

## **AFFIDAVITS IN THE COURT OF KING'S BENCH**

This guide is intended to provide general legal information on the preparation and use of affidavits in the Court of King's Bench. While the guide is intended to provide correct information, it is not the law, and no judge of the Court is bound by any statement contained in this guide.

This guide is not a substitute for professional legal advice. It does not address all possible situations, nor does it cover all areas of applicable legislation.

This guide provides legal information in response to the following questions:

- **What is an affidavit?**
- **When is an affidavit used?**
- **What form do I use to prepare and affidavit?**
- **What type of information is included in an affidavit?**
- **How do I attach documents to an affidavit?**
- **Before whom may an affidavit be sworn or affirmed?**
- **When must an affidavit in support of an application be served and filed?**

### **What is an Affidavit?**

An affidavit is a form of evidence or written testimony. It contains facts that a person (called the deponent) swears or affirms to be true before a Commissioner of Oaths.

Because an affidavit is sworn or affirmed to be true before a Commissioner of Oaths it is a serious offence for a person to swear or affirm an affidavit that they know to be false or misleading.

### **When is an Affidavit used?**

In the Court of King's Bench affidavits are primarily used to support an application to the court for an order that is decided on the basis of the application and affidavit alone without a trial or oral testimony. Affidavits can also be used to prove other things to the Court, such as that a court document has been served or delivered to an opposing party.

### **What form do I use to prepare an Affidavit?**

A general use affidavit form can be found in the Rules of Court as Form 13-31. A copy of this form is attached at the end of this Guide.

The generalized use affidavit form may be used where a specialized affidavit is not otherwise provided in legislation or the rules. For example, KB form #12-15 is a specialized affidavit to prove service of a document.

The facts in the affidavit are set out in a series of numbered paragraphs. Each page of the affidavit should be numbered. The affidavit should also be prepared on good quality paper that is 8.5 inches by 11 inches (21.5 x 28 centimetres) in size with a left hand margin of at least 1.5 inches (38.3 centimetres) and line spacing of 1.5. Only one side of the paper should be used.

An affidavit may be hand printed if it is neat and legible.

### **What type of information is included in an affidavit?**

Your affidavit should only include facts that you personally know to be true. In your affidavit you can state what the opposing party has told you. However, you should not include information that has been told to you by someone else who is not a party to the action. Instead ask that person to complete his or her own affidavit that you may then include with your application. In special circumstances, you may state what you learned from someone else if you explain in your affidavit: who told you this information; that you believe it to be true; and the reason why you need to put this information in your affidavit.

The affidavit should only contain facts. It should not contain opinions. The exception is affidavits sworn by doctors or other experts who have a recognized expertise in a particular subject.

It is important that your affidavit or other affidavits you file in support of your application only contain relevant facts or information the Judge needs to know when assessing the application. Court staff cannot assist you in deciding what facts you should include or not include in your affidavit. If you are uncertain as to what is relevant or what you should or should not include it is recommended that you consult a lawyer.

An affidavit should not repeat facts or matters that are already set out in another affidavit filed with the court in the same action. Instead, your affidavit should refer to the earlier affidavit.

In writing your affidavit, the following tips may be helpful:

- An affidavit often tells a story. To the reader a story is always easier to understand if it is told in chronological order.
- An affidavit is easier to read and understand if each paragraph contains sentences about a single topic.
- Keep sentences short whenever possible.

- General statements of fact are often not useful. It is better to be specific in describing certain events or facts.
- Name calling or making accusations about the character of another individual should be avoided. Instead, if that person's conduct is in issue, then the particular event that displays that conduct may be described. Allegations made against another person that are unnecessarily insulting and/or unsupported by evidence will not assist your application and may undermine the reliability or credibility of your version of events.
- Avoid pronouns in favour of a person's name so that it is always clear to whom you are referring.
- After you have prepared your affidavit read it through or have someone else read it through to check for:
  - Missing or misspelled words.
  - Grammatical errors
  - Missing or misstated facts. For example, dates referred to should always include the day, month and year.
  - Readability. When you read it, does it clearly convey what you are trying to say?

### **How do I attach documents to an affidavit?**

You may have documents that you would like the court to see. You can attach a copy of this document to your affidavit. The document will be known as an "exhibit". To attach a document to the affidavit, the affidavit must state that a document is attached to the affidavit as an exhibit. Each exhibit is labelled with a letter of the alphabet. The first exhibit attached is called "Exhibit A", the next exhibit is "Exhibit B" and so on. For example:

"Attached to my affidavit and marked as exhibit "A" is a copy of the receipt showing payment of the Plaintiff's account."

The document must also be labelled so that the judge can identify which exhibit is which. To label an exhibit the following words must be typed or printed on the document:

"This is Exhibit "....." referred to in the affidavit of ..... sworn (affirmed) before me at ..... this ..... day of ..... 20....."

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A Commissioner of Oaths for Saskatchewan

Your affidavit should also explain how the exhibit came into your possession or other information which explains why you know or believe it is a true document.

If you know that the original or true copy of the document you want to exhibit has already been filed on the court file, you should not attach it to your affidavit but instead refer to it in your affidavit as follows:

“an original or true copy of which was filed in Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.”

### **Before whom may an affidavit be sworn or affirmed?**

An affidavit may be sworn or affirmed in Saskatchewan before a court official, lawyer, notary public, justice of the peace or commissioner of oaths.

An affidavit may be sworn or affirmed outside of Saskatchewan before a commissioner or other official authorized by the laws of the other jurisdiction to administer oaths or affirmations. If your affidavit is to be used in court, you may swear or affirm your affidavit before a local registrar or deputy local registrar.

### **When must an affidavit in support of an application be served and filed?**

When an affidavit is intended to be used in support of an Application with Notice or an Originating Notice, copies of the affidavit must be served on the other parties with the application 14 days before the day the application is scheduled to be heard in chambers. The Application and original affidavit must also be filed with the court 14 days before the hearing date.

The respondent may then file an affidavit in response to the application. The Respondent's affidavit should be served on the Applicant and filed with the court at least 8 days before the hearing date.

If a Respondent serves and files an affidavit, the Applicant may file an additional affidavit but only to respond to new matters raised in the Respondent's affidavit. The Applicant's additional affidavit must be served and filed at least two days before the hearing date.

In each case, the original affidavit is filed with the court and copies of the affidavit are served on the other side. In each case, proof that the affidavit was served on the opposing party must also be filed.

### **FORM**

A MS Word version of the following affidavit form can be downloaded at no charge from Publication Saskatchewan at: <https://publications.saskatchewan.ca/#/categories/5343>

**Form 13-31**  
**(Rule 13-31)**

COURT FILE NUMBER \_\_\_\_\_

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE \_\_\_\_\_

PLAINTIFF(S) \_\_\_\_\_

DEFENDANT(S) \_\_\_\_\_

**AFFIDAVIT**

AFFIDAVIT OF \_\_\_\_\_  
*(name of deponent)*

I, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_,  
*(full name) (city, town, village, etc.)*

Saskatchewan, (if the deponent is a party or the lawyer, officer, director, member or employee of a party, set out the deponent's capacity – for example: “the plaintiff in the within action”)

MAKE OATH AND SAY (or AFFIRM):

**1** *(Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact.)*

SWORN (OR AFFIRMED) BEFORE ME

at \_\_\_\_\_, Saskatchewan,  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*(signature)*

\_\_\_\_\_  
Commissioner for Oaths for Saskatchewan