

Information and Instruction Guide

for

Commissioners for Taking Affidavits for British Columbia



Ministry of
Attorney General

A. General

A Commissioner for Taking Affidavits may administer oaths and affirmations and take affidavits and statutory declarations as permitted or required by law. This authority, however, may be limited by special restrictions, terms or conditions in the appointment order, which is why it is important for commissioners to read their appointment orders carefully so they are aware of any limitations that apply to their appointments.

Note: An appointment as a Commissioner for Taking Affidavits does not authorize a person to certify or verify documents.

What is an Oath?

Generally speaking, an oath is a solemn promise, either to do something or that something is true. It is the way a person signifies that they are bound in conscience to act faithfully and truthfully. An oath usually includes an appeal to God, or to a sacred object, to witness the person's words and to impose punishment if the person does not act truthfully. Under the *Interpretation Act*, "oath" includes an affirmation, a statutory declaration or a solemn declaration made under the British Columbia *Evidence Act* or the Canada *Evidence Act*.

What is an Affirmation?

An affirmation is a solemn and formal declaration that an affidavit is true or that a person will tell the truth.

What is an Affidavit?

An affidavit is a statement of facts made in writing, which is confirmed by the oath or affirmation of the person making it before someone who has the authority to administer an oath or affirmation.

What is a Statutory Declaration?

Like an affidavit, a statutory declaration is a statement of facts made in writing. The statement is verified by the solemn declaration of the person making the statement. Statutory declarations may be required pursuant to various statutes. The form of a statutory declaration is mandated by the Canada *Evidence Act* and the British Columbia *Evidence Act*, as follows:

I, [name], solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

B. How to Take an Affidavit or Statutory Declaration

1. Identity of the Person Making the Statement

Whether you are administering an oath, affirmation or declaration, you must be satisfied you know the identity of the person making the written statement (who may be referred to as the deponent, affirmant or declarant). Ask the person whether they are the same person the affidavit (statutory declaration) names as making the written statement. If the person is someone you do not know personally, the person should be required to produce some reliable means of identification (such as a government-issued ID that includes the person's name, current address, signature and photograph).

2. Capacity of the Person Making the Statement

You must also be satisfied that the person making the written statement (who may be referred to as the deponent, affirmant or declarant) understands the contents of the document and appreciates the significance of making the affidavit or statutory declaration. If you have any concerns about someone's understanding of the statements in the document or of the nature of the process they are about to engage in, such concerns may be addressed by asking them to summarize one or two items in the statement or by explaining to them that affidavits and statutory declarations may be used to establish legal rights, they may be used as evidence in court and, under the *Criminal Code* of Canada, it is an offence to make a false statement.

If you have any reason to think the person does not understand the contents of the statement or does not appreciate the significance of the undertaking (or is not acting of their own free will), you should not proceed.

If an apparent lack of understanding is due to a language barrier, the affidavit or statutory declaration may be taken with the assistance of an interpreter, according to instructions in this guide. (See page 4: 7. Procedure When Person Making Statement Does Not Understand English.)

3. Administering the Oath, Affirmation or Solemn Declaration

- In the case of an affidavit being affirmed, address the person as follows:

“Do you, John Doe, solemnly affirm and declare that the contents of this affidavit are true to the best of your knowledge, information and belief?”

- In the case of an affidavit being sworn, hand the person making the statement a Bible (or New or Old Testament, whichever they prefer) and address them as follows:

“Do you, John Doe, swear that the contents of this affidavit are true to the best of your knowledge, information and belief, so help you God?”

Note: There are as many oaths as there are faiths and it is a good idea to first ask whether the person would feel bound by an oath on the Bible. If not, ask what form of oath would bind their conscience.

- In the case of a statutory declaration, address the person as follows:

“Do you, John Doe, declare that the contents of this declaration are true to the best of your knowledge, information and belief, knowing that it is of the same force and effect as if it were made under oath?”

