

# Commissioner of Oaths Handbook



**FINANCIAL AND  
CONSUMER SERVICES  
COMMISSION**

regulation • education • protection



**COMMISSION DES SERVICES  
FINANCIERS ET DES SERVICES  
AUX CONSOMMATEURS**

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## A. INTRODUCTION

The purpose of this Handbook is to provide guidance on the process and procedures for Commissioners for Taking Affidavits in the Province of New Brunswick. The guidelines contained in this Handbook are in relation to the requirements set out in the *Commissioners for Taking Affidavits Act*, S.N.B. 2011, c. 127, the *Canada Evidence Act*, R.S.C., 1985, c. C-5, the *Evidence Act*, R.S.N.B. 1973, c. E-11 and the Rules of Court for the Province of New Brunswick.

Unless otherwise authorized by law, individuals wishing to be appointed as a Commissioner of Oaths in the Province of New Brunswick must complete an Application for Appointment as a Commissioner of Oaths, pass an oral examination based on the information contained in this Handbook with the Clerk of the Court and pay the requisite fee (if applicable). In order to be eligible to make an application, the applicant must be a Canadian citizen who is at least 19 years of age and who is free of any criminal convictions relevant to the appointment. Applications are made to the Consumer Affairs Division of the Financial and Consumer Services Commission, 200-225 King Street, Fredericton, New Brunswick E3B 1E1, telephone 1-866-933-2222. The Commission is responsible for the administration of the *Commissioners for Taking Affidavits Act*.

Should you have any questions concerning rights, responsibilities or requirements under the law you should seek your own independent legal advice.

## B. DEFINITIONS

### **Affidavit**

An “affidavit” is a voluntary statement of facts made by an individual that is written down and sworn or affirmed before a person authorized to administer an oath.

An affidavit should only be completed when it is either:

- (a) intended to be used for court purposes, or
- (b) is authorized by a statute or regulation.

An example of an affidavit is included at [Appendix “A”](#).

### **Statutory Declaration/Solemn Declaration**

A statutory declaration is a written statement that attests, under penalty of perjury, to facts known by the individual and is made in accordance with (or under the authority of) the *Canada Evidence Act*, the *Evidence Act* (New Brunswick), or other similar legislation.

A person making a statutory declaration confirms the statements made in the document by “solemnly declaring” their truth. The terms “solemn declaration” and “statutory declaration” may be used interchangeably.

An example of a statutory declaration is included at [Appendix “B”](#).

### **Deponent/Declarant**

A “deponent” is a person who swears or affirms an affidavit. A “declarant” is a person who makes a statutory declaration.

## **Jurat**

A “jurat” is the certification at the end of the affidavit or statutory declaration stating when and before what authority the affidavit or statutory declaration was made. This part of an affidavit or statutory declaration is completed by the Commissioner of Oaths whereby the Commissioner of Oaths certifies three things:

1. That the person signing the document did so in their presence;
2. That the person signing appeared before them on the date and at the place specified; and
3. That they administered an oath or affirmation to the person signing, who swore to or affirmed the contents of the document.

The jurat often appears to the left of the declarant or deponent’s signature, directly above the Commissioner of Oaths signature, and reads as follows:

***SWORN [or AFFIRMED] to before me this \_\_\_\_ day of \_\_\_\_\_ in the  
City of \_\_\_\_\_, County of \_\_\_\_\_, in the Province of New Brunswick.***

The jurat may also include other information required in special circumstances as further outlined in the section on **“Special Circumstances”**.

## C. GENERAL

It is perjury to make a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false, and it is an offence under the *Criminal Code of Canada*, (R.S.C., 1985, c. C-46). The *Criminal Code* emphasizes the importance of affidavits and statutory declarations and provides for a maximum penalty of up to 14 years imprisonment for any person who makes a false affidavit or a false statutory declaration.

