



Responding to a Subpoena Administrative Procedure 1.A.127

1.0 School Administration
1.A. Foundations

Board Governance Policy Cross Reference:

Legal Reference:

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A subpoena is an order issued by a Court or an Arbitrator, requiring the attendance of the individual named in the subpoena on the date, time, and location set out in the subpoena.

The purpose of a subpoena is to compel the attendance of the individual named in the subpoena to give oral evidence and/or to provide documentary evidence in relation to a matter proceeding before a Court or an Arbitrator.

If you have been subpoenaed, you should immediately contact the School Division to advise them of the subpoena and provide a copy, if required. The subpoena will likely necessitate your absence from work.

Who Has Been Subpoenaed?

The first step is to assess who has been subpoenaed. You may either be subpoenaed in your personal capacity, or in your capacity as an employee of the School Division.

Whether you are subpoenaed in your personal capacity, or as employee, can provide some insight as to the expected evidence to be provided at the hearing.

Often times, the purpose of the subpoena is not to obtain oral evidence from the individual named in the subpoena; rather, the intent is to obtain documentation that is under the power and control of the individual named in the subpoena.

Is Attendance Required?

Yes. It is of utmost importance that any individual who receives a subpoena attend on the date indicated. Failure to attend could result in a warrant issued for the arrest of the individual for failing to appear; also known as contempt of court.

In the event that the individual named in the subpoena is unable to attend court on the date in question, for good and sufficient reason, the individual should contact the lawyer who issued the subpoena to address the issue. The lawyer who would issue the subpoena will be named on the subpoena and contact information should be provided.

Documents

In the event that documents are required to be produced, the documents should be brought by the individual named in the subpoena to Court and only disclosed at the time the individual is set to testify (i.e. called to the witness stand).

Under no circumstances should the documents be provided to anyone, including the lawyer who issued the subpoena, in advance of attendance. The documents are often subject to confidentiality, or in the case of a School Division, are protected by legislation from disclosure.

Am I Required to Speak to the Lawyer that Subpoenaed Me?

You are not required to speak to the lawyer who issued the subpoena in advance of your attendance at Court. That said, it is often advisable to speak to the lawyer to gain an understanding as to the purpose of your attendance. Under no circumstances should confidential information be disclosed during your discussions, should you elect to contact the lawyer.

Subpoenaed to Court

If you have been subpoenaed to the Court of Queen's Bench in Winnipeg, you are required to attend at 408 York Avenue, on the date and time indicated in the subpoena. Please be advised that you will be required to pass through security, and as such, arriving early (30 minutes before the time specified in the subpoena) is advisable.

Upon entering the law courts, there is a bulletin board under glass to your immediate left, which has a listing of all of the matters proceeding that day. The file number and parties named in the subpoena will correspond to a specific matter listed on the bulletin board, which will indicate the courtroom in which the matter is proceeding.

If you are having difficulty locating the courtroom, you may ask a sheriff (in brown uniform) or a lawyer for assistance and direction.

How Long am I Required to Stay?

Typically, a subpoena is issued requiring attendance at the beginning of proceedings on the date specified. If the subpoena requires that you be in court at 9:00 am, you should be prepared to remain in Court for the entirety of the day, as the time you will be called as a witness is uncertain.

You will be required to remain in Court until such time as you are excused by the Judge. It is recommended that you bring something with you to occupy yourself, as there is often significant delays in Court proceedings.

Testifying In Court

Generally speaking, you are not entitled to sit in the court room throughout the proceedings, prior to you being called as a witness. When you arrive at Court, you should enter the Court

room and introduce yourself to the lawyers to advise that you are in attendance. You will likely be required to leave the court room and wait until such time as the sheriff comes to get you.

Once you are summoned to the court room, you will be directed to the witness booth, and the court clerk will ask you to swear on the Bible or affirm that your testimony will be true. At that time, you will state your full name and swear/affirm to tell the truth. It is at this stage that if there are any documents that are required to be produced, the Court may order that they be disclosed.

You must be honest and forthcoming your testimony. Your role as a witness is to answer the questions that are asked. Your role is not to provide an opinion, unless you are specifically required to provide your opinion.

If you are concerned about answering a certain question, you may seek direction from the Judge presiding over the matter. Judges understand the difficulties witnesses can have testifying in court and should provide guidance.

If you do not know the answer to a specific question, it is not your role to speculate. As such, if you do not know as specific answer to a question, indicate that in your response.

Remember, while testifying in Court can be intimidating, nothing bad will happen if you attend at the time specified and tell the truth.

What Should I Wear?

Out of respect for the court, it is recommended that you dress in business attire.