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# Queen's Bench Summons Court: Consolidated Practice Notes

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## PRACTICE NOTES

2<sup>nd</sup> Edition: November 2011

### The Listing and Hearing of Summonses before the Masters in the Queen's Bench Division

The following Notes contain the main rules governing the listing of business before, and the hearing of summonses by, the masters in the Queen's Bench Division of the High Court of Judicature. These Notes replace previous Practice Notes issued by the masters including: Practice Note No.1 of 2001, Adjournments in the Queens Bench Summons Courts; Practice Note No.2 of 2001, Proceedings by way of Summons before the Masters; Practice Note No.1 of 2002, Listing and Hearing of Assessments of Damages under Order 37; and Practice Note No.2 of 2002, Proceedings by way of Summons before the Masters. In addition, Appendix 1 to these Notes contains a Guide to Good Practice on Applications for Remittal.

#### INTRODUCTION TO THE SECOND EDITION

The Consolidated Practice Notes governing the listing and hearing of summonses before the masters in the Queen's Bench Division came into force on 5 September 2006. Since then the Notes have provided an easily accessible guide to Summons Court practice for young or inexperienced counsel, and have ensured an expeditious and disciplined approach to Summons Court practice generally. Queen's Bench interlocutory practice has undergone considerable change in a number of areas. The introductions of a system of master's review of personal injuries actions had reduced the number of summons in routine, often non contested applications, whilst the numbers of complex contested applications, particularly involving banking or jurisdictional issues has grown. This has brought with it a greater reliance upon lists of authorities and skeleton arguments which if they are to be useful must be lodged in timely fashion. Specific changes have been introduced with respect to matters such as engineers inspection and applications for leave to call expert witnesses. The purpose of this 2<sup>nd</sup> Edition of the Notes is to update them to reflect current practice, and to incorporate various practice notes introduced since September 2006. These include: Master's Practice Note No 1 of 2009, Directions In Respect of Contested Summonses before the Masters; Practice Note No 3 of 2007, Applications for Inspection Facilities Pursuant to Order 29 rule 4, and Masters' Practice Note No 2 of 2009, Applications pursuant to Order 38 rule 1B for leave to call additional expert witnesses, all of which are replaced by this 2<sup>nd</sup> Edition.

## **Introduction**

The Summons Court is the primary means by which the routine interlocutory business of the Queens Bench Division is dispatched. The systems by which the court operates have been designed, following consultation with the Queen's Bench Masters' Liaison Committee, to enable the processing of a large volume of summonses for varying forms of relief expeditiously and flexibly, whilst allowing practitioners the degree of certainty in respect of hearing times for contested matters necessary if they are to plan their working schedules. Summonses issued for hearing before the masters are allocated a return date for a specified summons court usually no more than 4 weeks ahead, at which each summons must be mentioned to the master. If the system is to operate fairly and effectively summonses cannot be stood over for mention after the court, and it is essential therefore that practitioners liaise with their opposite numbers in advance of the court with regard to such matters as the arranging of hearing times for contests or the terms of consent orders.

Applications for Summary Judgment (Order 14) and Appointments for Assessments of Damages (Order 37) are not dealt with at the Summons Court and are listed separately.

### **1. The Summons Court**

- (a) The Queens' Bench Summons Court will sit each Friday commencing at 9.45 am. The Court will be managed by a master who will deal with all summonses in the list at a single callover which will run from 9.45 am until 12.45pm.
- (b) All summonses in the list for a given court must be mentioned to the master during the callover, at which the master will attend to:
  - (i) requests for adjournment;
  - (ii) applications for consent orders;
  - (iii) applications in short uncontested matters;
  - (iv) fixing of times for the hearing of short contested summonses that day; and
  - (v) other short non-contentious applications.

