

# What You Need to Know About Affidavits

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# WHAT YOU NEED TO KNOW ABOUT AFFIDAVITS

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An affidavit is a form of giving written evidence, sworn under oath.

Just as when a person is on the witness stand in court, the *deponent* (the person making the affidavit) is swearing that what he or she is stating is the truth. For this reason, the deponent needs to be meticulously accurate, and 100% comfortable that what they are stating is the truth.

Affidavits basically tell a story and should, as much as possible, be told in chronological order. For example, in a guardianship application, the applicant's affidavit(s) will tell the story of the person with a disability, their medical/mental condition, and their current level of functioning.

Affidavits are relatively simple.

*However, all affidavits need to contain some standard wording (what I call the "magic words") in order to be accepted into evidence by the court.*

## What to include in your affidavit

### 1. The oath or affirmation

An affidavit *always* starts with the deponent identifying themselves and *either making an oath or affirming* that what they are about to say is true.

You may use the following wording:

I, [insert full name], make oath and give evidence as follows:

The "oath" here refers to a promise before God.

Alternatively, individuals who are not comfortable swearing an oath before God may affirm as follows:

I, [insert full name], affirm and give evidence as follows:

**Tip:**

*Although the choice is yours, I would suggest that, unless there is a particular reason, you stick with the standard "make oath" on all affidavits.*

*This issue shows up again in the jurat (signature lines), where you have a choice between using either "Sworn to" or "Affirmed" – you will delete one of these options, keeping the one that matches what you used at the top of the affidavit.*

## **2. Personal knowledge and other sources for your information**

The next standard wording (in two separate paragraphs, below) tells the court who you are relative to the litigation, and allows the court to accept what follows as sworn evidence.

If you are the person who has started the litigation (referred to as either the plaintiff or applicant), it will look like this:

I, [full name], make oath and give evidence as follows:

1. I am the applicant [or plaintiff] herein and as such have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information or belief.
2. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.

Or, if you are the person responding to the lawsuit (referred to as either the defendant or the respondent), it will look like this:

1. I am the defendant [or respondent] herein and as such have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information or belief.
2. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.

**Tip:**

*These two paragraphs are very important, and must be in every single affidavit.*

**3. Source of information *not* based on personal knowledge**

For the rest of the affidavit, ***every single time*** the deponent states a fact for which they do not have personal knowledge, they must state two things, worded as below:

I was advised by [name of person] and do verily believe that [remainder of sentence].

**4. Formatting your affidavit**

When composing your affidavit, stick to these formatting rules:

- All paragraphs must be numbered consecutively.
- Wherever an individual's name is required, it is preferable to use full names (first, middle, and last) and it ***must*** be done this way the first time the name is used.
- When using a number in the text of a paragraph, type out the full number in letters. For example, twelve, three, twenty, etc.
- It is perfectly acceptable to preface dates or ages with words conveying approximations. For example:

“When John Phillip Smith was approximately two years old ...” OR

“In or about July, 1989 ...”.

- Each paragraph should be fairly short, in that each paragraph should only contain one idea. Some people take the view that each paragraph should only contain one sentence, but each paragraph should certainly be no longer than three sentences, maximum.
- It's fine for an affidavit to contain multiple pages, but make sure you never split the **jurat** (the signature portion of the affidavit) between two pages. The jurat should always be completely contained on one page. For example:

Sworn before me at Halifax, in the )  
Halifax Regional Municipality, )  
Province of Nova Scotia, the )  
\_\_\_\_\_ day of \_\_\_\_\_, 2019. )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

\_\_\_\_\_  
[Full name of deponent]

- The jurat should also never be on a page all by itself. Make sure there is at least one paragraph of text above the jurat on the page.

## 5. Having Your Affidavit Sworn

Affidavits can be sworn (stamped and signed) by practicing lawyers, notaries public, and commissioners of oath. *They must be sworn at the same time as they are signed.* In other words, the person swearing the affidavit must actually see the deponent sign it.