Similarly, it is an offence for a person to sign a document that claims to be an affidavit or statutory declaration and say it was sworn or declared before them when it was not sworn or declared. The *Criminal Code* provides for a sentence of up to two years imprisonment for a person who states they supposedly have taken an affidavit or statutory declaration when in fact they did not.

It is also an offence for a person to administer an oath, affirmation or declaration when they do not have the authority to do so.

A high degree of responsibility is placed upon the person who administers an oath, affirmation or statutory declaration.

For an affidavit or statutory declaration to be valid, the oath, affirmation or statutory declaration must be properly administered. If this is not done, the legal effect of the affidavit or statutory declaration may be questioned. The person who administered the oath, affirmation or statutory declaration can be called into court to prove that the proper procedure was followed. For these reasons, proper procedures must be used at all times. The legal validity of an affidavit or statutory declaration then, if questioned, may be successfully defended. As well, the person who administered the oath, affirmation or statutory declaration will not be embarrassed by being unable to remember what he or she did on a particular occasion.

In New Brunswick, affidavits to be used in court are governed by the **Rules of Court**. Rules 4.01 and 4.02 do not refer specifically to affidavits but do apply to court documents, generally, which would include affidavits. Consequently, Commissioner of Oaths should be familiar with the provisions regarding formatting, signatures and content.

The **Rules** indicate that, page margins should be approximately 4 centimeters and the characters used are to be at least 12 point in size. Line spacing is to be 1.5 spaces. The names of both the deponent and the Commissioner of Oaths who sign the document **must** be typed, stamped or legibly printed beneath their respective signatures.

## D. PERSONS AUTHORIZED TO TAKE OATHS, AFFIRMATIONS OR STATUTORY DECLARATIONS

There are several different ways in which a person can be authorized to act as a Commissioner of Oaths:

1. All lawyers who are members in good standing with the Law Society of New Brunswick are Commissioners for Taking Affidavits (Commissioners of Oaths) and when acting in such role must indicate so by including a statement that they are “A Commissioner of Oaths being a Solicitor” or “Commissioner for taking affidavits to be read in the Court of King’s Bench of New Brunswick being a Solicitor” below their signature on every affidavit or declaration made before them.
2. Other individuals may be appointed by the Minister of Finance under the *Commissioners for Taking Affidavits Act*. Applications for appointment by the Minister of Finance are made through the Consumer Affairs Division of the Financial and Consumer Services Commission. These appointments are for five years and may be renewed.
3. A commissioned officer serving on active service in the Canadian Forces who holds the equivalent of a Major or higher rank may administer oaths and take and receive affidavits, statutory declarations and affirmations within the province for use in the province. These individuals do not hold the title of “Commissioners of Oaths.”
4. People who hold certain offices designated under some statutes of New Brunswick are Commissioners of Oaths. These include but are not limited to:
  - (a) Judges of:
    - The Court of Appeal of New Brunswick,
    - The Court of King’s Bench of New Brunswick, and
    - The Provincial Court of New Brunswick;
  - (b) District Medical Health Officers;
  - (c) Sheriffs and Deputy Sheriffs; and
  - (d) Registrars and Deputy Registrars of Deeds appointed under the *New Brunswick Registry Act* and Registrar Generals appointed under the *New Brunswick Land Titles Act*.

## E. WHAT IS AN OATH OR AFFIRMATION?

The *Evidence Act* sets out the requirements for swearing a document in New Brunswick.

An **oath** is a sincere statement, accompanied by a swearing to God or other revered person or thing, that one's statement is true or that they will be bound by a promise.

Section 13 of the *Evidence Act* describes how an oath may be properly taken. There are many forms of oaths from many cultures and the *Evidence Act* provides for alternatives to swearing on the Bible, so long as the manner and form is such that the deponent declares the ceremony to be binding, such as swearing an oath on a religious document of the deponent's choice (i.g., the Quran).

