UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

UNIFORM INTERJURISDICTIONAL SUBPOENA ACT PROJECT

REPORT OF THE WORKING GROUP

Whitehorse, Yukon
August 2012

Uniform Interjurisdictional Subpoena Act

Introduction

[1] The Uniform Interprovincial Subpoena Act was adopted by the Conference in 1974. In their 1973 report, the Manitoba Commissioners identified the issue that the Act sought to address as follows:

> Basically the problem is one of securing the attendance of witnesses from outside the province in civil suits, but not necessarily exclusively so.

[2] The "problem" stemmed from the fact that no jurisdiction in Canada was able to "legislate extra-territorially or accord extra-territorial powers to its courts".

[3] The Conference's solution to this problem was to establish a court process for the issuance and certification of an extra-provincial subpoena based on a common set of requirements. Where such certification has been obtained in the jurisdiction in which the subpoena was issued, the court of the jurisdiction in which the witness is found would be required to receive and adopt the subpoena as an order of that court.

[4] While the 1974 Uniform Act's scope was limited to subpoenas issued by a court requiring a person to attend as a witness before that court, it was noted that jurisdictions might wish to extend the definition of court to include named boards, commissions or other bodies having the power to issue a subpoena by regulation on a reciprocal basis with another province. In 1998, this approach was expressly rejected by the Conference and the Act's definition of "court" was amended to enable all such subpoenas to be subject to the process of the Act without the need for reciprocity.

[5] While all 12 of Canada's common law jurisdictions now have interjurisdictional subpoena legislation based on the 1974 Uniform Act, not all of them have amended their legislation to deal with a subpoena issued by entities that are not courts.

[6] Québec has a similar rule that applies to witnesses only from Ontario. Modifications to its Code of Civil Procedure have been suggested which would apply the model of the Uniform Act. The Draft Bill to enact the new Code of Civil Procedure was presented to the National Assembly in September 2011, public consultations were conducted in January 2012 and the Justice Minister has announced that a Bill could possibly be presented as soon as this fall.

[7] At last year's annual meeting, the delegation for Nunavut presented a proposal that the Conference undertake a review and revision of the Uniform Act. The Conference accepted this recommendation and established a Working Group to

conduct this review and report back to the Conference in 2012. The Working Group began meeting in October 2011 and in a series of conference calls since then discussed a number of issues and concerns with the current Uniform Act. The Working Group has made considerable progress on the project but certain issues remain outstanding about which the Working Group seeks input from the Conference. With respect to some issues, the Working Group has reached consensus or believes that a consensus is emerging but further discussion is required. With respect to others, a significant difference of opinion remains within the Working Group. This interim report therefore sets out the results of the Working Group's deliberations to-date, providing preliminary recommendations with respect to those issues about which the Working Group has reached consensus or believes that a consensus is emerging and posing questions concerning outstanding issues about which the Working Group remains divided.

[8] The members of the Working Group are:

Ann McIntosh, Chair
Nunavut Justice

Joan Neatby
Alberta Justice and Solicitor General

John Lee , John Twohig, and Brandon Parlette
Ministry of the Attorney General Ontario

Chris Hambleton
Saskatchewan Justice

Gregory Steele
Steele Urquhart

The Working Group was also assisted by Clark Dalton, Q.C. Projects Coordinator of the Commercial Law Strategy, and Myriam Anctil of the Quebec Department of Justice, who provided very helpful insights as to how things are currently and are envisaged in future developments of Quebec's Civil Law.

Issues

Name of the Act and the References to "Province" in the Act

[9] The Uniform Act makes reference only to provinces and omits any reference to the three territories. The use of "Interprovincial" in the name of the Uniform Act also ignores the three territories.

Preliminary Recommendation 1:

[10] The Working Group recommends that the term “Interjurisdictional” be used in the title, rather than “interprovincial” and that the Uniform Act also include references to the territories where it currently only refers to provinces.

