

# Instructions for Commissioner of Oaths

March 2016

This booklet is prepared for the guidance of Commissioners of Oaths appointed under the *Notaries and Commissioners Act*. It is for reference only and for the personal use of Commissioners of Oaths.

# INSTRUCTIONS FOR COMMISSIONERS OF OATHS

## Introduction

The Minister of Justice appoints Commissioners of Oaths under the authority of the *Notaries and Commissioners Act*. A Commissioner of Oaths is deemed to be an officer of the Supreme Court of Nova Scotia. Commissioners take affidavits, declarations and affirmations concerning any matter to come before a court in the Province.

Other provincial statutes authorize Commissioners of Oaths to take declarations on company documents, deeds, mortgages and similar matters.

A Commissioner of Oaths may only 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. As a Commissioner of Oaths you must ensure that you restrict the use of your commission to these purposes. **You may not perform other functions such as certifying true copies.**

When an affidavit or statutory declaration is intended to be used in another province, you must check the law of that province to determine what is necessary to have the document accepted for use in that province. Other provinces often require that a document be completed by a Notary Public rather than a Commissioner of Oaths.

**As a Commissioner of Oaths you must ensure that you do not act after the expiry of your appointment.**

## Terms

**Oath** means a formal declaration or attestation in support of a pledge or promise.

**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.

**Affidavit** means a written declaration sworn before competent authority.

**Statutory Declaration** means a written declaration affirmed before a competent authority by a person conscientiously unable to take an oath.

**Affirmation** means a solemn declaration by a person who declines taking an oath.

**Jurat** means the statement at the bottom of an affidavit, requiring the name(s) of the person(s) swearing to the affidavit, and where, when and before whom it was sworn.

## **Taking Oaths and Affirmations**

### **Oath or Affirmation**

The *Interpretation Act* prescribes the method of taking an oath. The Commissioner of Oaths asks the person to swear that the contents of the document are true. A Commissioner may administer an oath to any person while the person holds a copy of the Old or New Testament. The person taking the oath need not kiss the Bible.

A Commissioner of Oaths may administer an oath with such ceremonies as a person may declare to be binding upon their conscience. Those taking an oath under some other ceremony will do so in accordance with that ceremony.

Those who object to being sworn may affirm. Those who affirm do so without the Bible. The Commissioner of Oaths asks them to solemnly affirm that the contents of the document are true.

It is an offence under Section 138 of the *Criminal Code of Canada* to sign a document, purporting to be an affidavit or statutory declaration, sworn or declared before you when it was not. The party to the oath must be present and appear before you when the oath is taken.

### **Identifying the Person**

Whether you are administering an oath, or taking an affidavit, declaration or affirmation, you must be satisfied that you know the identity of the witness or deponent.

If it is someone you do not know personally, you should require the person to produce some reliable means of identification.

### **Making Sure They Understand**

You have a special duty when you are dealing with anyone:

- whose first language is not the language used in the material;
- who cannot read;
- who is very young;
- who is very old.

You must be sure that the person understands the meaning and significance of both the document and of the oath or affirmation.

If a person who cannot read is swearing to or affirming a document, it must be read to the person, in your presence. Then you have to certify that it was read to the deponent in your presence and that the deponent appeared to understand the material.

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 certify on the document itself that the material has been interpreted to the deponent.

### **Taking the Oath or Affirmation**

#### (a) Method

An oath [affirmation or statutory declaration] must be taken by the deponent in the presence of the Commissioner of Oaths, who must be satisfied of the genuineness of the signature of the deponent or declarant. Once you have satisfied yourself of the genuineness of the signature, ask the person to hold a copy of the New or Old Testament (*or uplifted arm only*) and repeat 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 Commissioner of Oaths should follow that form.

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

"Do you, (A.B.), 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 made under oath."

#### (b) Illiterate or Blind Deponent or Declarant

The contents of the affidavit or statutory declaration should first be read aloud by the Commissioner of Oaths. The form of jurat 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\_\_\_ 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.

(Signature of Commissioner)  
John Doe  
(*print or type name of Commissioner*)  
A Commissioner of the  
Supreme Court of Nova Scotia

My Commission expires: (e.g. December 1, 2013)

(c) Two or More Deponents or Declarants

The word "severally" should be placed at the beginning of the jurat as follows:

Severally sworn (*affirmed or declared*) before me, etc.

"Severally" means that each deponent separately swears to the oath or made the declaration as they would if doing it alone.

(d) Physically Incapacitated Deponent or Declarant

The form of jurat in this case should be as follows:

Sworn (*affirmed or declared*) before me, etc., by the deponent (*or declarant*), who being incapable of writing his/her name (choose one):

- (i) made their mark in my presence; or

(ii) verbally indicated their understanding of the affidavit or declaration.

\_\_\_\_\_  
*(Signature of Commissioner)*  
John Doe  
*(print or type name of Commissioner)*  
A Commissioner of the  
Supreme Court of Nova Scotia

My Commission expires:     (e.g. December 1, 2013)    

(e) Foreign Language

If the deponent or declarant speaks only a foreign language, and an interpreter is used, the form of the translated jurat 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 \_\_\_\_\_ said     name of interpreter     having been first sworn truly and faithfully to interpret the contents of this affidavit (*affirmation 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 taken by them*).