Alternatively, individuals who do not wish to swear an oath due to conscientious or religious beliefs or because they do not consider the oath to be binding on their conscience may make an **affirmation** instead. An affirmation is a pledge equivalent to an oath, but without reference to a supreme being or to "swearing". Excerpts from the *New Brunswick Evidence Act* (**Appendix "D"**) describe the procedure to be used to administer an affirmation.

While an oath is "sworn to", and an affirmation is "affirmed", both are equally binding on the individual.



## F. HOW TO ADMINISTER AN OATH TO AN INDIVIDUAL MAKING AN AFFIDAVIT

When a person appears before you to take an oath, the following procedure should be followed:

- (a) Be sure the affidavit is to be used in a court proceeding or is authorized by statute.
- (b) If you do not know the person, ask if he or she is the deponent named in the affidavit. Request photo identification and make note of the verification in your file for future reference including a notation the identification provided, for example, N.B Driver's Licence No. 00012345.
- (c) Be sure that the document is properly completed. If a form is used, make sure that all spaces are filled in, properly initial any erasures or corrections, and identify any exhibits by initialing each page.
- (d) Be certain that the person understands what is stated in the affidavit.
- (e) Watch as the individual signs the affidavit; if it has already been signed, have them re-sign the document in your presence. The original signature should be crossed out and initialed the same as any other change to the document.
- (f) Make sure that the name of the individual making the affidavit is printed or typed below the signature line.
- (g) Ask the deponent to either hold or touch a religious document of their choosing. Ask, "Do you swear that the statements made in this affidavit signed by you are true So Help You God?" While still holding or touching the religious document, the deponent replies "yes," or, "I do," or, "I so swear."
- (h) If the jurat reads "Sworn (or Affirmed)," cross out the words "or Affirmed."
- (i) Complete the jurat by filling in the date and the place in New Brunswick where you took the affidavit. Below your signature clearly print your name and indicate your authority for taking the affidavit. In most cases this will be "A Commissioner for Taking Affidavits to Be Read in The Court of King's Bench of New Brunswick" or "A Commissioner of Oaths." Commissioners who were appointed by the Minister of Finance **must** add, "My commission expires [insert the date your commission expires]." Many Commissioners of Oaths find it useful to have a stamp made which includes their name, their authority for taking the affidavit and the expiration date of their appointment.

## G. HOW TO ADMINISTER AN AFFIRMATION TO AN INDIVIDUAL MAKING AN AFFIDAVIT

The following procedure should be followed when an affidavit is affirmed. Follow steps (a) to (f) set out in the previous section:

(g.1) If the person does not wish to be sworn using a religious document then the affidavit can be affirmed. Before administering the affirmation, change any words in the jurat section of the document such as “make oath and say” or “swear” or “sworn,” to read “solemnly affirm” or “solemnly affirmed.”

(h.1) Point to the signed affidavit and ask, “Do you solemnly affirm that the statements made in this affidavit signed by you are true?” The deponent should reply, “I do solemnly affirm,” or similar words.

(i.1) Complete the jurat as indicated in paragraph “i” above, replacing the word “sworn” with “solemnly affirmed.”

## H. HOW TO ADMINISTER A STATUTORY DECLARATION

When a person wants to make a statutory declaration, the following procedure should be used:

- (a) Be sure that the declaration is worded to conform with section 16 of the *New Brunswick Evidence Act* (see [Appendix “D”](#)).
- (b) If you do not know the person, ask if he or she is the individual named in the statutory declaration. Request photo identification and make note of the verification in your file for future reference including a notation of the identification provided, for example, N.B. Driver’s Licence No. 00012345.
- (c) Check that the document is properly completed. If a form is used, make sure that all the spaces are filled in, initial any erasures or corrections, and properly identify any exhibits by initialing each page.
- (d) Satisfy yourself that the person understands what is stated in the declaration.
- (e) Watch as the individual signs the document; if it is already signed, request that they resign the document, cross out the original signature and initial the change. Ask the declarant, “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, and by virtue of the *Evidence Act*?” The declarant should answer, “Yes,” or words to the same effect.
- (f) Complete the jurat. The jurat should read “solemnly declared.” Make sure your authority for taking the declaration is indicated and that your name is typed or printed below your signature.