- (c) The master will not entertain any request that a summons be stood over to be mentioned after the court has ended. Time should not be fixed for the hearing of a contested summons unless there is a genuine intention that the summons will be heard at that time. The fixing of times for hearings in order to circumvent the masters' practice that summonses will not be stood over to be mentioned after the close of the callover, will not be permitted.
- (d) The master will not generally hear contested summonses during the callover, except, at his discretion, where most of the of the business listed before the court has been attended to early in the callover and there is time available to hear short contested summonses without causing inconvenience or delay to practitioners in other cases.
- (e) Summonses in which the expected hearing time is in excess of 15 minutes will generally be unsuitable for hearing at a Friday court and will instead be fixed for special appointment hearing in the earlier part of the following, or a subsequent, week. Where a special appointment hearing is required, counsel or solicitors should notify the master at the Friday court, request the summons papers, and take them to the Masters' Secretaries Office where the case will be allocated to a specific master, and a date and time fixed for hearing. When requesting a special appointment hearing parties should be in a position to provide an estimate of the likely duration of the hearing.
- (f) A summons which has not been attended to during the callover will automatically be re-listed on one occasion only, in a designated part of a Friday list 4 weeks ahead. At the second listing the summons may be dealt with in the normal way, but if it remains unattended to on that occasion it will be automatically struck out and no application for reinstatement will be entertained.

## **2. Adjournment**

- (a) In general the masters will only permit summonses to be adjourned for a minimum period of four weeks, unless good reason is given justifying adjournment for a shorter period. Examples of good reason justifying shorter adjournments include:-
  - (i) The action has been listed for trial;
  - (ii) The summons is being adjourned to fix a date and time for a special hearing;

- (iii) The action has been reviewed before the Senior Queen's Bench Judge or a Queen's Bench Master who has specifically directed that interlocutory matters will have been advanced or completed prior to a specific date or before the next review date;
  - (iv) There is a particular urgency with respect to the relief sought;
  - (v) Counsel requires an opportunity to consider a recent response such as replies to a notice for particulars, answers to interrogatories or a replying affidavit, before finally disposing of the summons.
- (b) An application made with the consent of the parties for adjournment of a summons which is listed for the first time, where the proposed adjournment is for a period of 4 weeks or more, may be made in writing either by fax or delivery, to the Writ Office on the day prior to the return day for which the summons is issued. Any other application for adjournment of a summons must be made to the master during the Friday court, when a proper reason for the adjournment must be given.
- (c) Whilst the master retains discretion in all cases, in general it will be the masters' practice not to adjourn summonses to which there is no answer, including summonses for:
- (i) simple discovery pursuant to Order 24, rule 3;
  - (ii) to compel replies to a notice for further and better particulars pursuant to Order 18, rule 12, where no replies have been served.
  - (iii) to strike out for failure to set the action down for trial pursuant to Order 34, rule 2;
  - (iv) to strike out for failure to serve a Statement of Claim pursuant to Order 19, rule 1; or
  - (v) to strike out for failure to compel compliance with a previous order of the court.

### **3. Special Appointment hearings**

- (a) As a general rule a summons listed by agreement for special appointment hearing should not be adjourned without very good reason, though the masters retain discretion and will so far as is practicable deal sympathetically with genuine difficulties.
- (b) Where it is proposed to apply for adjournment of a summons listed for special appointment hearing, the master should be given proper notice, and such applications should not be left until the time the hearing is scheduled to commence.
- (c) Generally summonses which are adjourned will not be automatically listed for another special appointment but shall be returned to a future Friday Summons Court list.
- (d) It is understood that generally counsel prefer afternoon appointments over morning appointments, but in the time available it is not practicable or possible to allow everyone an afternoon appointment. Therefore in order to facilitate the greater number of practitioners the usual practice shall be that the longer and more complex summonses, in excess of 30 minutes duration, will be listed in the morning, with the shorter half hour summonses generally listed in the afternoon.
- (e) Where neither party attends for a special appointment hearing generally the summons will be struck out with no order as to costs. The master may at his discretion reinstate the summons upon application by the moving party.

### **4. Lists of Authorities and Skeleton Arguments**

- (a) Where the hearing time for a contested summons is estimated at 45 minutes or more, or a party proposes citing authorities including case law or texts:-
  - (i) each party shall file in the Masters' Office a list of authorities and skeleton argument, at least 7 working days prior to the date fixed for hearing;
  - (ii) the Central Office shall provide the master with the summons papers at least 7 days prior to the date fixed for hearing.
- (b) Where in any summons covered by paragraph 1 the lists of authorities and skeleton arguments are not filed in the Masters Office at least 7 working days

prior to the date fixed for hearing, the summons will not proceed and instead will automatically be adjourned for mention to a subsequent Summons Court.