\_\_\_\_\_  
*(Signature of Commissioner)*  
John Doe  
*(print or type name of Commissioner)*  
A Commissioner of the  
Supreme Court of Nova Scotia

My Commission expires:     (e.g. December 1, 2013)    

Before the interpreter proceeds to interpret 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 taken by them*) out of the English language into the language of the deponent (*or declarant*), and also in like manner interpret and translate the oath (*or declaration*) taken by them out of the language of the deponent (*or declarant*) into the English language (*so help you God.*)

**Alterations**

If there are any interlineations, alterations, or erasures on an affidavit or statutory declaration (including the jurat), you should place a check mark at the beginning and end of each of the changes and then write your initials beside each change. UNLESS CHANGES ARE AUTHENTICATED BY YOUR INITIALS, THE AFFIDAVIT OR STATUTORY DECLARATION MAY NOT BE ACCEPTED IN COURT PROCEEDINGS. The following is an example of this procedure:

✓fifth✓John Doe, ✓February✓John Doe,  
Comm. of Oaths Comm. of Oaths  
I did on the fourth day of January, 1997.

**Jurat**

Once the person has been sworn or has affirmed. The Commissioner of Oaths must complete the jurat in the manner set out below. The jurat must include the name(s) of the person(s) swearing to the affidavit, the time when, and the place where the affidavit is sworn, including the name of the city, town, province, and country. The jurat should be written at the end of the affidavit but not on a separate page. You must print or type your name below your signature.

**Sample Format**

Sworn, (*affirmed or declared*) before me at )  
\_\_\_\_\_ (*city*) \_\_\_\_\_, in the County of )  
\_\_\_\_\_ (*county*) \_\_\_\_\_, in the Province of )  
Nova Scotia, this \_\_\_ day of \_\_\_\_\_, )  
2\_\_\_. )  
)  
) (Signature of Deponent or )  
) \_\_\_\_\_ Declarant )  
)  
) (*Signature of Commissioner*) )  
) John Doe )  
) (*print or type name*) )  
) (*of Commissioner*) )  
) A Commissioner of the )  
) Supreme Court of Nova Scotia )  
)  
)  
) My Commission expires: )  
) \_\_\_\_\_ (*e.g. December 1, 2013*) )



## **Exhibits**

If the affidavit or statutory declaration refers to other documents that are annexed as exhibits, each exhibit should be marked as follows:

This is Exhibit (letter or number) referred to in the affidavit (or statutory declaration) of (name of person) sworn (affirmed or declared) before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
(Signature of Commissioner)  
John Doe  
(print or type name of Commissioner)  
A Commissioner of the  
Supreme Court of Nova Scotia

My Commission expires: (e.g. December 1, 2013)

## **Commissioners Interested in a Matter**

Oaths, affidavits, declarations or affirmations concerning a matter taken by a Commissioner of Oaths who is a party or the employee of a party, cannot be introduced as evidence in a proceeding unless all the other parties to the proceeding consent or the judge orders it.

## **Criminal Code**

We bring to your attention Section 138 of the *Criminal Code* which provides:

138. Every one who

(a) signs a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared before him when the writing was not so sworn or declared or when he knows that he has no authority to administer the oath or declaration,

(b) uses or offers for use any writing purporting to be an affidavit or statutory declaration that he knows was not sworn or declared, as the case may be, by the affiant or declarant or before a person authorized in that behalf, or

(c) signs as affiant or declarant a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared by him, as the case may be, when the writing was not so sworn or declared,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

**Fee**

The fee for administering an oath is Nineteen Dollars and Ninety-five Cents (\$19.95). *(Order in Council 2015-96 dated March 31, 2015)*

**Stamp**

If you wish to have a stamp made for your use, it should be approximately 1½" x 2" in size and should contain your name and beneath your name the words "A Commissioner of the Supreme Court of Nova Scotia".

***Notaries and Commissioners Act***

**CHAPTER 312**

**OF THE**

**REVISED STATUTES, 1989**

as amended by

2005, c. 8, s. 16; 2014, c. 22

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**NOTE** - This electronic version of this statute is provided by the Office of the Legislative Counsel for your convenience and personal use only and may not be copied for the purpose of resale in this or any other form. Formatting of this electronic version may differ from the official, printed version. Where accuracy is critical, please consult official sources.

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An Act Respecting  
Notaries Public and Commissioners  
for Administering Oaths

**Short title**

**1** This Act may be cited as the Notaries and Commissioners Act. R.S., c. 312, s. 1.

**Notary public**

**2** The Governor in Council may, by commission under his hand and seal, from time to time appoint such persons as he thinks fit to be notaries public for the Province. R.S., c. 312, s. 2.