## I. SPECIAL CIRCUMSTANCES

### 1. Where the Individual Making an Affidavit is a Spouse

You cannot take an oath, affirmation or statutory declaration from your spouse. The *Canada Evidence Act* and the *New Brunswick Evidence Act* protect spouses from giving evidence against each other. This could result in possible problems respecting the proof of documents in court and in prosecution involving perjury or the swearing of false affidavits.

### 2. Where the Individual is Visually Impaired or Cannot Read

If the person making an affidavit or statutory declaration is visually impaired or cannot read, either you or someone else must read the document to that person. You then must ask the deponent if he or she understood it. You may only administer the oath, affirmation or statutory declaration if you are satisfied that it was understood.

You then should change the ordinary form of jurat by inserting the following before your signature:

***Because (name of person) is (visually impaired or cannot read):***

***(a) This affidavit (statutory declaration) was read to (him/her) in my presence,***

***(b) (he/she) seemed to understand it, and***

***(c) (he/she) made (his/her) signature (or mark) in my presence.***

### 3. Where the Individual is Physically Unable to Sign

If the person making the affidavit or statutory declaration is physically unable to sign, that person may direct someone else to sign on their behalf. The designated person should sign the document using the deponent's name and in the presence of all parties. A statement including these facts should appear in the jurat before your signature.

***Because (name of person making document) is physically unable to sign and because he/she directed (name of person signing document) to sign the document in (name of person making document) name, I (name of Commissioner of Oaths) certify that the document was signed in the name of (name of the person making the document) by (name of the person signing document) in the presence of (name of person making the document) and by the direction of (name of the person making the document).***

#### 4. Where the Person Does Not Understand the Language of the Affidavit or Statutory Declaration

If the person making the affidavit or statutory declaration does not understand the language in which the document is drafted, a person who can interpret its contents must first be sworn or affirmed. You may use the following oath or affirmation:

***Do you swear/affirm that you understand (the language of the deponent), that you will interpret the contents of this affidavit/statutory declaration to (name of deponent), and that you will honestly interpret the oath/affirmation/solemn declaration about to be administered to him/her (add so help you God if an oath is used).***

After the interpreter has translated the contents of the document for the deponent, you administer the oath, affirmation or statutory declaration to the person through the interpreter. The deponent should also respond through the interpreter. The most important aspect is that you satisfy yourself that the deponent understands the document and the necessity for the truth of the statements contained in it.

You then should change the jurat on the original deponents' affidavit or statutory declaration by adding before your signature:

***Because (name of person) does not understand the language of the affidavit/statutory declaration, this affidavit/statutory declaration was, in my belief, interpreted to him by (name of interpreter) who first swore/affirmed that he/she understands (the language of the person), that he/she would honestly interpret the contents of this affidavit/statutory declaration and the he/she would honestly interpret the affidavit/statutory declaration.***

#### 5. If the Affidavit or Statutory Declaration is to be Used Outside of New Brunswick

Usually when an affidavit or statutory declaration is to be used outside New Brunswick, the document must be sworn, affirmed or solemnly declared before a Notary Public rather than a Commissioner of Oaths. In New Brunswick, all lawyers are Notaries Public. A Commissioner of Oaths cannot execute these documents.



## J. POWERS

Commissioners of Oaths appointed under the *Commissioners for Taking Affidavits Act* can perform only functions authorized under that Act. They can administer oaths, affirmations and statutory declarations, and take affidavits and statutory declarations. They cannot perform other functions such as certifying true copies unless they have other specific authority. For example, Registrars of Deeds have specific authority to issue certified copies under the *Registry Act*.