Any written documentation referred to in the affidavit (such as a letter, report, or other document) must be attached (in the order they appear, if more than one) to the back of the affidavit. Such documents are called exhibits, and if any exhibits are attached to the affidavit, it's very important to advise the person who is swearing the oath of this fact, as they must stamp and sign each exhibit.

## CONCLUDING THOUGHTS

Although you may be initially intimidated at the idea of having to draft an affidavit, if you keep in mind that you are simply telling the court the facts about what happened, and follow the above instructions, you should have nothing to be concerned about.

One suggestion is to start by putting aside the documentation completely, and think about sitting down for coffee with a friend who has no knowledge of the events that occurred. Begin typing whatever you would say in that conversation; this is the story you need.

Read the result and put yourself in your friend's shoes; she is an intelligent, curious person and really wants to understand what happened. What sort of factual question(s) might she ask? What details might she need to understand the complete picture? If you can think of those questions (in other words, what you would ask if

you were hearing this story for the first time), and incorporate those answers into your story, you should have it covered.

Finally, reread this Primer. Most of what you need will be right there in your story. You might need to elaborate in a couple of areas, or play around with it a little, but most of the information you need should be there. The only thing left to do is to transfer that story into the affidavit format as described here.

For further illustration, find a sample affidavit in a representation (adult guardianship) application below.

2019

No.

Supreme Court of Nova Scotia

Between:

**Joseph Alexander Smith**

Applicant

and

**Susan Ellen Smith**

Respondent

**Affidavit of Joseph Alexander Smith**

I, Joseph Alexander Smith, make oath and give evidence as follows:

1. I am the Applicant in this action and as such have personal knowledge of the evidence affirmed in this affidavit except where otherwise stated to be based on information or belief.
2. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
3. Susan Ellen Smith was born on January 5, 1940 in Halifax, Nova Scotia and is now seventy-nine years old.
4. I was born on September 10, 1950 and am the younger brother of Susan Ellen Smith and her only living next of kin.
5. Susan Ellen Smith continues to reside in her own home in Halifax, Nova Scotia.
6. In or about August 2018, Susan Ellen Smith began showing signs of forgetfulness and confusion, resulting in her being by assessed by Dr. Frank Alan Lever, a geriatric specialist in October 2018.
8. At that time, Dr. Lever diagnosed Susan Ellen Smith as suffering from the first stages of dementia. Attached as Exhibit "A" to this, my Affidavit, is a true copy of Dr. Lever's report dated November 5, 2018.
9. Susan Ellen Smith's condition continued to deteriorate and a second assessment was conducted by Dr. Lever on February 2, 2019. Attached as Exhibit "B" to this, my Affidavit, is a true copy of that most recent assessment dated February 2, 2019.

10. In that report, Dr. Lever states that due to Susan Ellen Smith's current medical condition, she is no longer capable of making decisions regarding her health care, place of residence or finances.
11. I have always had a close relationship with Susan Ellen Smith and have continued to provide more and more assistance to her as her condition has deteriorated.
12. Susan Ellen Smith currently has a bank account and GIC investment at the Toronto Dominion Bank, which have a combined value of Eighty Thousand Three Hundred Twenty-Five Dollars and Forty Cents (\$80,325.40). She also owns personal property worth approximately Ten Thousand Dollars (\$10,000.00).
13. Susan Ellen Smith also owns a piece of land in Chester, Nova Scotia, with an approximate market value of Two Hundred Thousand Dollars (\$200,000.00).
14. I believe Susan Ellen Smith lacks the capacity to make either personal care or financial decisions and therefore it is necessary that a person be appointed by this Honourable Court to be the lawful Representative of Susan Ellen Smith with respect to both financial and personal care decisions.
15. I make this Affidavit in support of my application to be appointed Representative of Susan Ellen Smith with respect to both financial and personal care decisions. I undertake to abide by and uphold all terms of an order appointing me as Representative.

Sworn before me at Halifax, in the Halifax )  
 Regional Municipality, Province of Nova )  
 Scotia, the 2<sup>nd</sup> day of June 2019 )

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**Joseph Alexander Smith**  
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