

Using a Subpoena in the Supreme Court Family Division

This guide gives general information for the applicant

or respondent in a family law case

who wishes to ask the court to issue a

subpoena. It does not explain the law.

Court staff can give general information

about how the court works, and about

court rules and procedures. Court staff

cannot give legal advice. Speak to a

lawyer for legal advice about

your situation.

What is a subpoena?

A subpoena is a court document that requires a person to give evidence at a court proceeding. The subpoena tells a person that they must come to court at a certain date and time to give evidence to the court. They may be required to give evidence by either coming to court to answer questions, or bringing or providing the court with documents, or both.

Why might I need a subpoena?

If a person or representative of an organization refuses to come to court or is unable of their own free will to come to court, and you will need them or documents they have to prove your case, you may ask the court to issue a subpoena. The subpoena will require them to come to the court on a certain date. You will need to pay witness fees to anyone you subpoena.

Before you ask the court officer to issue a subpoena, you should talk to the person you want to call to court to testify or to a representative of the organization that holds the documents you want to subpoena. Find out

- if they have the desired documents
- how much it will cost to locate and copy the documents
- whether they will provide copies of the documents that you want without the need for a subpoena

Based on this information, ask for only what documents you will need to prove your case. Avoid paying to have documents produced to the court that may be irrelevant and unhelpful.

Must the witness I serve with a subpoena be in Nova Scotia?

No. But if you are serving someone outside of Nova Scotia, you must make a court application asking a judge to issue the subpoena.

A designated court officer can issue a subpoena being served on someone in Nova Scotia if the subpoena complies with the Civil Procedure Rules.

When must I serve the subpoena?

Serve the witness with a subpoena as early in the court process as possible. If the person or organization that you are requiring come to court is the opposing party in the case, or the opposing party's lawyer, you must serve the subpoena at least 5 days

before the court date. If the witness is not the opposing party (or their lawyer), serve them with the subpoena at least 2 days before the court date. Do not include weekends or holidays, the day of the hearing, or the day of service when counting the days. This is called “clear” days.

For example, if the court hearing is on a Monday, for 2 clear days serve the witness on the previous Wednesday. Thursday and Friday are the 2 clear days. If the court date is on Wednesday, for 2 clear days serve the witness on the previous Friday. Monday and Tuesday are the 2 clear days. However, if Monday is a holiday, serve the witness on the previous Thursday. Friday and Tuesday are the 2 clear days.

A subpoena issued by the Supreme Court Family Division must be served within 10 weeks after the date it was issued by the court officer.

How to subpoena a witness in the Family Division of the Supreme Court

Step 1

Identify the need for a subpoena.

Step 2

Get a subpoena form. A subpoena for the Family Division of the Supreme Court (Form 31.24a) is attached. You can also find it on the Internet at <www.courts.ns.ca/Rules/rule28_35.htm#rule31>. You can also get a blank copy of the forms at the court administration office in the court house.

Step 3

Fill in the subpoena form with the required information. Make an additional 3 copies of the subpoena—one for the person being subpoenaed, one for you, and one for the court.

Step 4

Take the original subpoena and 3 copies to the court administration office. A designated court officer must sign a subpoena before it is valid. The court officer will decide whether the subpoena complies with the rules relevant to the court case. If the court officer is satisfied with your subpoena and signs it, they will give you back the original and all copies but one, which will be kept in the court case file. This is called “issuing” the subpoena.

Step 5

Serve (deliver) the subpoena by personal service. You must arrange for the subpoena to be served personally on the person or organization that you are requiring to come to court. You cannot use registered mail or fax the person who you have subpoenaed. To serve the subpoena on a person or on an

organization that you are requiring to come to court, you or a person you choose must do one of the following:

- hand a copy of the subpoena to the person
- if it is an incorporated company, hand a copy of the subpoena to a chief officer of the company or to the registered agent of the company

You must have the original subpoena with you when you serve the person or organization that you have required to come to court. If they request it, you must show them the original subpoena

You must pay witness fees to the person you have subpoenaed to court. These must be delivered with the subpoena. Give the witness a copy of the subpoena and the witness fee. Witness fees are traveling expenses to enable the witness to come to court. Pay the witness fees in cash. For further information on the fee amount, check with court staff.

If you want to hire someone to serve the subpoena, look in the yellow pages under “bailiff” and “process servers.”

Step 6

Prove that the subpoena was served. The person who delivers the subpoena must complete the affidavit of personal service on the back of the subpoena form. It will tell the court the name and occupation of the person who served the subpoena. It will also tell the court the name of the witness who was served and where and when they were served. The affidavit must be signed in front of a commissioner for taking oaths. This can be done at a lawyer’s office, and at the court administration office. Call ahead to these offices to make sure someone will be available to “take the affidavit.” There may be a small fee for this service.

File the subpoena and affidavit with the court before or at the hearing date to prove that the witness, or the documents, or both, were subpoenaed.

To subpoena a professional person to give expert evidence, there are special rules (Civil Procedure Rule 31). You will be responsible to pay for the expert’s time to prepare for court and to come to court.

More Information

For more information about representing yourself in court visit the Department of Justice website at <www.gov.ns.ca/just/repselfmain.htm>. For information about the courts of Nova Scotia go to <www.courts.ns.ca>.

FORM 31.24a

[Rule 31.24(1)]

**In the Supreme Court of Nova Scotia
(Family Division)**

Between:

Applicant

- and -

Respondent

Subpoena

TO: _____
[names and addresses of witnesses]

You are required to attend the trial of the above proceeding in the Supreme Court, to be held at the Court House, in _____, Nova Scotia, on _____, the ___ day of ____, 20___, at ___ o'clock in _____noon and so on from day to day until the end of the trial, to give evidence on behalf of the [plaintiff] [defendant].

[You are also required to bring with you and to produce at the above trial the following documents or things:]

Failure by you without adequate excuse to obey this subpoena may be deemed a contempt of court and render you liable to arrest and imprisonment.

Issued at _____, Nova Scotia, this ___ day of _____, 20___.

Prothonotary

**In the Supreme Court of Nova Scotia
(Family Division)**

Between:

Applicant

- and -

Respondent

Affidavit of Personal Service of Subpoena

I make oath and say that I personally served the subpoena on the person listed below at the place and time listed by giving that person a true copy of the subpoena.

Name of person served with subpoena

Place where subpoena was served

Date and time served

Day month year time

My means of knowledge as to the identity of the person served were as follows:

[it is usually sufficient to indicate a drivers licence or Social Insurance card was produced with the person's name and recite the licence number or Social Insurance Number, or other means, which will accurately identify the person served with the subpoena].

Name of person who served the subpoena

Occupation of person who served the subpoena

Signature of person who served the subpoena

[sign in front of Commissioner]

Sworn to before me this ____ day of _____, 20____, at

[town, county, province]

Signature of Commissioner for taking oaths etc.

Return completed subpoena to Supreme Court Family Division