Commissioners of Oaths must not take an oath or affirm or affix their stamp to any documents other than affidavits or statutory declarations. For example, when acting as a witness to a Will or a contract they are not acting in their capacity as a Commissioner of Oaths. Should a Commissioner of Oaths affix their stamp under their signature, they could invalidate the document.

Commissioners of Oaths cannot use the title in their signature block.

Commissioners of Oaths cannot and should not draft affidavits or other documents. This activity may be considered to be practising law and is regulated by the Law Society of New Brunswick.

## K. REVOCATION OF APPOINTMENTS

Should a Commissioner fail to meet the requirements and duties under the *Commissioner for Taking Affidavits Act* or the *Criminal Code of Canada*, the appointment may be revoked by the Minister of Finance.

## L. FEES

Commissioners of Oaths often inquire whether or not they can charge a fee. The Act does not prohibit a fee being charged for services, however many Commissioner of Oaths provide their services free of charge.

# M. QUICKLIST – DOS AND DON'TS

When asked to provide your services as a Commissioner of Oaths:

DO	DO NOT
Make sure that the document is an affidavit or a statutory declaration.	Certify copies.
Verify the identity of deponents and declarants that you do not know.	Provide legal advice.
Make sure that the name of the deponent or declarant is typed or printed below the signature.	Use your authority of Commissioner of Oaths for any purpose other than taking affidavits or statutory declarations.
Make sure that any erasures or corrections have been appropriately identified.	Take affidavits to be used in another province or country.
Make sure any attachments have been properly identified.	Take an affidavit or statutory declaration of your spouse.
Make sure that the jurat has been properly completed and that your name is typed or printed under your signature.	Take your own affidavit or statutory declaration.
Make sure the deponent or declarant understands the document.	Take an affidavit or statutory declaration of a person who does not sign the document in your presence.
Make sure the deponent or declarant signs the document in your presence.	Take an affidavit of a photocopied signature.
	Take an affidavit over the telephone or computer.
	Use your title of Commissioner of Oaths in a title block or correspondence, except as provided in this Handbook.
	Take affidavits or statutory declarations after your appointment has expired



## N. LEGISLATION

Relevant sections of the *Rules of Court* (New Brunswick), the *Interpretations Act* (New Brunswick), the *Evidence Act* (New Brunswick) and the *Canada Evidence Act* are attached as Appendices.

Full copies of relevant legislation may be obtained online [here](#).\*

\*[https://www2.gnb.ca/content/gnb/en/departments/jag/attorney-general/content/acts\\_regulations.html](https://www2.gnb.ca/content/gnb/en/departments/jag/attorney-general/content/acts_regulations.html)

## APPENDIX A

### *Example of Affidavit*

Court File number \_\_\_\_\_

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK TRIAL DIVISION  
JUDICIAL DISTRICT OF FREDERICTON

B E T W E E N:

\_\_\_\_\_

PLAINTIFFS

- and -

\_\_\_\_\_

DEFENDANTS

#### **AFFIDAVIT**

I, \_\_\_\_\_ of the City of \_\_\_\_\_, in the  
County of \_\_\_\_\_ and Province of New Brunswick, MAKE  
OATH AND SAY:

1. I am \_\_\_\_\_ of the \_\_\_\_\_ and I am  
authorized to make this Affidavit on behalf of the \_\_\_\_\_;
2. I have, save as stated otherwise, a personal knowledge of the matters  
herein deposed to;

