

Using a Subpoena in the Small Claims Court (Form 3)

This guide provides information for the claimant or defendant in a small claims court case who wishes to ask the court to issue a subpoena.

It gives general information only.

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

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 hearing. 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 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. 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 court that may be irrelevant and unhelpful.

When must I serve the subpoena?

Serve the witness with a subpoena at least 4 days before the date set for the Small Claims Court hearing.

How to subpoena a witness in the Small Claims Court of Nova Scotia

Step 1

Identify the need for a subpoena.

Step 2

Get a subpoena form, called Form 3. One is attached.

You can also find it at

www.gov.ns.ca/just/regulations/regs/sccfrmpr.htm.

Read the form carefully.

Step 3

Fill in the form.

- Put the Claim No. on the top right-hand corner of the subpoena form. You will find this number on the top right-hand corner box of your claim form.
- Fill in the name of the claimant and the name of the defendant on the first two lines of the subpoena form. In the space after the word “To”, fill in the name and complete street and mailing address of the witness being subpoenaed.
- Fill in the building or site and the city or town where the proceeding will be held, the month, day, year, and time set for the proceeding, and the word identifying which party the person will be giving evidence on behalf of— “claimant” or “defendant.”
- List the documents you want the witness to bring to court as evidence of what happened. Examples include contracts, letters, invoices, statements, plans, drawings, photographs, written opinions, or quotations for repair work.

Step 4

Make 2 copies of the original subpoena. Take the original subpoena and 2 copies of the subpoena to the court administration office. The original will be signed and sealed by court staff and will be returned to you with one copy. The other copy will be kept for the court file. This is called “issuing” the subpoena.

Step 5

Serve (deliver) the subpoena on the witness by personal service at least 4 days before the date set for the hearing. When counting the 4 days, do not include the date of the hearing. To personally 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

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 server”.

Step 6

Prove that the subpoena was served. The person who delivers the subpoena must complete the affidavit on the bottom of the subpoena form. It will tell the court the date and the year the witness was served, the name of the witness, and the number of kilometres travelled to get the witness served with the subpoena.

Step 7

Take the original subpoena (Form 3) to the court administration office to be sworn by a Clerk of the Small Claims Court, or a Commissioner of Oaths. The affidavit must be filed with the court before or at the hearing date to prove that the witness or the documents, or both, were subpoenaed.

Form 3 - Subpoena to Witness
in the Small Claims Court of Nova Scotia

Claim No. _____

BETWEEN:

Name _____ Claimant(s)

- and -

Name _____ Defendant(s)

TO: _____
(name of witness)

You must attend the hearing of this proceeding in the Small Claims Court, to be held at _____ in _____, Nova Scotia on _____, 20____, at _____ a.m./p.m. You must be present each day of the hearing. You will be called upon to give evidence on behalf of the _____.
(Claimant(s)/Defendant(s))

You must bring the following documents or things with you and produce them at the hearing:

If you do not obey this subpoena and do not have an adequate excuse for disobeying this subpoena, then you may be found to be in contempt of court and you could be arrested.

Issued on _____, 20 ____.

Clerk of the Small Claims Court of Nova Scotia

AFFIDAVIT

I _____, swear that on _____, 20____ I served this subpoena on _____, by leaving a true copy of it with him/her personally, and that I travelled _____ kilometres to do so.
(name of witness)

Sworn before me on _____, 20 ____.

Clerk of the Small Claims Court of Nova Scotia,
Barrister, Commissioner of the Supreme Court
of Nova Scotia

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