



INFORMATION

AND

INSTRUCTIONS

For

Commissioners for Oaths

This guide is prepared to assist Commissioners for Oaths. It is not legal advice. If you are in need of legal advice, please consult a lawyer. If anything in this booklet is inconsistent with the *Notaries and Commissioners Act* or the *Commissioners for Oaths Regulation*, the act and regulation govern.

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Definitions

Affidavit

A written statement formally confirmed by swearing an oath or affirming before a competent authority, such as a Commissioner for Oaths. Affidavits are often used as evidence in court. Affidavits can only be used when a statute or regulation authorizes the use of an affidavit.

Affirmation

A solemn statement that is not religious, confirming that a statement is true. It has the same effect as an oath. An affirmation can be used if a person objects to swearing an oath.

Attest

To affirm the truth of a statement or bear witness to something.

Deponent

A person who gives evidence in writing. The person who makes an affidavit is the deponent.

Exhibit

Evidence in the form of records or other documents that are meant to support a person's affidavit. Exhibits are frequently found annexed, or attached to, affidavits.

Jurat

Describes when, where, and before whom an affidavit was sworn. The jurat appears at the end of the document and must be completed by the Commissioner for Oaths.

Oath

A solemn statement attesting to the truth of a statement to a Supreme Being or something sacred to the person taking the oath. The person making the oath considers it to be binding on their conscience.

Solemn Declaration

A promise to tell the truth that is used for statutory declarations.

Statutory Declaration

A formal declaration made in a prescribed form that has legal force similar to an oath or affidavit. Statutory declarations are used when no law authorizes the use of an affidavit.

The Role and Responsibilities of Commissioners for Oaths

Commissioners for Oaths perform important functions in our society. They are expected to comply with the highest standards of behaviour as set out in the *Notaries and Commissioners Act* and the *Commissioners for Oaths Regulation*. The regulation includes a Code of Conduct that is reproduced in this booklet.

What Commissioners for Oaths Can Do

Commissioners for Oaths in the Province of Alberta can administer oaths and take and receive affidavits, affirmations and declarations in and for Alberta.

A person may be a Commissioner for Oaths by virtue of office (*ex officio*), as set out in the *Notaries and Commissioners Act*.

A Commissioner for Oaths may also be appointed. A person may apply to be appointed as a Commissioner for Oaths if they:

- Are at least 18 years old, and
- Reside in Alberta or in the part of the City of Lloydminster that is located in Saskatchewan

The work of Commissioners for Oaths must be authorized by the *Notaries and Commissioners Act*. Section 19 of that Act provides that anyone who

acts as a Commissioner for Oaths without authorization can be liable for a fine of up to \$5,000.

Commissioners for Oaths are not authorized to do types of work usually done by lawyers, such as conveyancing. The *Legal Profession Act* prohibits anyone who is not a lawyer or member of the Law Society of Alberta from practising law or from representing themselves as a lawyer. Anyone who performs the work of a lawyer when they are not authorized to do so contravenes these provisions and may be prosecuted.

Only judges and lawyers have the authority to:

- Witness or certify and attest deeds, contracts and commercial instruments
- Issue a certificate under the *Guarantees Acknowledgment Act*

Affidavits and Statutory Declarations

Affidavits are written statements that are formally confirmed by oath or affirmation. The deponent (person making the affidavit) must swear the oath or affirm before a person with the power to administer an oath or affirmation, such as a Commissioner for Oaths. An affidavit must be authorized by legislation (a statute or a regulation) which allows or requires the proof of certain facts by way of an affidavit.

Statutory declarations are another type of statement of facts, similar to affidavits. They are used when no statute or regulation authorizes the use of an affidavit. Statutory declarations are made pursuant to the *Canada Evidence Act* or the *Alberta Evidence Act*. A person making a statutory declaration must solemnly declare that those statements are true before a person with the power to administer solemn declarations.

Affidavits and statutory declarations are used to establish legal rights. If they are not properly made, problems can arise in establishing these rights. For an affidavit or statutory declaration to be legally valid the oath, affirmation or solemn declaration must be administered properly. If you are unsure about the format of an affidavit or statutory declaration, what it can be used for, or how to complete it, please consult a lawyer.

The importance of affidavits and statutory declarations is reflected in the *Criminal Code*. A person who makes a false affidavit or statutory declaration can face a maximum penalty of 14 years imprisonment.