Definition of “Court”

[11] As mentioned previously, the Conference amended the definition of “court” in the Uniform Act in 1998 in order to allow subpoenas issued by bodies other than courts to take advantage of the machinery created by the Act. However, the Uniform Act refers to “courts” in the context of not just subpoena issuing bodies, but also as bodies carrying out oversight responsibilities associated with the certification process and responsibilities that have to do with receiving and adopting subpoenas. The Conference clearly did not intend that bodies other than courts undertake those responsibilities, but the Uniform Act, as currently drafted, does not appear to preclude this.

[12] An indication of the unsatisfactory nature of the definition of “court” in the Uniform Act lies with the different approaches some jurisdictions have taken towards giving effect to the Conference’s intention while avoiding the approach of the Uniform Act. In Alberta’s legislation, new terms such as “court in Alberta” and “court outside Alberta” are introduced. While both those terms are defined to include a board, commission, tribunal or other body, only the latter is defined to include what is normally considered to be a court. In addition, the Alberta Court of Queen’s Bench is specifically named in the parts of the legislation that deal with the reception and adoption of subpoenas and the certification process. In Ontario, a different approach is taken. In that province’s statute, it is the term “summons” (note: Ontario does not generally use term “subpoena” in its legislation) that is defined to include a “summons issued by a court, an agency, board or commission, or another person authorized to issue summonses”.

[13] While both the Alberta and Ontario legislation accomplish what is the Conference’s intended goal, the Working Group favours the Ontario approach only because it avoids the need to give what may be new meaning to the term “court”, which is widely understood not to include other bodies such as boards, commissions and tribunals.

Preliminary Recommendation 2:

[14] The Working Group recommends that “court” be defined simply as “any court in a province or territory of Canada” and that “subpoena” be defined to include subpoenas issued by bodies other than courts.

Types of Subpoenas

[15] The Uniform Act deals only with subpoenas that require a person in one jurisdiction to attend as a witness in another jurisdiction. Ontario’s legislation refers to summonses “to attend as a witness at a trial, hearing or examination, to produce documents or other things or to testify before the issuing body or person.” British Columbia’s legislation refers to subpoenas to “attend as a witness, to produce documents or other articles or to testify before that court.” Nova Scotia’s statute refers to subpoenas “to attend as a witness to produce documents or other things or to testify.”

[16] At first glance it might seem that adopting the Ontario approach of extending the scope of the Act to include subpoenas requiring a person to give evidence at a pre-hearing examination would be problematic for those jurisdictions which do not have such a provision included in their legislation. Upon closer examination, it becomes evident that that any such problems are more imaginary than real. The purpose of the Act is to assist in the securing the attendance of witnesses to give evidence in proceedings being conducted in a jurisdiction other than where the proposed witness resides pursuant to a subpoena issued in accordance with the procedural laws of that other jurisdiction, Recognizing and enforcing a subpoena issued by Ontario requiring a person resident in British Columbia to give evidence at pre-hearing examination, British Columbia would be assisting Ontario in the enforcement of Ontario’s procedural laws. Extending the scope of the Act in this manner would not require British Columbia to issue subpoenas other than in accordance with its own procedural laws but it would more fully achieve the principal purpose of the Act.

Preliminary Recommendation 3:

[17] The Working Group recommends that the scope of the Act be extended to include subpoenas requiring a person to attend to give evidence at a pre-hearing examination.

[18] The extension of the Act to include subpoenas requiring a person to produce documents or other items in their possession raises a different issue. Most jurisdictions

have laws that govern the production of documents in the possession or control of a third party. These laws are designed as much to protect the holder of such documents as they are to assist in the conduct of litigation. Issues of privacy, and confidentiality as well as privilege arise. British Columbia, for example, has a legitimate interest in legislating how such documents are to be subject to production and should not be required to make its interest subservient to the laws of another jurisdiction.

Preliminary Recommendation 4:

[19] The Working Group recommends that the Act, as it relates to production of documents in the possession or control of a third party, be 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.

Witness Fees and Travelling Expenses

[20] Under the Uniform Act, the appropriate fees and expenses that must accompany an interjurisdictional subpoena are to be set by the jurisdiction in which the witness is found. The Schedule of fees and expenses set out in the Uniform Act is merely a recommendation and each jurisdiction is free to set whatever fees and expenses it deems fit. The Working Group is of the view that the Schedule of fees and expenses is outdated and does not provide sufficient guidance.