- (c) The master may at his discretion, in cases of urgency, disapply the foregoing directions.
- (d) Practitioners are reminded that Part A of Practice Direction No.4 of 2005 concerning Skeleton Arguments and Related Documents, issued by the Lord Chief Justice, applies in all proceedings before the masters.

#### **5. Applications for inspection facilities pursuant to Order 29 Rule 4 of the Rules of the Court of Judicature**

- (a) An application for inspection facilities for an engineer or similar expert shall not be entertained by the master unless:-
  - (i) the summons includes a schedule containing a clear and concise description of the property, inspection of which is required;
  - (ii) the grounding affidavit clearly sets out the reasons why inspection facilities are necessary or expedient; and
  - (iii) the application papers include the relevant pleadings in the action.
- (b) An application which does not comply with the requirements of paragraph 1 may, at the master's discretion, be dismissed with costs awarded against the applicant.

#### **6. Applications pursuant to Order 38 rule 1B for leave to call additional expert witnesses.**

The approach to Order 38, rule 1B applications before the masters has been revised to reflect: (a) the overriding objective set out at Order 1, rule 1A of the Rules of the Court of Judicature; (b) the Pre Action Protocol for Personal Injuries Litigation; and (c) the general approach to the calling of expert witnesses in personal injuries actions now adopted by trial judges. Practitioners should be aware that at the hearing of such applications the following matters are likely to arise.

- (a) In all applications pursuant to Order 38, rule 1B for leave to call more than two medical experts or more than one non-medical expert, the party applying, either by summons with grounding affidavit or orally at a master's review hearing, should be in a position to satisfy the court of the following matters:-

- (i) the identity and specific discipline of each expert it is proposed to call;
  - (ii) the reasons necessitating that each expert give oral evidence;
  - (iii) the steps taken to agree the evidence of each expert;
  - (iv) the nature of the issue in dispute which prevents such agreement;
  - (v) what consideration has been given to discussions between experts to clarify and reduce the issues in dispute.
- (b) In complex cases involving a multiplicity of issues and experts the court in giving leave to call additional experts may also direct the preparation of Scott Schedule.

## **7. Summonses and Supporting Documents**

- (a) All summonses (including copies for service) must, where counsel is to be briefed for the moving party, be indorsed with his or her name.
- (b) All summons papers (including copies for service) must be accompanied by a copy of the Writ of Summons, Civil Bill or other originating process.
- (c) Papers which do not comply with the requirements of (a) and (b) above will not be issued by the Office.
- (d) Additional documents (such as affidavits or medical reports) which have not been included in the summons papers filed, or which have come into being after the summons papers have been filed, must be lodged in the Office at least one clear working day prior to the return date for a summons.
- (e) The master may refuse to accept a document produced in the course of the hearing, or may adjourn the summons for a minimum period of four weeks to enable a copy of the document in question to be lodged in the Office.
- (f) Solicitors when filing a summons for issue by the Office must ensure that the supporting papers are adequate to enable the master to deal expeditiously with the questions at issue. In particular, where a summons relates to an issue arising from the pleadings, the adequacy of replies to a notice for further and better particulars, or interrogatories, the papers should include a complete book of pleadings.

- (g) Failure to have proper regard for the matters contained at sub-paragraph (f) above may prevent the summons from being heard within the time allowed at a special appointment hearing, and may result in the summons being adjourned by the master to a time convenient to the Court.

## **8. Counsel's Duties**

- (a) Counsel mentioning a summons at the Summons Court on behalf of a colleague, or standing in for a colleague on the hearing of a contested summons, must ensure that he has been given adequate instruction to enable him properly to do so.
- (b) Counsel requesting a colleague to mention on his behalf a summons at the Summons Court, or to stand in for him on the hearing of a contested summons, must ensure that he provides that colleague with adequate instruction to enable him properly to do so.
- (c) Counsel are reminded that pursuant to rule 23.02 of the Bar's Code of Conduct pupils may appear on behalf of their own pupil masters only, and not other counsel.
- (d) The masters reserve the right in any proceedings before them to decline to hear a pupil barrister where he feels that the nature or complexity of the proceedings is such that it is not appropriate that they be conducted by a pupil.