A Commissioner for Oaths May be Called to Give Evidence

A Commissioner for Oaths may be called into court to establish that an oath, affirmation or solemn declaration was administered properly. To be prepared for this possibility, the Commissioner for Oaths must follow proper procedure every time.

Commissioner for Oaths should establish a consistent procedure from which they do not deviate. This will assist you should you be called upon to testify, as you can indicate what procedure you consistently use even if you cannot recall that particular occasion.

Criminal Liability of a Commissioner for Oaths

The *Criminal Code* places a high degree of responsibility on persons who administer oaths, affirmations and declarations. Section 138 of the *Criminal Code* provides that anyone who signs an affidavit or statutory declaration representing that it was sworn or declared before them when it in fact was not is guilty of an offence and is liable to imprisonment for up to two years.

A Spouse's Oath, Affirmation or Declaration

Commissioners for Oaths should not take their spouse's oath, affirmation or declaration. Sections of the *Canada Evidence Act* and the *Alberta Evidence Act* protect spouses from giving evidence against one another. If a Commissioner for Oaths takes their spouse's oath, affirmation or declaration, this can lead to problems in the proof of affidavits in court. It can also create problems in the prosecution of *Criminal Code* offences involving perjury and the swearing of false affidavits.

Taking Affidavits or Statutory Declarations

How to Administer an Oath to a Person Making an Affidavit

An **oath** is a solemn statement attesting to the truth of a statement to a

Supreme Being or something sacred to the person taking the oath. The oath should be administered in the following way:

1. Ensure that the words in the introduction to the affidavit read "make oath and say."
2. Ask the person appearing before you whether he or she is the individual named in the affidavit as the person making the affidavit. If you know the person, it is not necessary to confirm their identity.
3. Ask the person to sign the affidavit. If the affidavit has already been signed, ask the person if the signature on the affidavit is theirs.
4. Hand the person a Bible or any other religious text they consider binding on their conscience. Alternatively, you may ask the person if they would like to swear with uplifted hand.
5. Say to the person:

"Do you swear that the contents of your affidavit are true, so help you God?"
6. The person responds by saying "I do" while holding the Bible or the appropriate text in his or her uplifted hand or while holding his or her hand uplifted.
7. You must then complete the jurat (see instructions below).

A person can be sworn in a different way that is sanctioned by their own religion. What is important is that they consider the oath to be binding on their conscience.

How to Administer an Affirmation to a Person Making an Affidavit

An affirmation is a solemn statement that is not religious, confirming that a statement is true. A person may give an affirmation instead of an oath if the person objects to swearing an oath. When a person appears before you to make an affidavit but objects to giving an oath (being sworn)

- (a) from conscientious scruples, or
- (b) on the ground of [their] religious belief, or
- (c) on the ground that the taking of an oath would have no binding effect on [their] conscience,

the person may give an affirmation, instead of an oath, and the affirmation has the same force and effect as if the person had taken an oath.

The affirmation should be administered in the following way:

1. Before administering the affirmation, you must amend the words "make oath and say" in the introduction to the affidavit to read "solemnly affirm and declare".
2. Ask the person appearing before you whether she or he is the individual named in the affidavit as the person making the affidavit. If you know the person, it is not necessary to confirm their identity.
3. Ask the person to sign the affidavit. If the affidavit has already been signed, ask the person if the signature on the affidavit is theirs.
4. Ask the person:

"Do you promise that the contents of your affidavit are true and solemnly affirm that this promise is binding on your conscience?"
5. The person responds by saying "I do".
6. You must then certify that the person satisfied you that they are entitled to affirm, which may be done by inserting the following before your signature on the jurat:

"I certify that (name of person) satisfied me that he/she was a person entitled to affirm."

In so satisfying yourself, you need not enquire beyond the person's verbal statement that [they object] to being sworn on one of the grounds listed above.

7. You must then complete the jurat (see instructions below).

How to Administer a Solemn Declaration to a Person Completing a Statutory Declaration

A **solemn declaration** is a promise to tell the truth that is used for statutory declarations. The *Canada Evidence Act* and the *Alberta Evidence Act* prescribe this form for statutory declarations:

I, _____, 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 or affirmation.

Declared before me at _____ this _____ day of _____, 20____.

