To: Commissioners for Taking Affidavits for British Columbia appointed under section 56 of the Evidence Act

Re: Direction to Commissioners for Taking Affidavits during COVID-19

Date: April 30, 2020

In the context of the COVID-19 pandemic, the Ministry of Attorney General (MAG) has developed the following practice direction for Commissioners for Taking Affidavits for British Columbia to support them in their role as commissioners.

A Commissioner for Taking Affidavits for British Columbia is a person appointed under section 56 of British Columbia’s Evidence Act or designated by way of office or employment under the Act to administer oaths and affirmations and to take affidavits and declarations. The Order in Council Administration Office administers the program for the appointment of commissioners under section 56 of the Evidence Act. This practice direction applies to appointed commissioners only, although ex officio commissioners may consider whether it is appropriate to follow the procedures in their practice. It is intended to provide clarity around the Ministry’s expectations for the commissioning of documents during the state of emergency.

British Columbia’s Provincial Health Officer has declared a State of Emergency and made several orders and recommendations to reduce the risk of transmission of COVID-19, including physical distancing. It is recommended that commissioners review the most current public health information provided by the Provincial Health Officer.

It is the responsibility of commissioners to ensure all obligations and responsibilities in their role of administering oaths and affirmations and taking affidavits and declarations are met. The Order in Council Administration Office has published the Information and Instruction Guide for Commissioners for Taking Affidavits in British Columbia (the Guide) to provide guidance to commissioners on carrying out these responsibilities. The Guide sets out procedures for commissioners who are executing documents, with the guidance to practice in-person service.
Because of the COVID-19 State of Emergency, however, some accommodation may be made for the commissioning of documents in the circumstances where it is not possible or medically safe for the deponent to physically attend before a commissioner. For example, if deponents or commissioners are unable to leave their residences, are not permitted to receive visitors, or are required to self-isolate.

Despite what is set out in the Guide, if a commissioner is unable to be physically present to commission an affidavit or declaration, MAG will consider their obligations for taking affidavits or statutory declarations to be met if they take the following steps:

1. Determine if there is any reason why the commissioning must be done in person, even during the state of emergency. For example, there could be a legislative requirement that expressly states that documents must be commissioned in person. If in-person commissioning is required, then commissioners are advised to take health measures recommended by the Provincial Health Office related to social distancing when carrying out in-person commissioning.

2. Confirm that the recipient of the affidavit or declaration will accept a document that has been commissioned remotely.

3. If the commissioner is of the opinion that the affidavit or declaration does not need to be commissioned in person and that the recipient will accept a document that has been commissioned remotely, they must follow the directions for remote commissioning of affidavits published by the British Columbia Courts (www.bccourts.ca) This practice must be followed even if the affidavit or declaration is not for the purpose of filing in court.

If commissioners have any questions about commissioning affidavits and declarations during the COVID-19 pandemic, they are advised to seek independent legal advice on their obligations.

This direction is in effect until the Provincial State of Emergency for COVID-19 has ended, or until further direction.

April 30, 2020

Date

Richard Fyfe, QC
Deputy Attorney General