3. Attached and marked as Exhibit "A" to this my Affidavit is a copy of the Notice of Action with Statement of Claim Attached by which an action having court file number \_\_\_\_\_ was commenced against the Defendants, \_\_\_\_\_;
4. \_\_\_\_\_, a solicitor practicing with \_\_\_\_\_ has been retained to represent the \_\_\_\_\_ in this action;
5. I am informed by \_\_\_\_\_ and believe that on or about \_\_\_\_\_ he filed and served a Notice of Intent to Defend in this action, a copy of which is attached and marked as Exhibit "B" to this my Affidavit;
6. I am informed by \_\_\_\_\_ and believe that on or about \_\_\_\_\_ he filed and served a Demand for Particulars in this action, a copy of which is attached and marked as Exhibit "C" to this my Affidavit;
7. I am informed by \_\_\_\_\_ and believe that on or about \_\_\_\_\_ he received from the solicitor for the Plaintiffs a letter dated \_\_\_\_\_, a copy of which is attached and marked as Exhibit "D" to this my Affidavit, which enclosed the Plaintiffs' Statement of Particulars, a copy of which is attached and marked as Exhibit "E" to this my Affidavit;
8. The particulars sought by the Defendants in this Demand for Particulars are not known to the Defendant \_\_\_\_\_ nor does the Defendant have the means of obtaining those particulars other than from the Plaintiffs;
9. I am informed by \_\_\_\_\_ and believe that the particulars sought by the Defendants are necessary so as to enable the Defendants to give a full and fair answer and response to the allegations and claims made against them and to defend the same;



## APPENDIX B

### *Example of Declaration*

IN THE MATTER OF THE PURCHASE BY \_\_\_\_\_

FROM \_\_\_\_\_

OF \_\_\_\_\_ SHARES OF \_\_\_\_\_;

AND IN THE MATTER OF SECTION 116 OF THE INCOME TAX ACT (CANADA)

#### DECLARATION OF RESIDENCY

I, \_\_\_\_\_ of the City of \_\_\_\_\_, in the County of \_\_\_\_\_ and Province of New Brunswick, do solemnly declare that:

1. I am the Secretary-Treasurer of \_\_\_\_\_, a body corporate under and by virtue of the laws of the Province of New Brunswick, whose registered office is at \_\_\_\_\_, New Brunswick.
2. \_\_\_\_\_ is the beneficial owner of \_\_\_\_\_ shares of \_\_\_\_\_, which shares it has agreed to sell to \_\_\_\_\_.
3. \_\_\_\_\_ is not now non- resident of Canada within the meaning of section 116 of the Income Tax Act (Canada), and will not be on the date fixed for completion of the transaction of purchase and sale referred to in paragraph 2 of this my solemn declaration.



## APPENDIX C

### *Interpretation Act*

R.S.N.B., 1973, c. I-13, s. 28 – 29 & 31 - 32 (as amended)

28. Where an oath, affidavit, affirmation or declaration is directed to be made before any person or officer, that person or officer has full power and authority to administer the same, and to certify to its having been made. R.S., c.114, s.28

29. A judge of The Court of King's Bench of New Brunswick or a commissioner for taking affidavits to be read in The Court of King's Bench of New Brunswick may administer any oath, or take any affidavit to be used in any action, matter or proceeding in any court in the Province, or authorized to be administered or taken by any law in force in the Province. R.S., c.114, s.29; 1979, c.41, s.69

31. Where a court, commissioner or person is authorized to take evidence under oath, such oath may be administered and certified to by the judge of the court, commissioner or person, or if there are two or more of such commissioners or persons then by any one of them. R.S., c.114, s.31

32. No Act or regulation impairs or adversely affects the rights of the Crown unless it is expressly stated therein that the Crown is bound thereby. R.S., c.114, s.32; 1982, c.33, s.9

## APPENDIX D

### *Evidence Act*

R.S.N.B., 1973, c. E-11, s. 13 - 16 (as amended)

13. Where an oath may be lawfully taken, it may be administered to a person while such person holds in his hand a copy of the Old or New Testament without requiring him to kiss the same, or, when he objects to being sworn in this manner or declares that the oath so administered is not binding upon his conscience, then in such manner and form and with such ceremonies as he declares to be binding. 1966, c.52, s.1; 1983, c.4, s.6

14. (1) Where a person called as a witness, or desiring to give evidence or required or desiring to make an affidavit or deposition refuses or is unwilling to be sworn on grounds of conscientious motives, the Court or person qualified to take affidavits or depositions shall permit such person, instead of being sworn, to make solemn affirmation by using the words,

