

## Chapter 11

### AN ACT TO AMEND THE LIMITATION OF ACTIONS ACT AND THE LEGAL QUESTIONS ACT AND TO REPEAL AND REPLACE THE INTERPROVINCIAL SUBPOENAS ACT

(Assented to June 8, 2023)

The Commissioner, by and with the advice and consent of the Legislative Assembly, enacts as follows:

#### *Interjurisdictional Subpoena Act*

1. (1) The *Interjurisdictional Subpoena Act* set out in the Schedule is enacted.
- (2) The *Interprovincial Subpoenas Act* and the regulations made under it are repealed.

#### *Legal Questions Act*

2. (1) This section amends the *Legal Questions Act*.
- (2) Section 1 is repealed and replaced by:

Reference of questions

1. (1) The Minister may refer
  - (a) a question arising out of an agreement referred to in section 6 to the Nunavut Court of Justice; and
  - (b) any other matter to the Nunavut Court of Appeal.

Hearing and consideration

- (2) The court to which a matter is referred under subsection (1) must hear and consider the matter.

- (3) Section 2 is amended as follows:

Opinion of ~~Nunavut Court of Justice~~ court

2. The ~~Nunavut Court of Justice~~ shall court to which a matter is referred under section 1 must certify to the Minister its opinion on the matter, with the reasons for the opinion, and the opinion ~~shall~~ must be given in the same manner as in the case of a judgment in an ordinary action.

**(4) Section 4 is repealed and replaced by:**

Notice to interested parties

4. (1) The court to which a matter is referred under section 1 may direct that the following persons be notified of the hearing:

- (a) any interested person;
- (b) if there is a class of interested persons, any one or more persons as representatives of that class.

Entitlement to be heard

(2) A person notified under subsection (1) is entitled to be heard by the court.

**(5) Section 5 is amended as follows:**

Status of opinion

5. The opinion of the ~~Nunavut Court of Justice~~ shall be court to which a matter is referred under section 1 is deemed to be a judgment of the ~~Nunavut Court of Justice~~ court and an appeal lies from the opinion as in the case of a judgment in an action.

**Transitional**

**(6) A judge of the Nunavut Court of Justice may, by order, transfer any matter under the Act that is before the Nunavut Court of Justice on the coming into force of this Act, other than a question arising out of an agreement referred to in section 6 of the Act, to the Nunavut Court of Appeal.**

**(7) If a judge makes an order under subsection 2(6) of this Act, the order must provide for the transfer of the record and any material relating to the matter to the Nunavut Court of Appeal.**

**(8) A record that is transferred under subsection 2(7) of this Act is deemed to be part of the record of the Nunavut Court of Appeal. Any order or decision made or document issued by the Nunavut Court of Justice or one of its judges in relation to the matter that is transferred is deemed to have been made or issued by the Nunavut Court of Appeal.**

***Limitation of Actions Act***

3. (1) This section amends the *Limitation of Actions Act*.

(2) Paragraphs 2(1)(e) and (f) are repealed.

(3) Paragraph 2(1)(j) is amended as follows:

- (j) any other action not specifically provided for in this Act or any other Act, within ~~six years after the cause of action arose~~

three years after the discovery of the cause of action but no more than ten years after the cause of action arose.

**(4) The following is added after section 2.1:**

When a cause of action is discovered

2.2. (1) Unless otherwise provided in this Act and subject to subsection (2), a cause of action is discovered on the day on which the claimant first knew or ought to have known

- (a) that the injury, loss or damage had occurred;
- (b) that the injury, loss or damage appeared to have been caused by or contributed to by an act or omission that is the subject of the action;
- (c) that the act or omission that is the subject of the action appeared to be that of the person against whom the action is commenced; and
- (d) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.

Rebuttable presumption

(2) Except in the case of fraudulent misrepresentation, a claimant is presumed to have known of the matters mentioned in paragraphs (1)(a) to (d) on the day on which the act or omission on which the cause of action is based took place, unless the contrary is proved.

**(5) Section 4 is repealed and replaced by:**

Definition of "account"

4. (1) In this section, "account" means a recorded set of financial or equitable assets, transactions, liabilities, or obligations.

Item in account

(2) No claim in respect of an item in an account that was discovered more than three years or that arose more than ten years before the commencement of the action is enforceable by action by reason only of some other claim in respect of another item in the same account having been discovered within three years or having arisen within ten years before the commencement of the action.

**(6) Subsection 6(1) is repealed and replaced by:**

Subsequent acts

6. (1) Despite otherwise being barred under this Act, an action to recover a debt may be brought within three years after the date of a promise, acknowledgment or part payment listed below, if the person who is, or would have been but for the passage of time, liable to an action for the recovery of the debt, or their agent,

- (a) conditionally or unconditionally promises their creditor or the agent of the creditor in writing signed by the debtor or the agent of the debtor to pay the debt;

- (b) gives a written acknowledgment of the debt signed by the debtor or the agent of the debtor to their creditor or the agent of the creditor; or
- (c) makes a part payment on account of the principal debt or interest on the principal debt, to their creditor or the agent of the creditor.

**(7) Subsection 13(1) is repealed and replaced by:**

Recovery of rent and interest charged on land

13. (1) Arrears of rent, or of interest in respect of any sum of money to which section 11 or 12 applies or any damages in respect of such arrears must not be recovered by any proceeding, except within three years after a present right to recover it accrued to a person capable of giving a discharge for it or a release of it unless, before the expiration of the three years

- (a) some part of the arrears has been paid by a person bound or entitled to make a payment of it or their agent in that behalf to a person entitled to receive it or their agent; or
- (b) some acknowledgment in writing of the right to the arrears signed by a person so bound or entitled or their agent in that behalf has been given to a person entitled to receive the arrears or their agent.

Same

(1.1) In the cases referred to in subsection (1), proceedings must not be taken except within three years after the payment or acknowledgment, or the last of the payments or acknowledgments, if more than one was made or given.

**(8) Section 14 is amended as follows:**

Recovery where prior mortgagee in possession

14. Where a prior mortgagee has been in possession of land within one year before an action is brought by a person entitled to a subsequent mortgage on the same land, the person entitled to the subsequent mortgage may recover in that action the arrears of interest that have become due during the whole time the prior mortgagee was in such possession or receipt, although that time may have exceeded the term of ~~six~~ three years.

**Transitional**

**(10) If a cause of action arose and had been discovered prior to the coming into force of this Act, the Act as it read immediately prior to being amended by this Act applies to that cause of action.**

**(11) The limitation period with respect to a cause of action is determined in accordance with the Act as amended by this Act if the cause of action arises after the coming into force of this Act, or**

- (a) the cause of action arose but had been not discovered prior to the coming into force of this Act; and**

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- (b) the limitation period as determined in accordance with the Act as it read immediately prior to being amended by this Act had not expired before the coming into force of this Act.**

## SCHEDULE

### 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)