**Powers of notary public**

**3** Every such notary public shall have the power of drawing, passing, keeping and issuing all deeds and contracts, charter-parties and other mercantile transactions in this Province, and also of attesting all commercial instruments brought before him for public protestation, and otherwise of acting as is usual in the office of notary, and may demand, receive and have all the rights, profits and emoluments rightfully appertaining and belonging to the said calling of notary during pleasure. R.S., c. 312, s. 3.

**Fee**

**4** Every person so appointed shall pay a fee of ten dollars to the Minister of Finance upon receipt of the commission appointing him. R.S., c. 312, s. 4.

**Oath**

**5** Every notary public upon receiving his commission as such shall take and subscribe in writing an oath for the faithful performance of his duty, which oath may be administered by the Attorney General or Deputy Attorney General, a judge of the Supreme Court or a judge of a county court, or a notary public, and shall be filed in the office of the Attorney General. R.S., c. 312, s. 5.

### **Commissioner of oaths for within Province**

- 6** (1) The Governor in Council may by commission from time to time empower such persons as he thinks fit to administer oaths and take and receive affidavits, declarations and affirmations within the Province in and concerning any cause, matter or thing depending or to be had in the Supreme Court or any other court in the Province.
- (2) Every person so empowered shall be deemed to be an officer of the Supreme Court. R.S., c. 312, s. 6.

### **Commissioner of oaths for without Province**

- 7** The Governor in Council may by commission from time to time empower such persons as he thinks fit to administer oaths and take and receive affidavits, declarations and affirmations without the Province in and concerning any cause, matter or thing depending or to be had in the Supreme Court or any other court in the Province. R.S., c. 312, s. 7.

### **Oath or affidavit taken by interested person**

- 8** An oath, affidavit, declaration or affirmation hereafter administered, taken or received by or before a person appointed under Section 6 or authorized under Section 12 of this Act who is a party to the transaction or matter in respect of which it is to be used or who is employed by such a party in connection with such transaction or matter shall not be evidence on behalf of the person or his employer in any proceedings in respect of such transaction or matter except with the consent of all other parties to the proceedings or on the order of the judge or other person presiding over the proceedings. R.S., c. 312, s. 8.

### **Revocation of commission**

- 9** The Governor in Council may revoke the commission of any person appointed a commissioner to administer oaths, whether within or without the Province, whether such person was so appointed before or after the coming into force of this Act and such revocation shall operate as a revocation for all purposes. R.S., c. 312, s. 9.

### **Existing powers continued**

- 10** The powers of every person at the coming into force of this Act, holding a commission to take affidavits to hold to bail or to administer oaths within or without the Province, shall be continued, and every such person shall be deemed to have been duly appointed such commissioner, and shall have the powers conferred by this Act. R.S., c. 312, s. 10.

### **Authority of barrister**

- 11** Every barrister of the Supreme Court of Nova Scotia shall, by virtue of his office, and without any appointment by the Governor in Council, be, and he is hereby, authorized to administer oaths and take and receive affidavits, declarations and affirmations within the Province in and concerning any cause, matter or thing, depending or to be had in the Supreme Court, or any other court in the Province. R.S., c. 312, s. 11.

**Authority of commissioned officer**

- 12** Every commissioned officer of the Canadian Armed Forces being on active service, whether in Canada or outside of Canada, shall by virtue of his office, and without any appointment by the Governor in Council, be and is hereby authorized to administer oaths and take and receive affidavits, declarations and affirmations within or without the Province for use within the Province. R.S., c. 312, s. 12.  
Authority of member of Assembly
- 13** Every member of the Assembly, while he is a member, is authorized to administer oaths and take and receive affidavits, declarations and affirmations within or without the Province for use within the Province. R.S., c. 312, s. 13.

**Authority of certain police officers**

- 13A** Every chief officer of a municipal police department, every commissioned officer of the Royal Canadian Mounted Police being on active service and every non-commissioned officer of the Royal Canadian Mounted Police who is the head of a detachment being on active service in the Province is, by virtue of that person's office and without appointment by the Governor in Council, authorized to administer oaths and take and receive affidavits, declarations and affirmations within or without the Province for use within the Province. 2005, c. 8, s. 16.

**Authority of funeral director**

- 13B** Every funeral director holding a valid funeral director's licence, issued in accordance with the Embalmers and Funeral Directors Act, is authorized to administer oaths and take and receive affidavits, declarations and affirmations within the Province for use within the Province. 2014, c. 22, s. 1.

**Duty to print name**

- 14** A person before whom an oath, affidavit, declaration or affirmation is administered, taken or received shall cause his name to be typewritten or printed below or adjacent to his signature. R.S., c. 312, s. 14.

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[Re amendments to fees, please refer to Fees and Allowances Under Part I and II of the *Act*, determined under subsection 2(1) of the *Costs and Fees Act* R.S.N.S. 1989, c. 104, Fees and Allowances incorporated in accordance with Section 15 of Chapter 3 of the Acts of 2004, the *Financial Measures (2004) Act* as amended up to O.I.C. 2008-176 (March 31, 2008, effective April 1, 2008), N.S. Reg. 149/2008].