



Instructions for  
Lawyers  
Appointed as  
Notaries Public



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## Powers and Duties

### What a Notary Public may do

Notaries Public are appointed by the Minister of Justice and Lieutenant Governor pursuant to Section 2 of the *Notaries and Commissioners Act*, and the *Assignment of Authority Regulations*, N.S. Reg. 21/2004, made under the *Court and Administrative Reform Act*, in accordance with Section 13 of the *Legal Profession Act*.

Under the legislation, a Notary Public may

- administer oaths and take and receive affidavits, statutory declarations, and affirmations within the province for use in the Supreme Court or any other court in the province
- draw, pass, keep and issue deeds and contracts, charter-parties and other mercantile transactions and attest commercial instruments brought for protestation
- perform other functions such as certifying true copies.

When an affidavit or statutory declaration is intended to be used in another province, the law of that province may require that it be completed by a Notary Public rather than a Commissioner of Oaths.

### What a Notary Public may not do

You must not sign a document purporting to be an affidavit, affirmation or statutory declaration stating that it was sworn, affirmed or declared before you when it was not. Doing so is an offence under Section 138 of the *Criminal Code of Canada*. The person swearing the oath or making the affirmation or declaration must be present and appear before you when swearing, affirming or declaring.

## About These Instructions

**These instructions are prepared for your convenience of reference only and do not constitute legal advice. If you have a question about how this information applies to your circumstances, or about what you are authorized by law to do, please consult the relevant law.**

## Glossary of terms

**Oath** means a solemn statement attesting to the truth of a statement accompanied by swearing to something sacred to the person taking the oath. The person swearing the oath considers it binding upon their conscience.

**Declaration** means an open or formal announcement.

**Declarant** means a person who makes a declaration.

**Deponent** means a person who gives evidence, usually in writing. The person who makes an affidavit is the deponent.

**Affidavit** means a written statement formally confirmed by swearing an oath or affirming before a competent authority that the statement is true.

**Statutory Declaration** means a statement of facts written down and declared to be true by the declarant before an individual who is authorized to administer oaths, and which has legal force similar to an oath or affirmation.

**Affirmation** means a solemn statement attesting to the truth of a statement and that is not religious but that has the same effect as an oath. An affirmation can be used in place of an oath. The person making the affirmation considers it binding upon their conscience.

**Jurat** means the statement at the bottom of an affidavit or statutory declaration that describes when, where and before whom the document was sworn or affirmed. The jurat must be completed and signed by the Notary Public.

## Taking Oaths and Affirmations

### 1 Administering an oath, affirmation or declaration

- Affidavits and statutory declarations are used to provide evidence in court and can affect a person's legal rights and liabilities. If they are not properly made, problems can arise affecting these rights and liabilities. For an affidavit or statutory declaration to be legally valid the oath, affirmation or solemn declaration must be administered properly.
- When taking an affidavit or statutory declaration, the Notary Public should ask the deponent or declarant whether they prefer to swear an oath or make an affirmation. Swearing an oath and making an affirmation have the same legal effect. The difference is which the deponent or declarant considers to be binding upon their conscience when stating that the information contained in a document is true.

#### Swearing an oath

- A person may swear before a Notary Public that the contents of a document are true.
- The Notary Public administers the oath in accordance with whatever ceremonies the person considers to be binding on their conscience. For example, this could be holding a copy of a holy book, such as the Bible, or swearing upon something sacred to the person.

#### Making an affirmation

- A person may also affirm that the contents of the document are true, rather than swear an oath. Those who affirm do so without a religious text or ceremony, but in a manner that they consider binding on their conscience.

### 2 Identifying the deponent or declarant

- When administering an oath or affirmation in taking an affidavit or declaration, it is your obligation to make sure the deponent or declarant's signature is genuine. You must make sure that the person appearing before you is the individual named in the affidavit or declaration as the person making the affidavit or declaration.
- If it is someone you do not know personally, you should require the person to produce some reliable means of identification.

### 3 Duty to ensure they understand

- You must be sure that a deponent or declarant appearing before you understands the content of the affidavit or declaration and the significance of the oath or affirmation, especially when you are dealing with anyone:

- whose first language is not the language used in the material;
- who cannot read;
- who may have a disability, but is competent to swear/affirm;
- who is very young;
- who is very old.

## 4 Taking the oath or affirmation

### Signature

- Ask the deponent or declarant to sign the affidavit.

