

Congratulations on your appointment as a commissioner for taking affidavits! This guide outlines your new powers and responsibilities.

Please read this guide carefully and review the [Commissioners for Taking Affidavits Act](#) **before** you do any work as a commissioner.

GENERAL

The Ministry of the Attorney General does not provide legal advice or opinions to commissioners for taking affidavits. If you have a question about how this information applies to your circumstances, please consult a lawyer.

Subject to any limitations specified in your Appointment Certificate, as a commissioner for taking affidavits you may administer oaths and take affidavits, declarations and affirmations where permitted or required by law.

- Limitations on your appointment must be indicated by means of a stamp approved on behalf of the Attorney General. An imprint of the stamp must be affixed under your signature on every document that you sign as a commissioner for taking affidavits.
 - The approved wording of your stamp is located on the *Instructions and Notice of Approval* document that was sent to you. You may not add to or alter your stamp in any handwritten way.
 - You must obtain a new stamp after every renewal of your commission to reflect the new expiry date. A new stamp is also required to reflect any change requested by you and approved by the Legal Appointments Office.
- Your appointment as a commissioner DOES NOT authorize you to act or hold yourself out as a lawyer or provide legal advice.
- You must not use the authority of a commissioner after the expiry date noted on the attached Notice of Approval and on your stamp.
- Any change of employment, address or to the name of the business during the period for which the commission is held must be reported to the Legal Appointments Office of the Ministry of the Attorney General. In some cases, such changes will require a change to your stamp.

- The *Commissioners for Taking Affidavits Act* does not itself authorize commissioners to certify true copies of documents. However, other legal instruments may exist that confer this authority onto commissioners. Commissioners who plan to certify true copies should consult their lawyers to ensure that they have the legal authority to perform this function.
- The Attorney General may revoke the appointment of any commissioner.

INQUIRIES

For more information, please visit our [website](#).

If you have a question about the appointment of commissioners for taking affidavits, please contact:

Ministry of the Attorney General
Legal Appointments Office
c/o Ministry of Government Services
77 Wellesley St W, BOX 720
Toronto ON M7A 1N3
Phone: (416) 326-4064
Fax: (416) 326-4065
Toll-Free: 1-800-518-7901 (*ask for the Legal Appointments Office*)
E-mail: appointments@ontario.ca

RENEWAL OF APPOINTMENT

Your appointment is for three years and may be renewed. To renew, please notify the Appointments Office at least three months prior to the expiry of your present commission. A new application form is not needed but you must pay the [renewal fee](#). You must also advise the Ministry if any of your information has changed since the original appointment was granted.

RESPONSIBILITIES

Section 9 of the *Commissioners for Taking Affidavits Act* provides:

Duty of commissioner, etc., in administration of oath

Every oath and declaration shall be taken by the deponent in the presence of the commissioner, notary public, justice of the peace or other officer or person administering the oath or declaration who shall satisfy himself or herself of the genuineness of the signature of the deponent or declarant and shall administer the oath or declaration in the manner required by law before signing the jurat or declaration. R.S.O. 1990, c. C.17, s. 9.

The duties identified in section 9 must be followed. Failure to adhere to section 9 or to the limits of your appointment may threaten the legal validity of the declaration or affidavit that you commission.

As a commissioner, you may be called into court to establish that the oath, affirmation or declaration was administered properly. You may also be personally liable for improperly taking affidavits or declarations. Section 10 *Commissioners for Taking Affidavits Act* makes it an offence, punishable by a fine of up to \$2000, for a commissioner to:

- sign a jurat or declaration without satisfying himself or herself of the **genuineness of the signature of the deponent or declarant**; or
- fail to administer the oath or declaration **in the manner required by law** before signing the jurat or declaration.

Additionally, section 138 of the *Criminal Code of Canada* makes it an indictable offence, punishable by up to two years' imprisonment, to sign a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared before him or her when:

- the writing was not so sworn or declared; or
- the person knows that he or she has no authority to administer the oath or declaration.

Your commission may be revoked if you break these laws or fail to comply with your duties under the *Commissioners for Taking Affidavits Act*.

STEPS FOR TAKING WRITTEN DECLARATIONS AND AFFIDAVITS

1. Verify the Signature

It is your obligation to satisfy yourself of the genuineness of the signature. The affidavit or declaration must therefore be signed in your presence and the deponent/declarant must provide proof of identity.

2. Administer the Declaration, Oath or Affirmation

Declarations

The Ontario *Evidence Act* and the Canada *Evidence Act* both prescribe the following form for solemn declarations (italicized words added):

“I, (name of the declarant), solemnly declare that *(state the fact or facts declared to)*, and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me (signature of commissioner) at (city or town) this (date) day of (month), 20(year).”

Oaths and Affirmations

The Ontario *Evidence Act* requires the commissioner to take oaths and affirmations in a manner that the deponent (the person taking the oath or making the affirmation) declares to be binding on the deponent’s conscience. Examples could include making an oath, with or without a religious text or icon, or affirming solemnly.