[21] There are two components that must be considered. These are, first, witness attendance fees and, second, the costs and expenses a witness incurs as a consequence of having to attend the hearing to testify. The first is merely compensation to the witness in having to giving up their time to attend but is not meant to give full compensation for lost wages. The latter includes travel costs by usual means of transportation, accommodation expenses, daily allowance for meals, miscellaneous expenses and additional costs determined on a case by case basis (e.g. cost of child care incurred by a witness in order to attend the hearing).

[22] The Working Group considered various options including setting fees as a schedule to the Act itself, or by regulation, or basing them on the regular tariff of fees for court proceedings in the jurisdiction where the witness resides or where the subpoena was issued. The Working Group also considered setting fees by reference to the schedule of travel expenses applicable to government travel by public servants in the various jurisdictions but found that, although such information is publicly available in each jurisdiction, it is not easily found and, in some cases does not provide sufficiently

clear guidance for the purposes of issuing interjurisdictional subpoenas. The Working Group concluded that there should be provision for payment of fees in advance where a witness may be required to attend for several days. The proposed new Code of Civil Procedure in Quebec limits this advance to one day.

Preliminary Recommendation 5:

[23] The Working Group recommends that fees should be based on the regular tariff of fees for court proceedings and that a witness should be entitled to the higher of tariff rates in the issuing jurisdiction or the jurisdiction in which the witness resides. It should be noted that this latter provision could have the effect that a witness from another jurisdiction would receive higher fees than a local witness. The Act should include a statement of general principle that the party issuing a subpoena is responsible for all reasonable travel and accommodation expenses of a witness, reasonable daily allowance for meals and miscellaneous expenses, and any additional costs documented by a witness. The intention would be that resort to the principle would only occur when a witness seeks additional fees and expenses. Thus if a subpoena was accompanied by the fees and expenses required by the tariff, it would be enforceable. The witness could then apply for additional fees and expenses, invoking the general principle. The Act should provide that the subpoena issuing party and witness may determine expenses to be covered and the method of payment by agreement and should also include the present section, which is now only optional, allowing the witness to ask the court or tribunal for additional fees. Fees should be payable in advance in cash or by travel vouchers or tickets but the Act could include a limit on how much must be paid in advance in cases where a witness may be required to attend for several days.

Subpoenas Requiring a Witness to Give Evidence by Means Other Than Personal Attendance

[24] When the Interprovincial Subpoenas Act was originally proposed in 1973, only two situations were considered as needing to be covered by legislation in each jurisdiction:

1. A subpoena from another jurisdiction requiring a witness residing in the enacting jurisdiction to testify at a place located in that other jurisdiction; and
2. A subpoena from the enacting jurisdiction requiring a witness residing in another jurisdiction to testify in the enacting jurisdiction.

[25] While the Uniform Act improved the process for obtaining evidence from witnesses across the country, it did not provide for any alternative for witnesses to provide evidence that did not require physical attendance.

[26] With advances in communications technology, such as videoconferencing and teleconferencing which are now easily accessible and widely utilized, making it possible for a person to testify in a place by other means without being physically present, the Working Group has identified two additional situations for which legislation in each jurisdiction should provide:

1. A subpoena from another jurisdiction requiring a witness to testify at a place located in the jurisdiction in which the witness resides;
2. A subpoena from the enacting jurisdiction requiring a witness in another jurisdiction to testify at a place located in the jurisdiction in which the witness resides.

Preliminary Recommendation 6:

[27] The Working Group recommends the Uniform Act's scope should be amended to include subpoenas that require not only personal attendance but also attendance by other means specified in the subpoena which would allow the witness to testify at a place located in the jurisdiction in which the witness resides.