Whether making an affidavit or a statutory declaration, in each case the person must answer: “Yes” or “I do” or “So help me God,” as appropriate.

Under the *Criminal Code* of Canada, it is an offence (with a maximum penalty of two years imprisonment) to sign a document purporting to be an affidavit or statutory declaration sworn or declared before you, when in fact the document was not so sworn or declared.

4. Signature of the Person Making the Statement

Ask the person to sign the affidavit in your presence. If the document is already signed, ask the person to sign the document again in your presence.

A Commissioner for Taking Affidavits cannot take an affidavit or statutory declaration if the person signing the affidavit or declaration is not present. The commissioner must actually view the act of signing and so it must occur in the commissioner’s presence.

5. Completing the Jurat (Ordinary Form)

The jurat is the part of the oath, affirmation or declaration that must be completed by the Commissioner for Taking Affidavits. The jurat should include the date the statement was sworn (affirmed/declared), the place where the statement was sworn (affirmed/declared) and the signature of the commissioner before whom the statement was sworn (affirmed/declared).

The following information must appear, legibly, below your signature:

1. Your name.
2. The designation: A Commissioner for Taking Affidavits for British Columbia.
3. The expiry date of your appointment.

It is strongly recommended that commissioners obtain a rubber stamp with this information on it to affix beneath their written signature in the jurat. If a stamp is not used, this same information must be printed neatly beneath your signature. This is important so you can be readily identified and located if necessary. The Chief Justice of the Supreme Court of B.C. has directed that all affidavits that are prepared for filing in the Supreme Court *must* include the commissioner’s name, written or typed legibly, under their signature.

Example of an Affidavit Verified by Oath, with Ordinary Form of Jurat

Affidavit of Jane Doe

I, Jane Doe, of the City of Victoria in the Province of British Columbia, make an Oath and say:

1. THAT ...

Signature of Jane Doe

Sworn/Affirmed/Declared before me at the City of Victoria, in the Province of British Columbia, this ___ day of _____, 20__.

(Commissioner's Signature)

A Commissioner for Taking Affidavits for the Province of British Columbia

(Commissioner's stamp or printed name
and expiry date)

6. Additional Requirements

Alterations

Ideally, an affidavit or statutory declaration should not contain any alterations, corrections or interlineations (inserted words written between the lines). If such changes are necessary, each change should be initialled by both the person making the statement and the commissioner. Furthermore, check marks should be inserted at the beginning and end of each change to identify the portion to which each set of initials applies.

Exhibits and Schedules

If an affidavit or statutory declaration contains a reference to an attached schedule or exhibit, the attachment should bear these words:

This is exhibit (letter or number) referred to in the affidavit (or statutory declaration) of _____ sworn (affirmed/declared) before me this _____ day of _____, at _____

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This is usually affixed to the document by means of a rubber stamp. You must be sure all the blanks are filled in and then sign it immediately after taking the affidavit or statutory declaration.

7. Procedure When Person Making Statement Does Not Understand English

If the person making the affidavit or statutory declaration does not understand the English language, you may only proceed with the assistance of an interpreter. The interpreter must be sworn (or affirmed, making the necessary changes) as follows:

“Do you swear that you well understand _____ (the language of the person making the statement), that you will well and truly interpret the contents of this affidavit/statutory declaration to _____ (name of person) and that you will well and truly interpret to him/her the oath/affirmation/solemn declaration about to be administered to him/her, so help you God?”

The interpreter would then interpret the contents of the document, following which the commissioner would administer the oath (affirmation/declaration) in English to the person making the statement. The interpreter would repeat the oath (affirmation/declaration) to the person making the statement in that person’s spoken language and translate the response to the question in English.

