INTERJURISDICTIONAL SUBPOENA ACT

1. In this Act,

"Clerk" means [*the senior administrative official of the Court, whether titled a clerk, registrar, administrator or other equivalent designation*]; *(greffier)*

"Court" means [*the superior or designated court of the enacting jurisdiction*]; (*Cour)*

"subpoena [or summons, or notice to appear]" 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 province or territory other than the province or territory 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 his or her testimony; *(assignation [ou subpoena ou citation à comparaître])*

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

> **Comment:** The Act's definition of subpoena is extended to include subpoenas requiring a person to attend for a pre-hearing examination but, as it relates to production of documents in the possession or control of a third party, is limited to subpoenas requiring a person to testify and to bring to the hearing at which they are to testify, any documents or other items which are or might be relevant to their testimony.

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 (*enacting jurisdiction*) to attend to give evidence in person in another province or territory, a judge of a superior, county or district court; or**
- **(b) in the case of a subpoena that requires a witness residing in (*enacting jurisdiction*) to attend to give evidence at a place in (*enacting jurisdiction*) for a proceeding in another province or territory, 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.**

Idem

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

(a) the subpoena is accompanied by a certificate from a certifying authority in the issuing province or territory, 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 (*enacting jurisdiction*) concerning a subpoena certified and registered in accordance with subsection (2), the authority of the court or tribunal certifying the subpoena to do so shall be determined by the law of the province or territory 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.

Comment: Section 2(1)(b) extends the scope of the Act to include subpoenas that require not only personal attendance but to include subpoenas which would allow the witness to testify at a place located in the jurisdiction in which the witness resides. This would accommodate cases where personal attendance was not required and the court or tribunal issuing the subpoena was satisfied that other means of securing the testimony of the witness, such as video conferencing, were sufficient. The Act does not specify what other means may be used but leaves that to the issuer of the subpoena which, presumably, would specify the means of testimony in the subpoena.

The reception, registration and adoption of interjurisdictional subpoenas are administrative functions. While the Uniform Interprovincial Subpoenas Act did not specifically require that these functions be exercised by a judicial officer, this was the interpretation made in some jurisdictions. The purpose of section 2(2) is to make clear that this function is to be exercised by a non-judicial court officer and that there is no requirement for a judicial decision maker to adopt a subpoena.

Immunity of witness

3. Where a subpoena requires attendance in person in another province or territory, the Clerk shall not register the subpoena under section 2 unless the law of the other province or territory has a provision similar to section 7 providing absolute immunity to a resident of *(enacting jurisdiction)* who is required to attend to give evidence in the other province or territory from all proceedings of the nature set out in section 7 and within the jurisdiction of the Legislature of that other province or territory, except only those

proceedings based on events occurring during or after the required attendance of the person in the other province or territory.

Failure to comply

4. Where 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, he or she is in contempt of court and subject to such penalty as the Court 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 province or territory to attend to give evidence in person in (*enacting jurisdiction*), a judge of the Court; or**
- **(b) in the case of a subpoena that requires a witness residing in another province or territory to attend to give evidence at a place in that province or territory for a proceeding in (*enacting jurisdiction*), a judge of the court or a presiding officer of the tribunal in *(enacting jurisdiction*) that is seized of the proceeding in which the witness is required to testify, or a judge of the Court.**

Idem

(2) Where a party to a proceeding in any court or tribunal in (*enacting jurisdiction*) issues a subpoena to be served in another province or territory, 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 province or territory 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 shall be either attached to or endorsed on the subpoena.

Comment: The certification authority for subpoenas that do not require the witness to travel from the jurisdiction in which they normally reside in order to testify is a judge of the court or the presiding officer of the tribunal that is seized of the proceeding in which the witness is required to testify. However, because of the increased burden and inconvenience for a witness who has to travel to another jurisdiction to testify, section 5(1)(a) provides that the oversight responsibilities associated with registration, adoption and certification of subpoenas requiring personal attendance in the issuing jurisdiction is to be exercised by traditional courts.

Court certification upon hearing and examining party or counsel

6. (1) Where a party to a proceeding in any court or tribunal in (*enacting jurisdiction*) issues a subpoena to be served in another province or territory that requires a judicial certificate issued by a court upon hearing and examining the party or his or her counsel in order for the subpoena to be adopted as an order of the court in that province or territory, the party may attend upon a judge of the Court who shall hear and examine the party or his or her counsel, if any, and shall 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 province or territory where the subpoena is to be served, and cause the certificate to be impressed with the seal of the Court 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 (*enacting jurisdiction*).

Attachment or endorsement

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

Comment: Section 6 (which is essentially section 5 of the previous Uniform Interprovincial Subpoenas Act) is provided as an alternative to be used in those cases where the intended receiving jurisdiction requires such a process as a condition of reception and adoption of an interjurisdictional subpoena. This situation will arise where the intended receiving jurisdiction has not amended its Act but the sending jurisdiction has.