Requirements for Certification of an Interjurisdictional Subpoena

[28] The current Act provides for judicial certification of all out-going subpoenas under section 5, and recognition and adoption as orders of the receiving court of all in-coming subpoenas under section 2. Because the certificate requirements in sections 5 and 2 mirror each other across the country, subpoenas from any jurisdiction can be accepted in any other jurisdiction.

[29] Sections 2 and 5 of the current Uniform Act set out a two-part test for certification and adoption. The certifying judge must be:

> … satisfied that the attendance in *(enacting province)* of the person required in *(enacting province)* 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 *(enacting province)*;

[30] This project began because these certification and adoption procedures were considered unnecessarily stringent and restrictive by some jurisdictions. The Working Group fairly quickly agreed that this was so as it they relate to subpoenas that do not require personal attendance of the witness in the issuing jurisdiction.

Subpoenas That Do Not Require Personal Attendance in the Issuing Jurisdiction

[31] As the existing Uniform Act makes no provision for attendance by means other than in person in the issuing jurisdiction, if the scope of the Act is amended to include such subpoenas, the certification and adoption procedures must also be amended to accommodate them. The Working Group considered extending the Uniform Act's requirements for judicial certification to subpoenas requiring personal attendance to those that do not. However, considering that a person who does not need to leave his or her jurisdiction will suffer less inconvenience than a person who must do so, this appeared out of proportion to what is necessary in the circumstances and the Working Group accordingly rejected this approach.

[32] One alternative would be to not adopt any certification requirement for subpoenas that do not require personal attendance and provide that such subpoenas be legislatively recognised as equivalent to subpoenas issued within the jurisdiction in which they are sought to be enforced. Another would be to retain a more simplified certification process that might be effected by the issuing party certifying that they believe the witness has information relevant to an issue to be determined in the proceeding in the issuing jurisdiction and that the testimony of the witness is necessary for the due adjudication of the proceeding. Regardless of which approach is taken, all members of the Working Group agree that the Act should be modified to provide for a relatively simple and straight-forward process for issuing subpoenas and obtaining evidence from witnesses which do not require personal attendance in the issuing jurisdiction.

Preliminary Recommendations 7 and 8:

[33] The Working Group recommends that the Uniform Act be modified to provide for a relatively simple and straight-forward process for issuing subpoenas that do not require personal attendance in the issuing jurisdiction.

[34] The Working Group recommends that either there be no certification requirement for subpoenas that do not require personal attendance in the issuing jurisdiction, and that such subpoenas be legislatively recognised as equivalent to subpoenas issued within the jurisdiction in which they are sought to be enforced, or that the certification of

such subpoenas be effected by the issuing party certifying that they believe that the witness has information relevant to an issue to be determined in the proceeding in the issuing jurisdiction and that the testimony of the witness is necessary for the due adjudication of the proceeding.

[35] The Working Group believes that it is not necessary that all jurisdictions adopt the same change at the same time, however, the Working Group would appreciate receiving the input of the Conference on this issue.

Question 1:

[36] Would adopting a uniform act with two variants with respect to subpoenas which do not require the witness to travel to the jurisdiction which has issued the subpoena, one variant containing no certification requirement and the other providing for certification by the issuing party, hinder the effectiveness of the act or otherwise be problematic?

Subpoenas Requiring Personal Attendance in the Issuing Jurisdiction

[37] There is much more division in the Working Group on the question of whether or how to modify the certification procedures for cases where a witness would still be required to attend a hearing in person in the subpoena-issuing jurisdiction.

[38] The 1973 ULCC commissioners regarded the certification test as “a safeguard against frivolous or vexatious abuse of the scheme”, and deliberately made the test more stringent than the requirements to obtain out-of-jurisdiction letters of examination. It is the view of some members of the Working Group that in attempting to weed out the frivolous and vexatious, the process was made so cumbersome that it is often avoided by those with completely legitimate grounds for issuing subpoenas. These members of the group believe that members of the legal profession and other bodies authorised to issue subpoenas, whether or not they have changed significantly since 1973, can be trusted to be reasonable in the issuance of interjurisdictional subpoenas (particularly as they must be prepared to pay all of the costs of having a witness testify). They therefore propose that the certification process be modified by removing the requirement of paragraph (b) that attendance of the witness, in relation to the nature and importance of the proceeding must be “reasonable and essential for the due administration of justice in the jurisdiction”. They would require instead that the party seeking the subpoena must believe the witness has relevant information and that attendance in person is necessary for the due adjudication of the proceeding. The proposal to substitute a determination of the subpoena applicant’s belief that a witness has relevant information and that their personal attendance is necessary, for the current requirement that a court balance the reasonableness and importance of the witness’ attendance in relation to the nature and importance of the proceedings, is based on the concern that the requirement is confusing, difficult to administer and unreasonably and unnecessarily restrictive,