The solemn declaration should be administered in the following way:

1. Ask the person appearing before you whether he or she is the individual named in the statutory declaration as the person making the statutory declaration. If you know the person, it is not necessary to confirm their identity.
2. Ask the person to sign the statutory declaration. If the statutory declaration has already been signed, ask the person if the signature on the statutory declaration is theirs.
3. Ask the person:

"Do you make this solemn declaration conscientiously believing it to be the truth and knowing that it is of the same force and effect as if made under oath or affirmation?"
4. The person responds by saying "I do".

The ordinary form of jurat for an affidavit is:

Sworn (or affirmed) before me at
Province of Alberta, this. day of 20 ..
.....
A Commissioner for Oaths in and for Alberta

Name and Appointment Expiry Date or Office

On each document you must legibly print or stamp in legible printing:

- Your name,
- If you are appointed, the date your appointment expires, and
- If you are a Commissioner for Oaths by virtue of office, your office

If you do not place your name, appointment expiry date or office on a document you attest to you can be found guilty of an offence and liable to a fine of up to \$1,000.

Exhibits

Often an affidavit or statutory declaration will refer to other documents that are attached or annexed as **exhibits**. An exhibit might be evidence in the form of records or other documents that are meant to support the person's affidavit or declaration.

Exhibits must be identified by you. Each exhibit should be marked in this way:

This is Exhibit referred to in
the affidavit (or statutory declaration) of (name of
person) sworn (or affirmed or declared) before me
this day of, 20
.....
A Commissioner for Oaths in and for Alberta

When a Person is Visually Impaired or Unable to Read

If the person making the affidavit or statutory declaration is unable to read

you must read the document, or cause it to be read, to the person and then ask the person if they understood it. You may only administer the oath, affirmation or solemn declaration if you are satisfied that the person has in fact understood what was read.

In those cases, the ordinary form of jurat must be amended. Insert the following before your signature:

As (name of person) is visually impaired (or unable to read), this affidavit (or statutory declaration) was read to her (or him) in my presence, she (or he) seemed perfectly to understand it, and she (or he) made her (or his) signature (or mark) in my presence.

When a Person Does not speak English

If the person making the affidavit or statutory declaration does not understand the English language, a person competent to interpret the contents of the affidavit or statutory declaration must first be sworn using the following oath. If the interpreter objects to being sworn, an affirmation in similar form may be administered:

"Do you swear that you understand (the language of the person), that you will truly interpret the contents of this affidavit (or statutory declaration) to (name of person) and that you will truly interpret to him (or her) the oath (or affirmation or solemn declaration) about to be administered to him (or her). So help you God."

After the interpreter has interpreted the contents of the document, you must administer the oath, affirmation or solemn declaration to the person through the interpreter. The person should respond by saying "I do" through the interpreter.

The ordinary form of jurat must be amended by inserting the following before your signature:

As (name of person) does not understand the language of the affidavit (or statutory declaration), this affidavit (or statutory declaration) was, in my belief, interpreted to him (or her) by (name of interpreter) who first swore (or affirmed) that he (or she)

understands (the language of the person) and that he (or she) would truly interpret the oath (or affirmation or solemn declaration) about to be administered.

When a Person is Hearing Impaired

If the person making the affidavit or statutory declaration has a hearing impairment but that person is capable of reading, read the declaration or affidavit, and appeared to perfectly understand it, and signed his or her name, then an interpreter is not required. Here is a sample of the jurat that can be used:

Sworn (or affirmed/declared) before me)
at the _____ of _____ in the)
Province of Alberta, this _____)
day of _____ A.D., 20 _____)
by the above named _____, who)
being hearing and speech impaired)
but capable of reading, read over)
the above the written instrument,) (Signature of the Deponent)
when he (she) appeared perfectly to)
understand it, and signed his (her))
name in my presence.)

A Commissioner for Oaths in and for Alberta

If the person is hearing and speech impaired and incapable of reading, a person competent to interpret the document in the sign language known to the person must first be sworn. The following oath may be administered. If the interpreter objects to being sworn, use an affirmation in similar form:

“You swear that you understand (the sign language known to the person) and that you will truly interpret the contents of this affidavit (or statutory declaration) to (name of person) and that you will truly interpret to her (or him) the oath (or affirmation/solemn declaration) about to be administered to her (or him). So help you God.”