In these circumstances, the jurat (inserted before your signature) should read as follows:

Sworn/Affirmed/Declared before me at the City/Town/Community of _____
in the Province of British Columbia this ____ day of ____, 20 ____ through
the interpretation of _____ (name of interpreter) of the City/Town/
Community of _____ (residence of interpreter) in the Province/Territory
of _____ (residence of interpreter), said _____ (name
of interpreter) having been first sworn truly and faithfully to interpret the
contents of this affidavit/affirmation/declaration to the deponent/declarant, and
truly and faithfully, to interpret the oath/affirmation/declaration about to be
administered to them.

Note: If an affidavit is being taken for court purposes, you must consult Supreme Court rule 51(6), which imposes additional requirements on the taking of an affidavit when the person making the affidavit does not understand the English language.

8. Procedure When Person Making Statement is Visually Impaired or Illiterate

If the person making the affidavit or statutory declaration is visually impaired or illiterate, the document must be read to them and they must be asked whether they understand what was read. The oath, affirmation or solemn declaration may only be administered if you are satisfied that they understand what was read to them. In these circumstances, the following must be inserted before your signature:

As _____ (name of deponent/affirmant/declarant) is visually
impaired/illiterate,

- (a) this affidavit/statutory declaration was read to him/her in my presence;
- (b) he/she seemed perfectly to understand it; and
- (c) he/she made his/her signature (or mark) in my presence.

C. Frequently Asked Questions

Where does a commissioner's authority come from?

Appointments are made pursuant to section 56 of the British Columbia *Evidence Act*. Sections 56 through 69 of the *Evidence Act* pertain to Commissioners for Taking Affidavits.

Can commissioners take their own affidavits?

No.

Can the powers of a Commissioner for Taking Affidavits be exercised outside of the province?

Yes. Section 59 of the *Evidence Act* essentially provides that a Commissioner for Taking Affidavits for British Columbia may provide services outside of the province for use in British Columbia.

Can a commissioner refuse to take an affidavit or statutory declaration?

Yes. An appointment as a commissioner authorizes an individual to take affidavits and statutory declarations, but does not require them to do so. A commissioner may refuse to take an affidavit for any valid reason, such as:

1. The person wishing to make the statement has no identification and is unknown to the commissioner.
2. The person does not appear to understand the contents of the affidavit or statutory declaration.
3. The commissioner has reason to believe the person is not acting of their own free will.

If, for any reason, a commissioner is not comfortable taking an affidavit or statutory declaration, the person wishing to make the affidavit or declaration should be advised to contact a lawyer.

How long does an appointment as a commissioner last?

Appointments are generally granted for a term of three years. Commissioners have no authority to act as commissioners after their appointments have expired. Once an appointment is expired, it is void and the legal rights sought to be established through a document signed after the expiration date may be jeopardized.

Can an appointment be revoked?

Yes. Section 62 of the *Evidence Act* provides that the Attorney General may revoke the appointment of a Commissioner for Taking Affidavits for British Columbia.

Can a commissioner charge a fee for service?

No. Commissioners are restricted to providing services free of charge, except where fees are specifically allowed under other statutes.

What obligation do commissioners have if there is a change in their name, address or employment?

To keep official records current, changes in name, position, company name or company address must be reported to:

Commissioners for Taking Affidavits Program

Legal Services Branch, Ministry of
Attorney General
PO Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7
Email: BCCommAff@gov.bc.ca
Telephone: 250 387-5378
Fax: 250 387-4349

Commissioner appointments are not transferable between employers or volunteer organizations. If you change employer or volunteer organization you must notify the office to have your appointment cancelled.

Note: The Commissioners for Taking Affidavits Program does not send out reminder notices of appointments about to expire. If you wish to apply for a subsequent appointment, submit a completed application form and examination with the fee (if applicable) to the Order in Council Administration Office no more than more than 12 weeks (3 months) before the expiration of your current appointment.

As forms and documents are governed by statutes that the Order in Council Administration Office does not administer, the office cannot provide advice as to whether a particular form or document can be witnessed by a Commissioner for Taking Affidavits.

Order in Council Administration Office staff do not administer oaths or affirmations, take affidavits or statutory declarations or provide any other commissioner services.