[39] The concern of other members of the Working Group in regard to these proposed changes is that the Working Group has only heard anecdotal evidence to support the change and that such a change would weaken the test to obtain certification. Certification would be based solely on the subpoena applicant's belief that the witness has relevant information and the need for personal attendance of the witness to give that evidence – essentially the requirement for issuing an in-jurisdiction subpoena, albeit with judicial oversight. The nature and importance of the proceedings would no longer be a factor for judicial consideration for an out-of-jurisdiction subpoena.

[40] The extensive uniformity regarding this fundamental aspect of the process requires that the need for any change proposed by the ULCC be sufficiently compelling to outweigh the risk of upsetting the uniformity that has been achieved. This practical consideration needs to be seriously considered as absent any convincing need for change, some jurisdictions may not amend their legislation, whereas others may, in which case the uniformity that exists today will be lost. While the Working Group in general recognises that there is value in the uniformity, there is some question as to whether it is necessary to have absolute uniformity and that it may be possible to propose a variety of modifications to the Uniform Act such that the Acts of different jurisdictions will still work together even if not all jurisdictions amend their legislation immediately, or in the same way.

Question 2:

[41] Should the present certification process be:

- maintained;
- eliminated altogether;
- modified as outlined above; or
- be modified to allow for different approaches in different jurisdictions, by providing for modification or elimination of the certification requirement for incoming subpoenas while maintaining the possibility of obtaining certification if needed for out-going subpoenas?

[42] A possible problem identified in modifying the certification process would be the continued existence of section 2 in its current form in jurisdictions that do not amend their Acts. In order to allow for such cases, the amended or new uniform Act could retain section 5 essentially in its present form but modified such that resort to it would only be needed in those cases where the intended receiving jurisdiction required such a process as a condition of reception and adoption of an in-coming interjurisdictional subpoena.

[43] The parts of the legislation in different jurisdictions that need to work together are the certificate provisions in sections 2 and 5, so that a person in one jurisdiction can obtain a certificate in his or her jurisdiction that meets the requirements of any other jurisdiction. If we assume that some jurisdictions may not amend their Acts, at least in

the short to medium-term, it will be necessary to keep modifications of the certificate process for out-going subpoenas to a minimum. A jurisdiction could eliminate the certificate process for in-coming subpoenas if it so chose without negatively affecting potential subpoena issuers in other jurisdictions. If it chose to modify the certification requirements for in-coming subpoenas, it would need to be aware of the limits on the certificates available to subpoena issuers in other jurisdictions. However, with a minor modification to section 5 in any amended version of the Act, it is believed that any version of the legislation can be made to work with any other, amended or not.

[44] Another issue which has occupied the attention of the Working Group is the requirement that the certifying judge “hear and examine” the party or counsel before issuing the certificate. It is felt by some members of the Working Group that this requirement may require the judge conducting the certification procedure to have the party seeking the subpoena or its counsel personally appear before the judge. While it is now possible for judges to “hear and examine” parties by telephone or video-conference, reducing the time and inconvenience for both judge and parties for such a process, there is no obvious reason to limit a judge’s flexibility to be “satisfied” by other forms of information. Although there was some disagreement as to whether or not the present section required that the certifying judge hear and examine the issuing party or its counsel, there was no disagreement that such a requirement is unnecessary, and that for greater certainty it should be removed.

