



## COVID-19: VIRTUAL AFFIDAVITS IN SUPREME COURT PROCEEDINGS

**Thursday, April 2, 2020**

Due to the ongoing COVID-19 pandemic, the Nova Scotia Supreme Court is expanding the options available to counsel when preparing and filing affidavits with the Court to include virtual affidavits (using video technology).

The requirements for the commissioning of affidavits are set forth in the *Notaries and Commissioners Act* and the Civil Procedure Rules of Nova Scotia. Rule 39.08(2)(d) provides that the deponent must appear personally before the authority administering the jurat.

During the COVID-19 pandemic, some accommodations must be made for the commissioning of affidavits in circumstances where it is not possible or is medically unsafe for the deponent to physically attend before a commissioner. Examples might include deponents who are unable to leave their residences, deponents who are not permitted to receive visitors, or deponents who are required to self-isolate.

With the agreement of the Nova Scotia Barristers' Society, until further notice, the following accommodations will be made for affidavits to be used in any proceeding in the Supreme Court, subject always to the discretion of the Court to apply the best evidence requirements to their use.

Please note that the accommodations outlined below are further to the [March 26, 2020, directive regarding the electronic filing of documents](#), which states that the Court will accept unsworn affidavits, unless a judge directs otherwise. In those instances, a sworn copy of the affidavit is required at the hearing or alternatively, the individual will be required to affirm their affidavit evidence at the hearing.

Any affidavit to be sworn using video technology must contain a paragraph at the end of the body of the affidavit describing that the deponent was not physically present before the commissioner, but was linked with the commissioner using video technology and that the process described below for remote commissioning of affidavits was used. Additionally, the jurat should be revised to accurately reflect the circumstances of the swearing/affirming. An example can be found on the [Nova Scotia Barristers' Society website](#).

While connected via video technology, the deponent must show the commissioner the front and back of the deponent's current government-issued photo identification. The commissioner must compare the video image of the deponent and information in the deponent's government-issued photo identification to be reasonably satisfied it is the same person and that the document is valid and current. The commissioner must also take a screenshot of the front and back of the deponent's government-issued photo identification and retain it. For clarity, identification is only necessary if the deponent is not already personally known to the commissioner.

The commissioner and the deponent are both required to have a paper copy of the affidavit, including all exhibits, before each of them while connected via video technology.

The commissioner and the deponent must review each page of the affidavit and exhibits to verify that the pages are identical and if so, must initial each page in the lower right corner.

At the conclusion of the review, the commissioner will administer the oath, the deponent will state what needs to be said to swear or affirm the truth of the facts, and the commissioner must watch the deponent sign his or her name to the affidavit. The deponent will then send the signed affidavit, with the exhibits, electronically to the commissioner.

Before completing the affidavit, the commissioner must compare each page of the copy received from the deponent against the initialed copy that was before him or her in the video conference and may affix his or her name to the jurat only upon being satisfied that the two copies are identical.

The two copies will then be attached together with a certificate signed by the commissioner, stating that the commissioner was satisfied the process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together. The completed package would then be permitted to be filed.

ISSUED at Halifax, Nova Scotia, this 2<sup>nd</sup> day of April 2020.

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Chief Justice Deborah K. Smith