### Oath

- Ensure that the words in the introduction to the affidavit read “make oath and say”. You will then perform whatever ceremony the person says is binding upon their conscience. For example, the person may hold a copy of the New or Old Testament (*or uplift an arm*). You will then ask the following:

"Do you, (A.B.), swear that the contents of this affidavit are true to the best of your knowledge, information, and belief, so help you God?"

- The person must then answer:

"Yes", "I do", or "So help me God".
- If a person requests a different form of ceremony binding on their conscience, the Notary Public should follow that form.

### Affirmation

- A person who wishes to affirm instead of taking an oath should be asked the following:

"Do you, (A.B.), affirm that the contents of this affidavit are true to the best of your knowledge, information, and belief, knowing that it is of the same force and effect as if made under oath?"

- The person must then answer:

"Yes" or "I do".

## Special Situations

### **Two or more deponents or declarants**

- When there are two or more deponents or declarants, each person in turn separately swears, affirms or declares as they would if doing it alone. For instance, if there are two deponents, you would administer the oath or affirmation to the first person using the steps described above and then you would administer the oath or affirmation to the second person, again using the steps described above.

### **Deponent or declarant who cannot read**

- If a deponent or declarant cannot read the content of a document, it must be read to the person, in your presence, and then you must ask the person if they understand what was read. You may only administer the oath or affirmation if you are satisfied that the person has in fact understood what was read.

### **Deponent or declarant who cannot sign name**

- A person swearing to or affirming an affidavit or declaration who is unable to write their name may either make their mark on the document or indicate to the Commissioner their understanding of the affidavit or declaration.

### **Deponent or declarant speaks only a foreign language**

- If it seems to you that the person who is swearing to or affirming a document does not understand the language of the document (usually English), then the document must be interpreted to the deponent by a competent interpreter.
- The interpreter must swear or affirm that he or she will faithfully translate the contents of the document to the deponent or declarant and will faithfully translate the oath or affirmation that the deponent or declarant makes into the language of the Commissioner (usually English or French). The Commissioner must certify in the jurat that the interpreter so swore or affirmed and that the interpreter's services were used by the deponent or declarant when swearing or affirming the document.
- Before the interpreter begins their interpretation, they should be sworn (or should affirm) as follows:

Do you, (A.B.), swear (*or solemnly and sincerely affirm*) that you will truly and faithfully, and to the best of your ability, interpret and translate the contents of this affidavit (*or declaration*) to the deponent (*or declarant*) and the oath about to be administered to them (*or declaration about to be made by them*) out of the language it is written in into the language of the deponent (*or declarant*), and also in like manner interpret and translate the oath (*or declaration*) made by them out of the language of the deponent (*or declarant*) into the language understood by the Notary Public (*so help you God*)?

- The interpreter must then answer:

“Yes”, “I do”, or “So help me God”

## 5 Completing the jurat

- Once the deponent or declarant has sworn, affirmed or declared, the Notary Public must complete the jurat as set out in Section 6. The jurat must include:
  - the name(s) of the person(s) swearing, affirming or declaring the document,
  - the date when, and the place where the affidavit or declaration is sworn, affirmed or declared, including the name of the city or town, the county (if there is one) and province,
  - any relevant, special information about the swearing, affirming or declaring (see “Special Situations” above and the sample forms of jurats below),
  - the printed name and signature of the Notary Public taking the oath, affirmation or declaration
- The jurat should be written at the end of the document next to the signature of the deponent or declarant and not on a separate page.
- You must print or type your name below or adjacent to your signature, and may use a stamp to do so, as specified in Section 13.

## 6 Format of jurat

- For an oath, the jurat should include the words “Sworn before me”.
- For an affirmation, the jurat should include the words “Affirmed before me”.
- In the case of a declaration, the jurat should include “Declared before me”.

The standard form of jurat for a Notary Public should be modified, as necessary, for special circumstances as set out in this Section.

### Standard form of jurat

- The following is the ordinary form of jurat for a Notary Public, as it appears beside the deponent’s/declarant’s signature on the document:

Sworn (affirmed or declared) before me at  
\_\_\_\_\_ *(city)* \_\_\_\_\_, in the County of  
\_\_\_\_\_ *(county)* \_\_\_\_\_, in the Province of  
Nova Scotia, this \_\_\_ day of \_\_\_\_\_,  
20\_\_\_.