[45] Related to these issues is what test is to be applied by a judge conducting a certification proceeding. Some members of the Working Group are of the view that before certifying a subpoena requiring the personal attendance of the witness the present requirement, that the judge be satisfied by personal examination that both tests set out in paragraphs 5(1)(a) and (b) have been established, should be maintained. Others thought that it should be replaced by a less stringent test that the judge must be satisfied with respect to the facts stated in the certificate, namely that the applicant believes that the witness has relevant information and that attendance in person is necessary for the due adjudication of the proceeding. This would be set out in an affidavit setting out the basis for such belief. The Working Group was unable to resolve this issue and therefore seeks the input of the Conference.

Preliminary Recommendations 9 and 10:

[46] The Working Group recommends that the requirement that the certifying judge hear and examine the party or counsel before issuing the certificate be removed. The need for the hearing and examination of the party seeking the subpoena would be at the discretion of the judge.

[47] The Working Group recommends that section 5 be retained, essentially in its present form but modified as an alternative to be used in those cases where the intended receiving jurisdiction required such a process as a condition of reception and adoption of an in-coming interjurisdictional subpoena.

Question 3:

[48] Should the present requirement that before issuing a subpoena requiring the personal attendance of the witness the judge conducting a certification proceeding must be satisfied that the current requirements for certification have been established be retained, or should it be replaced with a less stringent test that the judge need only be satisfied with respect to the facts stated in the certificate, namely that the applicant believes that the witness has relevant information and that attendance in person is necessary for the due adjudication of the proceeding?

Reception and Adoption of an Interjurisdictional Subpoena

[49] The current Uniform Act provides for the reception and adoption of an interjurisdictional subpoena to be carried out by a court. The process for reception and adoption, as set out the Uniform Act, is essentially administrative as all that is required is confirmation that the subpoena is accompanied by the appropriate fees and expenses and a certificate that meets the statutory requirements.

[50] The use of the term “court” appears to have resulted in unintended consequences. In Ontario, the use of the term “court” has in practice precluded court staff from carrying out the work of reception and adoption. As a result, anyone with an extra-provincial subpoena must proceed by application to have the subpoena adopted. The Working Group believes that the requirement for the involvement of a judicial decision maker is unnecessarily burdensome to the applicant and an uneconomical use of limited judicial resources.

[51] The Working Group explored the potential for court rules to be adopted in Ontario (and in other jurisdictions that follow a similar approach to that of Ontario) so as to avoid the need for a legislative amendment. The Working Group concluded that it may be possible for such rules to be developed, but this would ultimately rest upon the decisions of the relevant rules committees. In any case, the Working Group was of the view that the Uniform Act should be amended to clearly allow court staff to be involved in the reception and adoption process in order to remove any doubt as to the Conference’s position.

Preliminary Recommendations 11 and 12:

[52] The Working Group recommends that the Uniform Act be amended to provide that court staff may be involved in the reception and adoption of interjurisdictional subpoenas.

[53] The Working Group further recommends that all jurisdictions that have adopted the Uniform Act review their processes for reception and adoption of interjurisdictional subpoenas and that in those jurisdictions that currently require the involvement of a

judicial decision maker, consideration be given to reforming the practice and, if necessary, adopting court rules that would allow court staff to carry out the work.

An Act to Amend the Uniform Interprovincial Subpoena Act or a New Uniform Interjurisdictional Subpoena Act

[54] The Working Group is divided as to whether or not the outcome of this project should be an amending act that would provide for amendments that could be made to the existing uniform act or if it should be the repeal of the existing act and adoption of an entirely new act. The arguments in favour of an amending act are essentially the same as those in favour of keeping changes to the act to a minimum, particularly as they relate to the certification process, in order to avoid the increased risk of loss of uniformity that would occur if more extensive changes were made. The arguments in favour of an entirely new act is that the proposed changes will involve almost every section of the existing Act and that to implement them by an act containing a series of proposed amendments would be more cumbersome than preparing a whole new Act. Further as there already has been some loss of uniformity, although not in the area of certification, there would probably be at least an equal loss of uniformity. Although the answer to this question will largely be determined by the decision of the Conference on the extent of the changes to the act, the Working Group seeks the input as to whether or not it should proceed by way of preparation of an amending act or entirely new act.