“I do solemnly affirm”

14. (2) Such solemn affirmation and declaration is of the same force and effect as if such person had taken an oath in the usual form. R.S., c.74, s.13; 1983, c.4, s.6

15. Where an oath has been administered and taken, the fact that the person to whom it was administered and by whom it was taken did not at the time of taking the oath believe in the binding effect of the oath does not, for any purpose, affect the validity of the oath. R.S., c.74, s.14

16. Any Notary Public, Commissioner for taking affidavits to be read in The Court of King’s Bench of New Brunswick or other functionary authorized by law to administer an oath may receive the solemn declaration of any person voluntarily making the same before him, in the form following, in attestation of the truth of any fact or of any account rendered in writing:

I, A. B., do solemnly declare (state the fact or facts declared to), and I 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, and by virtue of the *Evidence Act*.

Declared before me ..... at ..... this ..... day of ....., 19....

R.S., c.74, s.15; 1979, c.41, s.46; 1984, c.27, s.8



# APPENDIX E

## *Rules of Court of New Brunswick*

Regulation 82 – 73 under the  
*Judicature Act*  
and the  
*Provincial Offences Procedure Act*

### **PRELIMINARY MATTERS** **RULE 4** **COURT DOCUMENTS**

#### 4.05 Affidavits

##### *Format*

(1) An affidavit used in a proceeding shall be

(a) expressed in the first person, and shall state the name in full and place of residence of the deponent; and, if he is a party or the solicitor, agent or employee of a party, it shall state that fact,

(b) divided into numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact, and

(c) signed by the deponent or signed in the name of the deponent by another person in accordance with paragraph (8.1) and, when the jurat is completed, signed by the person before whom it is sworn.

##### *Contents*

(2) Every affidavit shall be confined to a statement of facts within the personal knowledge of the deponent, except as provided otherwise in these rules.

### *Exhibits*

(3) An exhibit referred to in an affidavit shall be identified by the person before whom the affidavit is sworn as the exhibit referred to.

(4) Where an exhibit is referred to in an affidavit as being attached to the affidavit, it shall be attached and filed with the affidavit.

(5) Where an exhibit is referred to in an affidavit as being produced and shown to the deponent, it shall not be attached to the affidavit or filed therewith, but shall be left with the clerk or Registrar for the use of the court and, upon disposition of the proceeding or motion in respect of which the affidavit was filed, the exhibit shall be returned to the party who filed the affidavit or his solicitor, unless ordered otherwise.

(6) A copy of every documentary exhibit referred to in an affidavit shall be served with the affidavit, unless it is impractical to do so or the person to be served has a copy.

### *By Two or More Deponents*

(7) Where an affidavit is made by two or more deponents, there shall be a separate jurat for each deponent, unless all the deponents are sworn before the same person at the same time.

### *By an Illiterate or Blind Person*

(8) Where it appears to a person before whom an affidavit is sworn that the deponent is illiterate or blind, he shall certify in the jurat that the affidavit was read in his presence to the deponent who appeared to understand it, and that the deponent signed the affidavit or placed his mark on it in his presence.

### *By a Person Who is Physically Unable to Sign or Place His or Her Mark*

(8.1) Where it appears to a person before whom an affidavit is sworn that the deponent is physically unable to sign an affidavit or place his or her mark on an affidavit and the deponent directs another person to sign the affidavit in the name of the deponent, the person before whom the affidavit is sworn shall certify in the jurat that the affidavit was signed in the name of the deponent by that other person in the presence of the deponent and by the direction of the deponent.

### *By a Person who does not Understand the Language*

(9) Where it appears to a person before whom an affidavit is sworn that the deponent does not understand the language used in the affidavit, he shall certify in the jurat that the affidavit was interpreted to the deponent by him or in his presence by a named interpreter sworn by him to interpret the affidavit correctly.