## **9. Assessment of Damages**

- (a) A plaintiff should not request an appointment before the master for an assessment of damages until the evidence relating to both general and special damages is complete. The first listing will be a Directions Hearing only to ascertain: (i) whether or not the assessment will be defended on quantum; (ii) the likely duration of the trial; (iii) whether expert oral evidence is required, and (iv) readiness for trial generally.
- (b) A Notice of Appointment will not be issued by the Masters' Office unless the plaintiff lodges a complete set of relevant papers to include:-
  - (i) a copy of the Writ of Summons and the pleadings;

- (ii) any medical reports upon which the plaintiff intends to rely; and
  - (iii) any documents relating to a claim for special damages upon which the plaintiff intends to rely.
- (c) Additional documents (such as medical reports or documents relating to special damage) which have not been included in the papers lodged, or which have come into being subsequently, must be filed in the Office at least one clear working day prior to the appointment for assessment of damages.
- (d) It is good practice when notifying the defendant of the date and time of the appointment for assessment of damages to provide him with copies of the documentation referred to at (b) and (c) above.
- (e) Where an action has settled between the date when the appointment for assessment is fixed and the appointed date, the plaintiff's solicitors should immediately notify the Office that the assessment of damages will not be proceedings.

#### **10. Summonses for Summary Judgment: Order 14**

It will be general practice that the first listing of Order 14 summonses for summary judgment will, unless the application is not to be defended, be a directions hearing only at which directions will be given for the filing of affidavits and a date will be fixed for full hearing.

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Master (High Court) Queen's Bench and Appeals

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## APPENDIX

### GOOD PRACTICE IN REMITTAL APPLICATIONS

The purpose of this guide is not to set out a strictly timetabled procedure, but rather to identify certain principles which reflect good practice, a failure to adhere to which may, at the discretion of the court, be penalised in costs. Therefore, rather than require that a given step be taken or response made within a specified time, reference is to performance within a 'reasonable time', with the court assessing what is reasonable in the context of a particular case, when exercising its discretion as to costs.

#### **Guide to Good Practice in Remittal Applications**

- (a) Before issuing a summons for remittal the defendant's solicitor should write to the plaintiff: (i) seeking consent to remittal, or/and (ii) confirmation that the medical and financial loss evidence is complete. He may indicate that if a response is not received within either a 'reasonable time' or a time specified at his discretion which ought not to be less than 3 or 4 weeks, he would issue a summons.
- (b) The plaintiff's solicitor should always respond to such a letter as described, indicating either consent or refusal of consent, and in the latter instance confirming whether or not the medical or financial loss evidence is complete. If the evidence is not complete he should indicate in general terms how long he requires to update it, and undertake not to list the action for hearing in the meantime.
- (c) If the plaintiff does not respond at all to the defendant's letter within a reasonable time, or responds in a manner which is unhelpful in that it fails to properly address the issues, then the defendant should proceed to issue the remittal summons.
- (d) If the plaintiff's solicitor has written refusing consent to remittal, confirming that the medical and financial loss evidence is not complete and indicating how long he requires in order to update it, then the defendant's solicitor should write to confirm that he will not issue the remittal summons for that

time or some lesser, but reasonable, period of time. In any event he should not issue the summons without giving the plaintiff final notice.

- (e) Either party failing to comply with good practice may be penalised in costs at the discretion of the court. For example, a defendant's solicitor issuing a remittal summons without allowing the plaintiff a reasonable time to update its medical and financial loss evidence could be denied the costs of the application even though the remittal application is successful. Similarly, a plaintiff failing to respond to the defendant's correspondence, or responding in an unhelpful manner, may be denied costs when he successfully defends the application to remit. In particular, a plaintiff who has refused to comply with good practice and applies to adjourn the summons in order to update the medical or financial loss evidence, may not only be denied costs when successful, but required to pay costs thrown away due to adjournment.

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