Question 4:

[55] Should the Working Group proceed by way of preparation of an amending act or entirely new act?

Summary of Preliminary Recommendations

1. The term “Interjurisdictional” be used in the title, rather than “interprovincial” and that the Uniform Act include references to the territories where it currently only refers to provinces.
2. That “court” be defined simply as “any court in a province or territory of Canada” and that “subpoena” be defined to include subpoenas issued by bodies other than courts.
3. That the scope of the Act be extended to include subpoenas requiring a person to attend to give evidence at a pre-hearing examination.
4. That the Act, as it relates to production of documents in the possession or control of a third party, be 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.
5. That fees should be based on the regular tariff of fees for court proceedings and that witness should be entitled to the higher of tariff rates in the issuing

jurisdiction or the jurisdiction in which the witness resides, that the Act include a statement of general principle that the party issuing a subpoena is responsible for all reasonable travel and accommodation expenses of a witness, reasonable daily allowance for meals and miscellaneous expenses, and any additional costs documented by a witness and provide that the subpoena issuing party and witness may determine expenses to be covered and the method of payment by agreement, that the Act retain the present section allowing the witness to ask the court or tribunal for additional fees, and that fees should be payable in advance in cash or by travel vouchers or tickets but with a limit on how much must be paid in advance in cases where a witness may be required to attend for several days.

6. That the Uniform Act's scope should be amended to include subpoenas that require not only personal attendance but also attendance by other means specified in the subpoena which would allow the witness to testify at a place located in the jurisdiction in which the witness resides.
7. That the Uniform Act be modified to provide for a relatively simple and straight-forward process for issuing subpoenas that do not require personal attendance in the issuing jurisdiction.
8. That either there be no certification requirement for subpoenas that do not require personal attendance in the issuing jurisdiction, and that such subpoenas be legislatively recognised as equivalent to subpoenas issued within the jurisdiction in which they are sought to be enforced, or that the certification of such subpoenas be effected by the issuing party certifying that they believe that the witness has information relevant to an issue to be determined in the proceeding in the issuing jurisdiction and that the testimony of the witness is necessary for the due adjudication of the proceeding.
9. That the requirement that the certifying judge hear and examine the party or counsel before issuing the certificate be removed. The need for the hearing and examination of the party seeking the subpoena would be at the discretion of the judge.
10. That section 5 be retained, essentially in its present form but modified as an alternative to be used in those cases where the intended receiving jurisdiction required such a process as a condition of reception and adoption of an in-coming interjurisdictional subpoena.
11. That the Uniform Act be amended to provide that court staff may be involved in the reception and adoption of interjurisdictional subpoenas.
12. That all jurisdictions that have adopted the Uniform Act review their processes for reception and adoption of interjurisdictional subpoenas and that In those jurisdictions that currently require the involvement of a judicial decision maker, consideration be given to reforming the practice and, if necessary, adopting court rules that would allow court staff to carry out the work.

Questions

1. Would adopting an uniform act with two variants with respect to subpoenas which do not require the witness to travel to the jurisdiction which has issued the subpoena, one variant containing no certification requirement and the other providing for certification by the issuing party, hinder the effectiveness of the act or otherwise be problematic?

2. Should the present certification process be:

   - maintained;
   - eliminated altogether;
   - modified as outlined above; or
   - be modified to allow for different approaches in different jurisdictions, by providing for modification or elimination of the certification requirement for incoming subpoenas while maintaining the possibility of obtaining certification if needed for out-going subpoenas?

3. Should the present requirement that before issuing a subpoena requiring the personal attendance of the witness the judge conducting a certification proceeding must be satisfied that the current requirements for certification have been established be retained, or should it be replaced with a less stringent test that the judge need only be satisfied with respect to the facts stated in the certificate, namely that the applicant believes that the witness has relevant information and that attendance in person is necessary for the due adjudication of the proceeding?

4. Should the Working Group proceed by way of preparation of an amending act or entirely new act?