served personally on the person summoned”. Therefore, once a party receives the signed *Summons*, it is the party's responsibility to ensure that the summons is handed **directly** to the witness. The party may deliver the *Summons* personally to the witness, or arrange to have someone else deliver it to the witness. The *Summons* cannot be mailed or faxed to the witness or left with another person at the witness's address.

The *Summons* is to be served no later than ten (10) days before the time for attendance.

In accordance with Tariff A, Rule 53.04(4) of the Rules of Civil Procedure in Ontario, witnesses must be paid a witness fee. The witness fee must be provided with the summons.

The Tariff also specifies a basic travel allowance to be paid to witnesses.

## Step 5: At the Hearing

If a witness has been summoned for a specified date and time, it is important to ensure that the witness can give his/her evidence at that time. Therefore, if the timelines have changed, the party that summoned the witness may ask the Tribunal to allow the witness to give his/her evidence out of sequence, thereby enabling the witness to attend as close to the specified time as possible.

If the witness does not come to the hearing after receiving the *Summons*, the party that delivered the *Summons* may choose to:

- proceed with the hearing without the witness;
- try to arrange for the witness to attend on a subsequent day within the time allocated for the hearing;
- ask the Tribunal to adjourn the hearing, pending a future appearance by the witness or the opportunity to obtain some other evidence instead of the expected evidence from the absent witness.

The party, that issued the *Summons* and whose witness did not attend, may apply to the Superior Court of Justice to force the witness to obey the *Summons*. The party may have to prove to the Court that the witness was properly served with the *Summons*. The person serving the *Summons* should prepare an affidavit, stating that the *Summons* has been delivered to the witness, specifying when it was delivered and the location to which it was delivered.

An affidavit is a voluntary written statement sworn before a person who is qualified to administer an oath. Parties should consider consulting a lawyer before applying to the court to enforce their summons.

Please note that the Tribunal has no responsibility for:

- delivering the *Summons*;
- covering the witness fee or any other related costs;
- ensuring the attendance of the summoned witness; or
- taking any steps against a witness who did not obey a summons.