After the interpreter has interpreted the contents of the documents, you must administer the oath, affirmation or solemn declaration to the person through the interpreter. The person should respond by saying "I do" through the interpreter. In those cases the ordinary form of jurat must be amended by inserting the following before your signature:

As (name of person) being hearing and speech impaired and incapable of reading, this affidavit (or statutory declaration) was in my belief, interpreted to her (or him) by (name of interpreter) who first swore (or affirmed) that he (or she) understands (the sign language known to the person) and that he (or she) would truly interpret the contents of this affidavit (or statutory declaration) and that he (or she) would truly interpret the oath (or affirmation/solemn declaration) about to be administered.

Powers

Commissioner for Oaths must ensure that they restrict the use of the appointments to those powers set out in the Act. They may not, as a Commissioner for Oaths perform other actions, such as certifying true copies, completion of documents etc.

Additional Information for Appointed Commissioners for Oaths

Re-appointment of a Commissioner for Oaths

A notice will be sent to Commissioners 8 weeks before their appointment expires. An application form will be included so the Commissioner can apply for re-appointment should they wish to do so.

Every Commissioner must ensure that they do not act after the expiry date of their appointment.

Change of Employment or Address

If a Commissioner for Oaths changes their employment or address during their appointment this must be reported to the Department of Justice at the following address:

Official Documents & Appointments
Rm. 111, 9833 - 109 Street
Edmonton, Alberta T5K 2E8

Inquiries about the Appointment of Commissioners for Oaths

Inquiries about the appointment of Commissioner for Oaths may be made to Official Documents & Appointments, at the address shown above or by telephoning (780) 427-5981.

Statute and Regulation

The work of Commissioner for Oaths in Alberta is governed by the *Notaries and Commissioners Act* and the *Commissioners for Oaths Regulation*. Both can be accessed on the Alberta Justice and Solicitor General website:

http://justice.alberta.ca/programs_services/official/Pages/commissioner.aspx

The regulation includes a Code of Conduct for Commissioner for Oaths, which is included below.

Code of Conduct for Commissioners for Oaths

1. A commissioner for oaths must
 - (a) discharge all of the commissioner for oaths' responsibilities with honesty, dignity and integrity;
 - (b) treat all persons fairly, courteously and with respect;
 - (c) provide services in a professional, ethical and responsible manner;
 - (d) comply with the terms and conditions of the commissioner for oaths' appointment;
 - (e) comply with
 - (i) the Notaries and Commissioners Act,
 - (ii) the applicable regulations under the Notaries and Commissioners Act,
 - (iii) any other law or directives that govern the conduct of commissioners for oaths in the discharge of their responsibilities, and
 - (iv) any direction issued to the commissioner for oaths under section 22 of the Act;
 - (f) act in a manner that maintains and upholds the honour and reputation of the office of commissioner for oaths;
 - (g) maintain up to date knowledge on the law and directives governing the duties and conduct of commissioners for oaths;
 - (h) hold in strict confidence all information of a confidential nature that comes to the commissioner for oaths' knowledge, except as is required to perform the services of the commissioner for oaths or as otherwise required by law.
2. A commissioner for oaths must not
 - (a) mislead or attempt to mislead anyone in the discharge of the commissioner for oaths' responsibilities;
 - (b) participate in the preparation or delivery of any document that is false, incomplete, misleading, deceptive or fraudulent;

- (c) participate in the preparation or delivery of any document that
 - (i) has the appearance of being validly issued by a court or other legitimate authority but is not,
 - (ii) is intended to or has the effect of deceiving any person, or
 - (iii) otherwise is lacking valid legal effect.

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SAMPLE – Affidavit

CANADA

PROVINCE OF ALBERTA

TO WIT

AFFIDAVIT

I, _____ of the City of _____ in
the Province of Alberta, MAKE OATH AND SAY:

1. THAT

SWORN (or Affirmed) before me

At _____

this _____ day of _____,

20____

(Signature of the Deponent)

(I certify that (name of person)
satisfied me that they are a person
entitled to affirm.)

A Commissioner for Oaths/Notary
Public in and for
Alberta

(PRINT OR STAMP NAME HERE)

MY APPOINTMENT EXPIRES

SAMPLE – Statutory Declaration

STATUTORY DECLARATION

CANADA

PROVINCE OF ALBERTA

In the Matter of _____

TO WIT:

I, _____, of _____, in the Province of Alberta, do solemnly declare as follows:

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as it made under oath.

DECLARED before me

At _____

This _____ day of _____,

20 _____

(Signature of the Deponent)

A Commissioner for Oaths/Notary
Public in and for
Alberta

(PRINT OR STAMP NAME HERE)

MY APPOINTMENT EXPIRES