

INTERJURISDICTIONAL SUBPOENA ACT

Definitions

1. In this Act,

"court" means

- (a) the Nunavut Court of Justice or the Nunavut Court of Appeal, or
- (b) any court in another territory or a province; (*tribunal*)

"subpoena" means a subpoena, summons, notice to appear or other document issued by a court or tribunal authorized to issue a subpoena, requiring a person within a territory or province other than the territory or province of the issuing party to attend to give evidence at a trial, hearing or examination, including by testifying before the court or tribunal and, if required, by producing documents or other things related to their testimony; (*assignation*)

"tribunal" means any board, commission, office, body or tribunal other than a court established under the laws of a territory or province, having the power to issue a subpoena in respect of a proceeding before that entity. (*tribunal administratif*)

Registration of subpoenas

2. (1) For the purposes of this section, the certifying authority that may certify a subpoena is

- (a) in the case of a subpoena requiring a witness residing in Nunavut to attend to give evidence in person in another territory or a province, a judge of a superior, county or district court; or
- (b) in the case of a subpoena that requires a witness residing in Nunavut to attend to give evidence at a place in Nunavut for a proceeding in another territory or a province, a judge of the court or a presiding officer of the tribunal that is seized of the proceeding in which the witness is required to testify, or a judge of a superior, county or district court.

Same

(2) A person who issues a subpoena in another territory or a province that requires a person residing in Nunavut to attend to give evidence, may register the subpoena with the Clerk of the Nunavut Court of Justice and the subpoena must be adopted as an order of the Nunavut Court of Justice if

- (a) the subpoena is accompanied by a certificate from a certifying authority in the issuing territory or province, signifying that the certifying authority is satisfied that the attendance of the person subpoenaed is necessary for the due adjudication of the proceeding; and
- (b) the subpoena is accompanied by one of the following:
 - (i) witness fees and travelling expenses determined in accordance with section 10, or

- (ii) confirmation from the named witness that satisfactory arrangements have been made with respect to the payment of witness fees and expenses.

Authority to certify subpoena

(3) Subject to subsection (1), in any dispute in the courts of Nunavut concerning a subpoena certified and registered in accordance with subsection (2), the authority of the court or tribunal certifying the subpoena to do so must be determined by the law of the territory or province where the subpoena was issued.

Form

(4) The certificate to which reference is made in paragraph (2)(a) may be in the form set out in Schedule 1 or in a form to similar effect.

Immunity of witness

3. When a subpoena requires attendance in person in another territory or a province, the Clerk of the Nunavut Court of Justice must not register the subpoena under section 2 unless the law of the other territory or province has a provision similar to section 7 providing absolute immunity to a resident of Nunavut who is required to attend to give evidence in the other territory or province from all proceedings of the nature set out in section 7 and within the jurisdiction of the Legislature of that other territory or province, except only those proceedings based on events occurring during or after the required attendance of the person in the other territory or province.

Failure to comply

4. If a person who has been served with a subpoena adopted under section 2 and given the witness fees and travelling expenses in accordance with section 10 or as agreed between the parties not less than ten days, or such other period as the subpoena may specify, before the date the person is required to attend to give evidence, fails without lawful excuse to comply with the subpoena, they are in contempt of court and subject to such penalty as the Nunavut Court of Justice may impose.

Certification of subpoena

5. (1) For the purposes of this section, the certifying authority that may certify a subpoena is

- (a) in the case of a subpoena requiring a witness residing in another territory or a province to attend to give evidence in person in Nunavut, a judge of the Nunavut Court of Justice or the Nunavut Court of Appeal; or
- (b) in the case of a subpoena that requires a witness residing in another territory or a province to attend to give evidence at a place in that territory or province for a proceeding in Nunavut, a judge of the court or a presiding officer of the tribunal in Nunavut that is seized of the proceeding in which the witness is required to testify, or a judge of the Nunavut Court of Justice.

Same

(2) When a party to a proceeding in any court or tribunal in Nunavut issues a subpoena to be served in another territory or province, the party may obtain a certificate, in the form set out in Schedule 1, or a form to similar effect as may be required by the law of the territory or province where the subpoena is to be served, from a certifying authority upon the certifying authority being satisfied that the attendance of the person required as a witness is necessary for the due adjudication of the proceeding in which the subpoena has been issued.

Attachment or endorsement

(3) The certificate must be either attached to or endorsed on the subpoena.

Court certification upon hearing and examining party or counsel

6. (1) When a party to a proceeding in any court or tribunal in Nunavut issues a subpoena to be served in another territory or a province that requires a judicial certificate issued by a court upon hearing and examining the party or their counsel in order for the subpoena to be adopted as an order of the court in that territory or province, the party may attend upon a judge of the Nunavut Court of Justice who must hear and examine the party or their counsel, if any, and must sign a certificate, which may be in the form set out in Schedule 2, or a form to similar effect as may be required by the law of the territory or province where the subpoena is to be served, and cause the certificate to be impressed with the seal of the Nunavut Court of Justice on being satisfied that the attendance of the person required as a witness

- (a) is necessary for the due adjudication of the proceeding in which the subpoena has been issued; and
- (b) in relation to the nature and importance of the proceedings, is reasonable and essential to the due administration of justice in Nunavut.