\_\_\_\_\_ *(Signature of Notary Public)*  
John Doe  
*(print or type name of Notary Public)*  
A Notary Public in and for  
the Province of Nova Scotia

\_\_\_\_\_ *(Signature of Deponent or  
Declarant)* \_\_\_\_\_

### Jurat for 2 or more deponents or declarants

- If there are 2 or more deponents or declarants, the word "severally" must be placed at the very beginning of the jurat before "sworn (affirmed or declared) before me". For example:

"Severally sworn (*affirmed or declared*) before me"

### Jurat for person who cannot read the content of the document:

- If the deponent or declarant cannot read the content of the document, the following text must be inserted into the ordinary form of jurat, after the date and before your signature:

having first been read over and explained by me to the deponent (or declarant), who, being incapable of reading the contents of the affidavit or declaration, appeared to understand the same and (choose one):

- (i) signed their signature in my presence; or
- (ii) made their mark in my presence; or
- (iii) verbally indicated their understanding of the affidavit or declaration

### Jurat for person who cannot sign the document:

- If the deponent can read the document but cannot write their name, the following text must be inserted into the ordinary form of jurat, after the date and before your signature:

Part 1: the deponent (or declarant), who, being incapable of writing their name (choose one):

- (i) made their mark in my presence; or
- (ii) verbally indicated their understanding of the affidavit or declaration

### Jurat for person who speaks foreign language

- If the deponent or declarant speaks only a foreign language and an interpreter is used, the form of the jurat on the translated document should be as follows:

Sworn (*affirmed or declared*) before me, at the City (*or Town*) of (e.g. Halifax) in the Province of Nova Scotia, this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ through the interpretation of (e.g. John Doe) in the Province of Nova Scotia, said ( name of interpreter) having been first sworn truly and faithfully to interpret the contents of this affidavit ( *or declaration*) to the deponent (*or declarant*), and truly and faithfully, to interpret the oath about to be administered to them (*or declaration about to be made by them*).



- marking the document with a statement such as “I certify that this is a true copy of the original to which I have compared it.”
- signing the document below the statement.

Be aware that different organisations, particularly from different countries, often have different requirements.

- To certify a digital document, the document should be printed by you or in your presence and it can then be certified as a “true hard copy of the electronic original”.
- If you are fluent in more than one language, you may be able to certify a translation to be true if you indicate both of the following on the document:
  - you attest to speaking both languages
  - you certify the accuracy of the document

## 10 Notaries Public interested in matter

- A Notary public should avoid providing notarial services to their spouses, as this can complicate the Notary’s position if required to give evidence in court.

## 11 Criminal Code

- The *Criminal Code* of Canada 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.

## 12 Fees for administering oath

- A Notary Public may charge a fee of \$19.95 per document for administering an oath or certifying a document, as set out in the regulations made under the *Costs and Fees Act*, or as otherwise prescribed by those regulations.

## 13 Notification of changes

- You should provide the Department of Justice with any changes to the following:
  - address;
  - name.

## 14 Stamp

- You may use a stamp to affix your printed name to documents that are sworn, affirmed or declared before you as a Notary Public.
- A stamp should be approximately 1/2" x 2" in size and should contain:
  - your printed name.
  - the words "A Notary Public in and for Nova Scotia" beneath your name.
- The Minister of Justice does not issue stamps. They can be purchased at many business supply stores.

## 15 A Notary Public may be called to give evidence

- A Notary Public may be called into court to establish that notarial services, such as the taking of an affidavit or the certification of a true copy, were administered properly. To be prepared for this possibility, the Notary Public must follow proper procedure every time.
- A Notary Public 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 the particular occasion.

## Appendix A: DOs and DON'Ts—Tips for When Acting as Notary Public (Oaths and Certifications)

| Do  | Do Not  |
|---|---|
| Make sure that the document is an affidavit or a statutory declaration.   | Take affidavits or statutory declarations if your appointment is revoked for any reason.  |
| Verify the identity of deponents and declarants that you do not know.   | Provide legal advice, unless you are a practising member of the bar.  |
| Make sure that the name of the deponent or declarant is typed or printed below the signature.   | Use your authority of Notary Public for any purpose other than taking affidavits or statutory declarations, certifying true copies or any other purpose authorized by the <i>Notaries and Commissioners Act</i> . |
| Make sure that any erasures or corrections have been appropriately identified.  | Take an affidavit or statutory declaration of your spouse.  |
| Make sure any attachments have been properly identified.  | Take your own affidavit or statutory declaration.   |
| Make sure the deponent or declarant understands the document.   |   |
| Make sure the deponent or declarant signs the document in your presence.  | Take an affidavit or statutory declaration of a person who does not sign the document in your presence.   |
| Make sure that the jurat has been properly completed in accordance with these Instructions and that your name is typed or printed under your signature. | Take an affidavit or statutory declaration with a photocopied signature.  |
| Certify a true copy by comparing to the original.   | Certify a copy if you have not seen the original.   |