

SERVING THE SUBPOENA

It is the responsibility of the requesting party to serve the subpoena and for any fees or expenses which may be incurred in its service such as transportation, meals, professional fees, etc.

In accordance with the *Rules of the Supreme Court (1986)*, the following outlines the procedure for serving a subpoena:

- A copy of the subpoena must be served (delivered) to the witness by the requesting party or their representative.
- Upon request, the witness is entitled to be shown the original subpoena issued by the WHSCRD.
- A witness is not bound to appear or give evidence unless the appropriate witness fee has been provided to the witness when serving the subpoena:
 - \$100.00 fee if the witness is to testify as an expert, or in relation to matters pertaining to his/her profession.
 - \$50.00 fee in every other case.

If a subpoenaed witness does not appear at the hearing, the Review Commissioner will determine whether the subpoena was properly served and may:

- Proceed without the witness if it is established their attendance is not essential to the case.
- Adjourn the hearing and reissue the subpoena.
- Proceed with contempt proceedings against the witness as per the *Public Investigations Evidence Act*.

FOR MORE INFORMATION

For more information on the WHSCRD process, please consult the following pamphlets:

- ▶ General Information
- ▶ Review Process
- ▶ Hearing Process
- ▶ Employer Participation
- ▶ Representation
- ▶ Reconsideration Process
- ▶ Access to Information

If you require additional information or assistance, please contact our office at:

**Workplace Health, Safety and
Compensation Review Division**
2nd Floor, Dorset Building
6 Mount Carson Avenue
Mount Pearl, NL
A1N 3K4
Tel: (709) 729-5542
Fax: (709) 729-6956
Toll Free: 1-888-336-1111
Email: whscrd@gov.nl.ca

or

Visit our website at:
www.gov.nl.ca/whscrd



Workplace Health, Safety and Compensation Review Division

WITNESSES AND SUBPOENAS



WITNESS

Parties involved in a Workplace Health, Safety and Compensation Review Division (WHSCRD) review may bring witnesses to the WHSCRD hearing in order to support their case.

To participate at the hearing, a witness should have been involved in the case under review and would have provided information to the Workplace Health, Safety and Compensation Commission (WHSCC) in the form of medical reports, functional assessments, or eye-witness testimony. For example, a physician can be a witness if the WHSCC has already reviewed their medical report and this material was considered in its decision-making process.

The WHSCRD must be provided with written notification of a witness' participation at least two weeks in advance of the hearing. Once notice has been received that a witness will be appearing, all other parties involved in the hearing will be advised by the WHSCRD. Failure to provide adequate notice may result in a hearing postponement.

SUBPOENA

In order to ensure the attendance of a witness, or to summon a witness who they believe may have evidence to support their case, a party may request the WHSCRD issue a subpoena. It is the responsibility of the party requesting the subpoena to serve (deliver) it to the witness and to pay any fees and expenses involved. The WHSCRD is not responsible for serving the subpoena and does not pay for costs or expenses associated with the attendance of a party to the hearing such as travel expenses or professional fees.

REQUESTING A SUBPOENA

The following outlines the procedure for requesting a subpoena:

- The subpoena request should be submitted in writing to the Chief Review Commissioner, identifying the name and address of the person to be subpoenaed, the case under review and the date and location of the hearing, no less than two weeks before the hearing date.
- The reason for requesting the subpoena and an explanation as to why the witness and/or document is relevant to the appeal should also be included in the request.
- If the party is requesting a witness to bring documentation to the hearing, a description of the documents should be provided in order that the person to whom the subpoena is directed can readily identify the documents.



ISSUING THE SUBPOENA

The Chief Review Commissioner will examine the request and determine whether it is appropriate to issue the subpoena. In making that determination, the following will be considered:

- Whether the subpoena is necessary to compel the witness' attendance.
- Whether the witness' evidence is relevant to the issues under review.
- Whether a witness requires a summons to obtain time off from work to attend the hearing.

The Chief Review Commissioner may refuse a request for a subpoena if it is determined:

- The individual is providing evidence which was not previously before the WHSCC.
- The reason for requesting the subpoena was insufficient, or inappropriate under the circumstances.
- The evidence sought is not relevant to the issue under review, or is readily available from another source.
- The witness is agreeable to attend without a subpoena.

Once the subpoena request is approved, the WHSCRD will prepare the subpoena. The subpoena will be issued to the requesting party and the WHSCRD will keep a copy for its records.