Nunavut Court of Appeal

(1.1) In the case of a proceeding in the Nunavut Court of Appeal, a reference to the Nunavut Court of Justice in subsection (1) or Schedule 2 is to be read as a reference to the Nunavut Court of Appeal.

Attachment or endorsement

(2) The certificate must be either attached to or endorsed on the subpoena.

Immunity of witness

7. A person required to attend to give evidence before a court or tribunal in Nunavut by a subpoena adopted by a court outside Nunavut is deemed, while within Nunavut, not to have submitted to the jurisdiction of the courts of Nunavut other than as a witness in the proceedings in which the person is subpoenaed and is absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature of Nunavut, except proceedings based on events occurring during or after the required attendance of the person in Nunavut.

Originals of documents and other things

8. When a person is required to give evidence at a place in Nunavut pursuant to a subpoena from another territory or a province, the originals of documents and other things that the person is required to produce must not be removed from Nunavut without the express consent of the person unless the Nunavut Court of Justice or the Nunavut Court of Appeal orders otherwise.

Non-application of Act

9. This Act does not apply to a subpoena that is issued with respect to a criminal offence under an Act of Parliament.

Witness fees

10. (1) The party issuing a subpoena must pay to the witness all reasonable travel and accommodation expenses of the witness, reasonable daily allowances for meals and miscellaneous expenses, and any additional costs documented by the witness.

Advance

(2) Unless the witness has agreed to another arrangement for the payment of expenses, the party issuing the subpoena must advance at least three days of expenses to a witness prior to travel, in the form of money, travel vouchers or tickets.

Tariff of fees

(3) Unless the witness has agreed to a lower amount, the amount payable to the witness under subsections (1) and (2) must in no case be lower than the higher of the regular tariff of fees for court proceedings in the jurisdiction where the witness resides and the jurisdiction where the subpoena was issued.

Order for additional witness fees and expenses

11. When a person is required to attend to give evidence before a court or tribunal in Nunavut by a subpoena adopted by a court outside Nunavut, they may request the court or tribunal to order additional fees and expenses to be paid in respect of their attendance as a witness and the court or tribunal, if it is satisfied that the amount of fees and expenses previously paid to the person in respect of their attendance is insufficient, may order the party who obtained the subpoena to pay the person forthwith such additional fees and expenses as the court or tribunal considers sufficient, and amounts paid pursuant to an order made under this section are disbursements in the cause.

SCHEDULE 1

(subsections 2(4) and 5(2))

Interjurisdictional Subpoena Act Certificate

I, _____ a judge or presiding officer of the _____ certify
(name of certifying authority) (name of court or tribunal)
that the attendance of _____ to produce documents or other things or to
(name of witness)
testify, or both, in _____ is necessary for the due adjudication of a
(place where witness is to testify)
proceeding in Nunavut before _____ styled _____.
(court or tribunal in which witness is to appear) (style of proceeding)

The *Interjurisdictional Subpoena Act* of Nunavut makes the following provision for the immunity of _____:
(name of witness)

A person required to attend to give evidence before a court or tribunal in Nunavut by a subpoena adopted by a court outside Nunavut is deemed, while within Nunavut, not to have submitted to the jurisdiction of the courts of Nunavut other than as a witness in the proceedings in which the person is subpoenaed and is absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature of Nunavut, except proceedings based on events occurring during or after the required attendance of the person in Nunavut.

Dated this ____ day of _____, _____.

(signature of certifying authority or person authorized to sign for certifying authority)

SCHEDULE 2

(subsection 6(1))

Interjurisdictional Subpoena Act Certificate

I, _____, a judge of the Nunavut Court of Justice certify that I
(name of judge)
have heard and examined _____ who seeks to compel the attendance of
(name of applicant party or their counsel)
_____ to produce documents or other things or to testify, or both in a
(name of witness)
proceeding in Nunavut in the _____ styled _____.
(name of court or tribunal in which witness is to appear) (style of proceeding)

I further certify that I am satisfied that the appearance of _____ as a
(name of witness)
witness in the proceeding, and, in relation to the nature and importance of the cause or
proceeding, is reasonable and essential to the due administration of justice in Nunavut.

The *Interjurisdictional Subpoena Act* of Nunavut makes the following provision for
the immunity of _____:
(name of witness)

A person required to attend to give evidence before a court or tribunal in Nunavut by a subpoena adopted by a court outside Nunavut is deemed, while within Nunavut, not to have submitted to the jurisdiction of the courts of Nunavut other than as a witness in the proceedings in which the person is subpoenaed and is absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature of Nunavut, except proceedings based on events occurring during or after the required attendance of the person in Nunavut.

Dated this ___ day of _____, _____.

(seal of the court)

(signature of Judge)

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