

Information Bulletin

This Bulletin provides information for individuals involved in a hearing before the Labour Board who wish to ask the Board to issue a subpoena. It provides general information only.

What does a Labour Board subpoena do?

A subpoena is a legal document which requires a person to testify at a hearing, and/or provide documents or objects which are relevant to a hearing. The *Labour Board Act* gives the Labour Board authority to issue subpoenas in relation to its hearings. See Section 10.02 and 10.03 of the [Board's Rules of Procedure](#) for information about subpoenas and summoning witnesses.

Who is eligible to obtain subpoenas?

Individuals involved in to Labour Board matters are eligible to obtain subpoenas.

Why might I need a subpoena?

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

How do I get a subpoena? What information do I need?

Before you ask the Board to issue a subpoena, you should talk to the person you want to call to the hearing to testify or to a representative of the organization that holds the documents you want to subpoena. A document can be any written information that proves a fact, such as a contract, a bank statement, or an estimate. Find out

- If they have the desired document(s)
- How much it will cost to locate and copy the document(s)
- Whether they will provide copies of the document(s) that you want without the need for a subpoena.

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

If you determine you require a subpoena, you will need to fill out a Board subpoena form. You can obtain a copy of the form at <http://novascotia.ca/lae/labourboard/forms/>. You may

request a copy of the subpoena form directly from the Board if you do not have access to the Internet. There are several blanks in the form which you **must** fill in. Those blanks include:

- the Labour Board file number for the matter;
- each of the parties' names in the appropriate spaces;
- the name of the person you wish to summon to the hearing for the matter;
- the date, time, and place of the hearing;
- your name to show that you are the person/party who wants to compel the witness to appear at the hearing; and
- clear descriptions of any documents, records, or other items you wish the witness to bring to the hearing.

The second step in obtaining a subpoena is to file a copy of your completed subpoena form with the Board. The subpoena will be signed by a Chair or a Vice-Chair of the Board and then returned to you. You may file a subpoena form at any time until 4 days before the hearing.

What do I do when I receive the signed subpoena from the Board?

The signed subpoena form becomes legally binding once it is served on the witness. You are responsible for personally serving the subpoena on the witness in a timely manner together with the appropriate witness fees. You must serve the witness with a subpoena at least 4 days before the date set for the Board hearing. Witnesses are entitled to fees when they are subpoenaed to appear before the Board. Witness fees are traveling expenses to enable the witness to come to the Board hearing. To determine the exact amount payable to a witness, see the [Cost and Fees Act of Nova Scotia](#).

You will need to be able to prove that the intended witness received the subpoena in case the witness does not show up for the hearing. If you use a process server, make sure they provide you with an affidavit confirming that the subpoena was served.

Are there any restrictions on who or what I can subpoena?

Subpoenas may only be used to obtain information which is relevant to the matter before the Board. That means that you may need to explain why the information you are seeking is relevant to the decision the Board must make. In addition, certain individuals are not "compellable", so they are excused from complying with a subpoena. For example, employees of the Department of Labour and Advanced Education are not compellable to provide evidence about information they may have received in the course of their duties related to the *Trade Union Act*.

How is the witness' evidence presented to the Board?

The party who subpoenas a witness is responsible to present the witness' evidence to the Board. Therefore, if you subpoena a witness, you will be responsible to ask the witness open-ended questions which will draw out the information you are seeking. If you ask the witness to bring a particular document, you will need to ask the witness questions which will confirm that the witness has personal knowledge of the document, that the document is authentic, and highlight/explain the information in the document you wish the Board to consider.

What happens if the witness does not show up?

If the witness does not show up and does not have an adequate excuse for disobeying the subpoena, the witness may be found to be in contempt.