

Evidence in Court: Affidavits

There are different ways of presenting evidence in court:

1. **Oral Evidence:** Evidence given by speaking under oath at a questioning, hearing or trial. Sometimes it is called *viva voce* (Latin for “by word of mouth”) evidence.
2. **Written Evidence:** Evidence in a written ***Affidavit*** that the writer makes under oath. This includes any documents attached to your *Affidavit* as exhibits.

What is an Affidavit?

An ***Affidavit*** is a written statement of facts that you swear or affirm before a Commissioner for Oaths or Notary Public. It is evidence in court. The judge treats it the same way as if you were giving oral evidence.

Sometimes an *Affidavit* is called a **Statement**. For example, if you are dealing with issues under the *Family Law Act*, you will use different Statements to deal with different issues.

To **swear** an *Affidavit* means that you promise what it says is true before God. To **affirm** an *Affidavit* means you promise what it says is true and binding on your conscience. Affirming is a non-religious option.

When you appear in court for a hearing that is not a trial, your evidence must be in an *Affidavit*. Include all the facts you want the judge to accept in your *Affidavit*. You cannot usually try to prove those facts by telling the judge about them in court. In rare circumstances, the judge will give you permission to present oral evidence.

For more information on Commissioners for Oaths or Notary Publics, visit:

<https://bit.ly/34dqDZS>

Trials are different. In a trial, the judge will hear oral evidence from witnesses. Court appearances that are not trials are shorter, and judges usually only allow written evidence.

The evidence in your *Affidavit* must be relevant and material to the issues you raise in your application document. Material means that the evidence is logically connected to a fact that you need to prove in your case. Your evidence should help a judge decide the issues that you outline in your application. If your evidence is irrelevant, the judge can ignore it. Including inflammatory, prejudicial, useless or unrelated information in your *Affidavit* will not help you convince the judge to do what you are asking.

An ***Affidavit of Service*** is a common type of *Affidavit* used to prove to the court someone has served documents on someone else.

What is an exhibit?

An **exhibit** is a record (such as a document, email or photo) that you attach to an **Affidavit**. For example, if you are applying to the court for child support for extraordinary expenses, you might want to attach the receipts or other proof of the amount of the expense to the *Affidavit*. If you are going to include exhibits, you must reference them in your *Affidavit*. You must mark all exhibits using consecutive numbers or letters so that they are easy to find.

For example:

- Attached as Exhibit "A" is a copy of the receipt for Joey's braces.
- Attached as Exhibit "B" is a copy of the estimate for the root canal procedure that Joey needs.

You must include your exhibits behind your *Affidavit*. The original copy of the *Affidavit* should have exhibits separated by labeled tabs.

You can find court forms on the Alberta Courts website:

www.albertacourts.ca

You can also contact **Resolution and Court Administration Services** for help locating these forms and the court process generally.

Preparing an Affidavit

Formal Requirements of an Affidavit

- On the front page, indicate your full name and the date you swear the *Affidavit*.
- Identify your address or municipality. For example, "I, John Smith, of 11111-111 Street, Edmonton, am making this affidavit..." or "I, John Smith, of the City of Edmonton, am making this affidavit..."
- Write the *Affidavit* in the first person, as if you were speaking. For example, "I have two children with the respondent."
- Organize the *Affidavit* into numbered paragraphs. Each paragraph should be short (only a few sentences).
- Express dates and numbers using numerals, unless the meaning is clearer using a combination of numerals and words. For example, it might make sense to state the date of a marriage as "We were married on July 12, 2007" instead of "We were married on 12/07/2007."

- Sign and swear or affirm the *Affidavit* in front of a Commissioner for Oaths (if it is being used in a court in Alberta) or a Notary Public (if it is being used in a court outside Alberta).
- State when, where and before whom the *Affidavit* was sworn.
- Make sure the person who administers the oath signs the *Affidavit* and the exhibits.
- Attach any records mentioned in the *Affidavit* as exhibits.
- Staple or bind the *Affidavit* if you are using it in court. This is not a rule but it will keep the court clerks and the judge a lot happier.

Technical Requirements

- 8.5" x 11" paper with one inch margins
- 12-point font, Times New Roman
- 1.5 line spacing
- Single-sided (print on only one side of the paper)
- Handwritten documents must be legible

Page Limits

Sometimes, there is a page limit for your *Affidavit* – the form and the exhibits.

For family cases in the Court of King's Bench, there are page limits for the *Affidavit* (excluding the exhibits) and the exhibits cannot be more than 40 pages total. See Practice Note 2 and the Court's tip sheet called "Family Practice Note 2 Tipsheet for Parties – Filing an Application" for more information. <https://bit.ly/3rgQXvK>

REMEMBER:

- Do not sign your *Affidavit* until the Commissioner for Oaths or Notary Public tells you to.
- Make sure your *Affidavit* (including your exhibits) is easy to read and well-organized.
- Only include facts in your *Affidavit* – not opinion, accusations or other people's evidence.
- File your *Affidavit* at the courthouse and serve it on the other parties within the deadlines. The deadlines change depending on why you are filing the *Affidavit*. For more information, see the **Serving Court Documents** tip sheet in this series.

Resources

CPLEA

Information booklets, FAQs and videos on many areas of the law and court process in Alberta.

cplea.ca/resources

LawCentral Alberta (a CPLEA website)

List of legal clinics and organizations in Alberta providing free or low-cost legal services.

lawcentralalberta.ca/clinics

List of more resources for preparing for court.

lawcentralalberta.ca/preparing-court

Alberta Courts

Information about the courts in Alberta, including forms and court processes.

www.albertacourts.ca

Court and Justice Services (CJS)

Government service providing resolution and court support for Albertans.

alberta.ca/court-and-justice-services.aspx

Alberta Law Libraries

Access to legal information and resources.

lawlibrary.ab.ca