There is no prescribed wording for oaths in the way that there are for declarations. Common formulations of oaths and affirmations are listed below. After administering the affidavit, you may also wish to confirm with the witness, “Are you bound by this oath/affirmation?”

i. **Oath**

“Do you swear that the contents of this affidavit as subscribed by you are true, so help you God?”

ii. **Affirmation**

“Do you solemnly affirm and declare that the contents of this affidavit as subscribed by you are true?”

iii. **Where the deponent requires an interpreter**

“Do you swear / solemnly affirm and declare that you understand the (*name of interpreted language*) language and the english language, that you shall well and truly interpret the oath to the deponent and all other matters and things as shall be required of you, to the best of your skill and understanding, so help you God?”

3. Completing the Jurat

The jurat is the part of the document where you certify when and where you took the affidavit or declaration. It is usually written at the foot of the document. A common form of jurat:

Sworn (*or Affirmed or Declared*) before me at the (City, Town, *etc.*) of
..... in the (County, Regional Municipality, *etc.*) of, on
(*date*).

.....
Commissioner for Taking Affidavits

(AN IMPRINT OF YOUR STAMP MUST BE PLACED HERE)

Signing the jurat is the final step in the process. The affidavit or declaration is now complete.

SPECIAL CASES: ADDITIONAL RULES FOR TAKING AFFIDAVITS

The various rules of court may contain specific additional requirements for taking affidavits that will be used in proceedings to which those rules apply. These rules are available online through the Ontario Courts [website](#).

For your information, certain commonly used rules are highlighted below. However, it is your responsibility to determine what your obligations are in any specific instance. If you are uncertain about how the rules may apply in your case, you should consult a lawyer.

Exhibits Attached To Affidavits

Rules of Civil Procedure, R. 4.06(3)

Criminal Proceedings Rules, R. 4.06(3)

Rules of the Ontario Court of Justice in Criminal Proceedings, R.4.06(3)

Under these rules, an exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit.

Before marking the exhibit, it is useful to confirm with the deponent: “Is this the document referred to in your affidavit?”

One common way of marking the exhibit is to write the following above your signature:

“This is exhibit ‘A’ referred to in the affidavit of (name of the deponent) sworn before me this (date) day of (month), 20(year).”

Many commissioners will also initial each page of the exhibit to illustrate that no pages were added after the fact.

Affidavit by Two or More Deponents

Rules of Civil Procedure, Rule 4.06(4)
Criminal Proceedings Rules, R. 4.06(4)
Rules of the Ontario Court of Justice in Criminal Proceedings, R.4.06(4)

Under these rules, where an affidavit is made by two or more deponents, there shall be a separate jurat for each deponent, unless all the deponents make the affidavit before the same person at the same time, in which case one jurat containing the words “Sworn (affirmed) by the above-named deponents” may be used.

Affidavit for a Corporation

Rules of Civil Procedure, Rule 4.06(5)
Criminal Proceedings Rules, R. 4.06(5)
Rules of the Ontario Court of Justice in Criminal Proceedings, R.4.06(5)

Where these rules require an affidavit to be made by a party and the party is a corporation, the affidavit may be made for the corporation by an officer, director or employee of the corporation.

Affidavit for a Partnership

Rules of Civil Procedure, Rule 4.06(6)

Where rules require an affidavit to be made by a party and a party is a partnership, the affidavit may be made for the partnership, by a member or employee of the partnership.

Affidavit By A Person Who Is Blind Or Cannot Read

Rules of Civil Procedure Rule, 4.06(7)

Where it appears to a person taking an affidavit that the person is illiterate or blind, the person shall certify in the jurat that the affidavit was read in his/her presence to the deponent, and that the deponent appeared to understand it, and that the deponent signed the affidavit or placed his or her mark on it in the presence of the person taking the affidavit.

Affidavit By A Person Who Does Not Understand The Language

Rules of Civil Procedure, Rule 4.06(8)

Where it appears to a person taking an affidavit that the deponent does not understand the language used in the affidavit, the person shall certify in the jurat that the affidavit was interpreted to the deponent in the person's presence by a named interpreter who took an oath or made an affirmation before him or her to interpret the affidavit correctly.

Alterations To An Affidavit

Rules of Civil Procedure, Rule 4.06(9)

Criminal Proceedings Rules, R. 4.06(6)

Rules of the Ontario Court of Justice in Criminal Proceedings, R.4.06(6)

Under these rules, any alteration in an affidavit shall be initialed by the person taking the affidavit and, unless so initialed, the affidavit shall not be used without leave of the presiding judge or officer.

In the below example, a commissioner demarcates the changes by placing his initials (A.B.) next to each change and a check mark at the beginning and end of each change.

A.B. fifth June A.B.
I served the affidavit on the ✓~~fourth~~✓ day of ✓~~May~~✓, 2011.

Some commissioners will ask the deponent to also initial any changes.

OATHS AND AFFIRMATIONS NOT RELATED TO AFFIDAVITS

Below are examples of oaths and affirmations that are commonly used when taking oaths other than for affidavits. As above, it is your responsibility to inquire with the deponent as to what kind of oath or affirmation will bind his or her conscience.

To a witness in an examination for discovery -- "Do you swear / solemnly affirm that the evidence that you are about to give shall be the truth, the whole truth and nothing but the truth?"

To an interpreter -- "Do you swear/ solemnly affirm that you understand the (*name of interpreted language*) language and the English language, that you shall well and truly interpret the oath to the deponent and all other matters and things as shall be required of you, to the best of your skill and understanding?"