Immunity of witness

7. A person required to attend to give evidence before a court, tribunal [or other person] in *(enacting jurisdiction)* by a subpoena adopted by a court outside *(enacting jurisdiction)* shall be deemed, while within (*enacting jurisdiction*) not to have submitted to the jurisdiction of the courts of (*enacting jurisdiction*) other than as a witness in the proceedings in which the person is subpoenaed and shall be 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 (*enacting jurisdiction*), except proceedings based on events occurring during or after the required attendance of the person in (*enacting jurisdiction*).

Comment: Section 7 is designed to protect a witness who is in a foreign jurisdiction in response to a subpoena under the Act from being subject to legal proceedings being taken upon the witness while in the jurisdiction with respect to matters that had arisen before the witness travelled to the jurisdiction. It does not, however, and is not intended to provide the witness with any protection for legal process being taken against the witness in the witness's home jurisdiction arising out the witness's testimony itself. That question

is left to the general law regarding witness immunity. It is beyond the scope of this Act to address any deficiencies in that law which arise in situations that are not limited to testimony pursuant to subpoenas under the Interjurisdictional Subpoenas Act.

Originals of documents and other things

8. Where a person is required to give evidence at a place in (*enacting jurisdiction*) pursuant to a subpoena from another province or territory, the originals of documents and other things that the person is required to produce shall not be removed from (*enacting jurisdiction*) without the express consent of the person unless the Court orders otherwise.

Comment: Although the Act does not contain any provision authorizing the removal of original documents by the examining party, section 8 is added to avoid any uncertainty regarding the issue.

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 shall 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 shall 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) shall 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. Where a person is required to attend to give evidence before a court or tribunal in (*enacting jurisdiction*) by a subpoena adopted by a court outside (*enacting jurisdiction*), he or she may request the court or tribunal to order additional fees and expenses to be paid in respect of his or her 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 his or her 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.

Comment: Pursuant to section 10, a witness is entitled to be reimbursed for all reasonable travel and accommodation expenses of a witness, reasonable daily allowance for meals and miscellaneous expenses, and any additional documented costs. When the witness believes that what has been tendered is inadequate, they are entitled to apply for an increase. The Act does specify when the application for an increase is to be made or what is to happen if the increased fees are ordered but not paid, leaving open the possibility that the witness will make the request after they have testified. Service of subpoena accompanied by the fees and expenses required under section 10 will be effective and will compel the witness to attend. If an order for increased fees and expenses is made before the witness travels, presumably the court or tribunal making the order will specify when the increased amounts are to be paid and what is to happen if they are not. If the order for the increased amounts is not made until after the witness has testified, then it will be up to the court or tribunal to specify what sanctions or remedies are to be imposed.

The purpose of section 11 is to ensure that witnesses are fully compensated for the costs they incur in attending to give evidence. It is not intended to be used as a means to allow a witness to charge a fee in return for their testimony.

SCHEDULE 1
Interjurisdictional Subpoena Act Certificate

I, _____, a judge or presiding officer of the _____, certify that the
(name of certifying authority) (name of court or tribunal)

attendance of _____ to produce documents or other things or to testify, or both,
(name of witness)

in _____ is necessary for the due adjudication of a proceeding in (*enacting jurisdiction*)
(place where witness is to testify)

before _____ styled _____.
(court or tribunal in which witness is to appear) (style of proceeding)

The *Interjurisdictional Subpoena Act* of (*enacting jurisdiction*) makes the following provision for

the immunity of _____
(name of witness)

A person required to attend before a court, tribunal [or other person] in (enacting jurisdiction) by a subpoena adopted by a court outside (enacting jurisdiction) shall be deemed, while within (enacting jurisdiction) not to have submitted to the jurisdiction of the courts of (enacting jurisdiction) other than as a witness in the proceedings in which the person is subpoenaed and shall be 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 (enacting jurisdiction), except proceedings based on events occurring during or after the required attendance of the person in (enacting jurisdiction).

Dated this _____ day of _____, _____

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

SCHEDULE 2
Interjurisdictional Subpoena Act Certificate

I, _____, a judge of the _____, certify that I
(name of judge) (name of superior, county or district court)

have heard and examined _____ who seeks to compel the attendance of
(name of applicant party or his or her counsel)

_____ to produce documents or other things or to testify, or both in a
(name of witness)

proceeding in (*enacting jurisdiction*) in the _____ styled _____
(name of court in which witness is to appear) (style of proceeding)

I further certify that I am satisfied that the appearance of _____ as a witness in
(name of witness)

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 *(enacting jurisdiction)*.

The *Interjurisdictional Subpoena Act* of (*enacting jurisdiction*) makes the following provision for

the immunity of _____
(name of witness)

A person required to attend before a court, tribunal [or other person] in (enacting jurisdiction) by a subpoena adopted by a court outside (enacting jurisdiction) shall be deemed, while within (enacting jurisdiction) not to have submitted to the jurisdiction of the courts of (enacting jurisdiction) other than as a witness in the proceedings in which the person is subpoenaed and shall be 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 (enacting jurisdiction), except proceedings based on events occurring during or after the required attendance of the person in (enacting jurisdiction).

Dated this _____ day of _____, _____

(seal of the court) _____
(signature of Judge)