

1980

c 220 Interprovincial Subpoenas Act

Ontario

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CHAPTER 220

Interprovincial Subpoenas Act

1. In this Act,

Interpre-
tation

- (a) "court" means any court in a province;
- (b) "province" means any province of Canada and includes the Yukon Territory and the Northwest Territories;
- (c) "subpoena" means a subpoena or other document issued by a court requiring a person within a province other than the province of the issuing court to attend as a witness at a trial or hearing, to produce documents or other things or to testify before the issuing court. 1979, c. 106, s. 1.

2.—(1) A court in Ontario shall receive and adopt as an order of the court a subpoena from a court outside Ontario if,

Adoption
of inter-
provincial
subpoena

- (a) the subpoena is accompanied by a certificate signed by a judge of a superior, county or district court of the issuing province and impressed with the seal of that court, signifying that, upon hearing and examining the applicant, the judge is satisfied that the attendance in the issuing province of the person subpoenaed,
 - (i) is necessary for the due adjudication of the proceeding in which the subpoena is issued, and
 - (ii) in relation to the nature and importance of the cause or proceeding is reasonable and essential to the due administration of justice in that province; and
- (b) the subpoena is accompanied by the witness fees and travelling expenses in accordance with Schedule 1.

(2) The certificate to which reference is made in clause (1) (a) may be in the form set out in Schedule 2 or in a form to the like effect. 1979, c. 106, s. 2.

Form of
certificate

3. A court in Ontario shall not receive a subpoena from another province under section 2 unless the law of that other province has a provision similar to section 6 providing absolute

Immunity by
law of other
province

immunity to a person in Ontario who is required to attend as a witness in the other province from all proceedings of the nature set out in section 6 and within the jurisdiction of the Legislature of that other province except only those proceedings grounded on events occurring during or after the required attendance of the person in the other province. 1979, c. 106, s. 3.

Failure to
comply with
adopted sub-
poena

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 Schedule 1 not less than ten days, or such shorter period as the judge of the court in the issuing province may indicate in his certificate, before the date the person is required to attend in the issuing court, fails without lawful excuse to comply with the order, he is in contempt of the adopting court and subject to such penalty as that court may impose. 1979, c. 106, s. 4.

Proceedings
in Ontario

5.—(1) Where a party to a proceeding in any court in Ontario causes a subpoena to be issued for service in another province, the party may attend upon a judge of the High Court, or of a county or district court, who shall hear and examine the party or his counsel, if any, and, upon being satisfied that the attendance in Ontario of the person required in Ontario as a witness,

- (a) is necessary for the due adjudication of the proceeding in which the subpoena or other document 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 Ontario,

shall sign a certificate which may be in the form set out in Schedule 2 and shall cause the certificate to be impressed with the seal of the court.

Certificate
to be
attached to
and endorsed
on subpoena

(2) The certificate shall be either attached to or endorsed on the subpoena. 1979, c. 106, s. 5.

No sub-
mission to
jurisdiction

6. A person required to attend before a court in Ontario by a subpoena adopted by a court outside Ontario shall be deemed, while within Ontario for the purposes for which the subpoena was issued, not to have submitted to the jurisdiction of the courts of Ontario other than as a witness in the proceedings in which he 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 Ontario except only those proceedings grounded on events occurring during or after the required attendance of the person in Ontario. 1979, c. 106, s. 6.

7. Where a person is required to attend before a court in Ontario by a subpoena adopted by a court outside Ontario, he may request the court in Ontario to order additional fees and expenses to be paid in respect of his attendance as a witness and the court, if it is satisfied that the amount of fees and expenses previously paid to the person in respect of his attendance is insufficient, may order the party who obtained the subpoena to pay the person forthwith such additional fees and expenses as the court considers sufficient, and amounts paid pursuant to an order made under this section are disbursements in the cause. 1979, c. 106, s. 7.

Order for additional witness fees and expenses

8. This Act does not apply to a subpoena that is issued with respect to a criminal offence under an Act of the Parliament of Canada. 1979, c. 106, s. 8.

Non-application of Act

9. This Act does not come into force until a day to be named by proclamation of the Lieutenant Governor. 1979, c. 106, s. 9.

Coming into force

SCHEDULE 1

WITNESS FEES AND TRAVELLING EXPENSES

The witness fees and travelling expenses required to be given to the witness upon service of an interprovincial subpoena shall be a sum of money, or a sum of money together with valid travel warrants, sufficient to satisfy the following requirements:

1. The fare for transportation by the most direct route via public commercial passenger carrier between the witness's place of residence and the place at which the witness is required to attend in court, in accordance with the following rules:

If the journey or part of it can be made by air, rail or bus, that portion of the journey shall be by airline, rail or bus by tourist class or equivalent class via carriers on which the witness can complete his total journey to the place where he is required to attend in court on the day before his attendance is required.

If railway transportation is necessary for part of the journey and sleeping accommodation would normally be obtained for such a journey, the fare for sleeping accommodation shall be included.

In the calculation of the fare for transportation, the most rapid form of transportation by regularly scheduled carrier shall be accorded priority over all other forms.

If the material which the witness is required to produce in court is of such weight or size as to attract extra fares or charges, the amount so required shall be included.

2. The cost of hotel accommodation for not less than three days at the place where the witness is required to attend in court, in an amount not less than \$60.

- 3. The cost of meals for the total journey and for not less than three days at the place where the witness is required to attend in court, in an amount not less than \$48.
- 4. In addition to the amounts described above, an allowance of \$20 for each day of absence from the ordinary residence of the witness, and the witness shall be paid on account of this allowance not less than \$60.

1979, c. 106, Sched. 1.

SCHEDULE 2

CERTIFICATE

I, a judge of the certify that I
 (name of judge) (name of court)

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

the attendance of to produce documents or
 (name of witness)

other articles or to testify, or both, in a proceeding in Ontario in the
 styled
 (name of court in which witness is to appear)

..... I further certify that I am persuaded that the
 (style of proceeding)

appearance of as a witness in the proceeding is
 (name of witness)

necessary for the due adjudication of the proceeding, and, in relation to the nature and importance of cause or proceeding, is reasonable and essential to the due administration of justice in Ontario.

The *Interprovincial Subpoenas Act* makes the following provision for the immunity of.....
 (name of witness)

A person required to attend before a court in Ontario by a subpoena adopted by a court outside Ontario shall be deemed, while within Ontario for the purposes for which the subpoena was issued, not to have submitted to the jurisdiction of the courts of Ontario other than as a witness in the proceedings in which he 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 Ontario except only those proceedings grounded on events occurring during or after the required attendance of the person in Ontario.

Dated this day of 19...

(seal of the court)
 (Signature of judge)

1979, c. 106, Sched. 2.