### *Alterations*

(10) An interlineation, erasure or other alteration in an affidavit shall be initialled by the person before whom the affidavit is sworn and, unless so initialled, the affidavit shall not be used without leave of the court.

### *Swearing of Affidavits*

(11) Affidavits sworn in New Brunswick shall be sworn before a judge, commissioner of oaths, notary public or anyone empowered by these rules to administer oaths.

(12) An affidavit may be sworn before the solicitor for the party using or filing it or before a commissioner of oaths or notary public who is partner, agent or employee of such solicitor but shall not be sworn before the party.

(13) Except with leave of the court, an affidavit shall not be used or filed unless the person before whom it is sworn shows in the jurat

- (a) the date when it was sworn,
- (b) the place where it was sworn, and
- (c) that the affidavit was sworn before him.

## APPENDIX F

### *Canada Evidence Act*

R.S.C., 1985, c. C-5, s. 13 - 16 (as amended)

#### **Oaths and Solemn Affirmations**

##### **Who may administer oaths**

13 Every court and judge, and every person having, by law or consent of parties, authority to hear and receive evidence, has power to administer an oath to every witness who is legally called to give evidence before that court, judge or person. R.S., c. E-10, s. 13.

##### **Solemn affirmation by witness instead of oath**

14 (1) A person may, instead of taking an oath, make the following solemn affirmation:

I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth.

##### **Effect**

(2) Where a person makes a solemn affirmation in accordance with subsection (1), his evidence shall be taken and have the same effect as if taken under oath. R.S., 1985, c. C-5, s. 14; 1994, c. 44, s. 87.

##### **Solemn affirmation by deponent**

15 (1) Where a person who is required or who desires to make an affidavit or deposition in a proceeding or on an occasion on which or concerning a matter respecting which an oath is required or is lawful, whether on the taking of office or otherwise, does not wish to take an oath, the court or judge, or other officer or person qualified to take affidavits or depositions, shall permit the person to make a solemn affirmation in the words following, namely, "I, , do solemnly affirm, etc.", and that solemn affirmation has the same force and effect as if that person had taken an oath.

##### **Effect**

(2) Any witness whose evidence is admitted or who makes a solemn affirmation under this section or section 14 is liable to indictment and punishment for perjury in all respects as if he had been sworn. R.S., 1985, c. C-5, s. 15; 1994, c. 44, s. 88.

### **Witness whose capacity is in question**

16 (1) If a proposed witness is a person of fourteen years of age or older whose mental capacity is challenged, the court shall, before permitting the person to give evidence, conduct an inquiry to determine

- (a) whether the person understands the nature of an oath or a solemn affirmation; and
- (b) whether the person is able to communicate the evidence.

### **Testimony under oath or solemn affirmation**

(2) A person referred to in subsection (1) who understands the nature of an oath or a solemn affirmation and is able to communicate the evidence shall testify under oath or solemn affirmation.

### **Testimony on promise to tell truth**

(3) A person referred to in subsection (1) who does not understand the nature of an oath or a solemn affirmation but is able to communicate the evidence may, notwithstanding any provision of any Act requiring an oath or a solemn affirmation, testify on promising to tell the truth.

### **No questions regarding understanding of promise**

(3.1) A person referred to in subsection (3) shall not be asked any questions regarding their understanding of the nature of the promise to tell the truth for the purpose of determining whether their evidence shall be received by the court.

### **Inability to testify**

(4) A person referred to in subsection (1) who neither understands the nature of an oath or a solemn affirmation nor is able to communicate the evidence shall not testify.

### **Burden as to capacity of witness**

(5) A party who challenges the mental capacity of a proposed witness of fourteen years of age or more has the burden of satisfying the court that there is an issue as to the capacity of the proposed witness to testify under an oath or a solemn affirmation. R.S., 1985, c. C-5, s. 16; R.S., 1985, c. 19 (3rd Supp.), s. 18; 1994, c. 44, s. 89; 2005, c. 32, s. 26; 2015, c. 13, s. 53.