FAQs: Commissioning vs. Notarizing a Document

Commissioner for Taking Affidavits (and Statutory Declarations)

1. **As a lawyer, what do I need to do to become a commissioner?** Section 1(1) of the Ontario *Commissioners for Taking Affidavits Act* (the “Act”) provides that a person who is entitled to practise law in Ontario is automatically a commissioner for taking affidavits (also called a commissioner of oaths) in Ontario. The commission is not limited in its duration, territory, or purpose.

2. **Do I need a stamp?** Your signature alone is sufficient. There is no need for you to obtain or use an approved stamp issued by the Inspector of Legal Offices (as is the case with commissioners whose commission is otherwise limited, such as when you were a student-at-law).

3. **What's the difference between an affidavit and a statutory declaration? What is a deponent?** An "affidavit" is a document that contains statements that are verified by the swearing (or affirmation) of an oath by the "deponent" (the person taking the oath). A "statutory declaration" is similar, but the verification is by solemn declaration (not oath) and is used when there is no legislative authority for an affidavit.

4. **How do I commission an affidavit or statutory declaration? How do I administer the oath?**
   - **Verify the identity of the deponent.** The Act states that every oath shall be taken by the deponent in the presence of the commissioner or notary public (among others) who has satisfied themselves of the genuineness of the signature of the deponent (section 9). If not, you could be found guilty of an offence punishable by a fine of up to $2,000 (section 10). We recommend verifying the identity of the deponent by examining at least one piece of government-issued photo identification (driver's licence, health card, passport, etc.) that has not expired and by completing the form attached at Schedule B for your records.
   - **Requirements of the deponent.** Sections 16 and 17 of the Ontario *Evidence Act* provide that the deponent may (a) swear while holding the Old or New Testament or in such manner and form and with such ceremonies as he or she declares to be binding or (b) make an affirmation or declaration. Therefore, the deponent **may**, but does **not** need to, hold a religious book or raise his or her hand to take an oath. Typically, deponents hold religious books only in a court of law.
   - **Your administration of the oath.** After the affidavit or statutory declaration (including any schedules or exhibits) is read and understood by the deponent:
     - **Affidavit.** Ask the deponent if he or she would prefer to swear or affirm its contents. Once determined, use the following sample accordingly: *Do you [swear/solemnly affirm and declare] that the contents of this affidavit as subscribed by you are true[, so help you God (only if swearing)]?*
     - **Statutory Declaration.** State: *Do you 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?*
   - **Execution.** The deponent should sign the affidavit or statutory declaration in your presence. If it has already been signed, ask the deponent to sign again in your presence. You should **not** sign (or date) the
Commissioning vs. Notarizing a Document

5. **As a lawyer, what do I need to do to become a notary?** Unlike a commissioner for taking affidavits, a lawyer is *not automatically* a notary public by virtue of office. However, sections 1(1), 1(2), and 2 of the Ontario *Notaries Act* provide that a lawyer is entitled to be appointed a notary public without further examination, upon application and payment of fees to the Ministry of Government and Consumer Services, Official Documents Services (the “**Ministry**”).

6. **Do I need a seal?** You will receive a notarial seal from the Ministry along with your appointment certificate.

7. **How do I notarize a document?** Notarizing (or certifying) a document means verifying it to be a true copy of an original document. Therefore, the client does not need to be present when you are notarizing a document. You need only obtain the original document from the client. When notarizing a document, attach a notarial certificate (a sample of which is attached at **Schedule A**) to the front of the copy. Complete and sign the certificate and affix your seal as close to your signature as possible (without it being placed over your signature or the text of the certificate). Ensure that the notarial certificate is securely attached to the notarized document, whether by stapling or otherwise.

**Know Your Client (KYC) Requirements**

8. **Do I need to consider the Law Society’s client identification and verification requirements?** If you are retained to commission or notarize a document for someone that you are not otherwise retained to represent, simply notarizing or commissioning a document will not, in and of itself, trigger the obligations under **Part III of By-law 7.1** made under section 62 of the *Law Society Act* (the “**By-law**”). However, according to section 22(1) of the By-law, if you are providing legal advice or representation, you must comply with the By-law. Section 22(2) of the By-law provides exemptions from these requirements (including if you are acting as agent for, or the client has been referred to you by, a lawyer who has already complied with the requirements). Out of an abundance of caution, we recommend that the client sign the acknowledgement attached at **Schedule C** to confirm the scope of the services provided.
SCHEDULE A
NOTARIAL CERTIFICATE

CANADA )
PROVINCE OF ONTARIO )

I, ● (name of lawyer), a Notary Public for the Province of Ontario, duly appointed by Royal Authority, residing in Toronto, Ontario, certify that the document attached to this certificate is a true copy of a document produced, shown to me, and purporting to be:

● (name of document) dated ●

As requested, I have compared this copy against the original document and have certified the copy under my notarial seal of office.

I have signed my name and affixed my notarial seal of office to this certificate at Toronto, Ontario this ● day of, 20●.

_________________________

A Notary Public for the Province of Ontario.
My commission does not expire.
SCHEDULE B
CLIENT IDENTIFICATION

FILE INFORMATION

Client/Matter No.: ___________________________________________________________
Responsible Lawyer: _________________________________________________________

VERIFICATION OF IDENTITY (INDIVIDUAL)

Name: ________________________________________________________________
Home Address: __________________________________________________________
Home Phone No.: _________________________________________________________
Business Name: _________________________________________________________
Business Address: ________________________________________________________
Business Phone No.: _____________________________________________________
Occupation(s): __________________________________________________________

IDENTIFICATION REVIEWED (COPY ATTACHED)

Type of Identification: ____________________________________________________
Date Verified: ____________________________________________________________
Verified By: ______________________________________________________________
ACKNOWLEDGEMENT

I, ● (deponent’s name), acknowledge that ● (lawyer or student’s name) has commissioned my [Affidavit/Statutory Declaration] dated ●, a copy of which is attached to this Acknowledgement, as a courtesy only, and that no solicitor-client relationship exists between us. I have not been given, nor have I sought, any legal advice from ● (lawyer or student’s name) relating to the contents of the [Affidavit/Statutory Declaration], and I understand that the responsibility, if any, for the giving of legal advice and counsel relating to the matter remains with my own lawyer.

DATED at Toronto, Ontario this ● day of ●, 20●.

Witness

● (deponent’s name)

Name: ●
Address: ●