



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

AFFIDAVITS ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to January 1, 2009. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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Table of Contents

Section	Page
1. Court, definition of.....	5
2. Commissioners, appointment of.....	5
3. Affidavits sworn before a commissioner, use in court	5
4. Affidavits sworn out of the province for use in the province	6
5. Attestation of signature of person taking affidavit	6
6. Commissioners appointed from outside province	7
7. Certificate that oath administered filed with Registrar of Deeds	7
8. Commission, registration of	7
9. Forms to be used	7
10. Informality in affidavit, effect of.....	7
11. Affidavit, sufficient proof of	7
12. Act to prevail.....	8
13. <i>Evidence Act</i> , section 13	8
14. Seal required outside province, where proof of unnecessary	8
15. Administering oath, procedure.....	8



AFFIDAVITS ACT

CHAPTER A-7

1. Court, definition of

In this Act “**court**” means any court, person or tribunal in the province, having by law or by consent of parties authority to receive affidavits or affirmations. *R.S.P.E.I. 1974, Cap. A 2, s.1.*

2. Commissioners, appointment of

- (1) The Prothonotary may appoint commissioners for taking affidavits for Prince Edward Island.

Terms

- (2) An appointment under subsection (1) may be made for a period and subject to such restrictions, exceptions, territorial limits or other terms as may be specified in the order.

Oath of office

- (3) Before acting as a commissioner a person appointed under subsection (1) shall be sworn before the Prothonotary to the due and faithful discharge of his duty as a commissioner.

Powers

- (4) Subject to subsection (2), a commissioner is empowered to administer, take and receive affidavits in or concerning any action, cause or matter in a court.

Ex officio commissioners

- (5) The following are commissioners by virtue of their office:
- (a) judges of the Court of Appeal or the Supreme Court;
 - (b) provincial court judges;
 - (c) the Prothonotary, the deputy registrars of the Court of Appeal and the Supreme Court;
 - (d) the Registrar of Deeds;
 - (e) members in good standing of the Law Society of Prince Edward Island;
 - (f) members of the Legislative Assembly. *R.S.P.E.I. 1974, Cap. A-2, s.2; 1983, c.2, s.1; 1988, c.8, s.1; 2008, c.20, s.72(3).*

3. Affidavits sworn before a commissioner, use in court

- (1) Any affidavit to be used in any court in this province or any affidavit which is made under the provisions of any statute of this province for use in the province may be sworn in any county of the province before a commissioner in that county for taking affidavits in the Supreme Court.

Proof other than by affidavit

- (2) Any oath, affirmation or declaration, in proof of any matter whereof proof is required by any statute of the province, otherwise than by affidavit, may be sworn, affirmed or declared before any commissioner or before a notary public in and for Prince Edward Island. *R.S.P.E.I. 1974, Cap. A-2, s.3.*

4. Affidavits sworn out of the province for use in the province

- (1) Oaths, affidavits, affirmations or statutory declarations administered, sworn, affirmed or made in any other province or territory of Canada or any country other than Canada before
- (a) a judge, a magistrate or an officer of a court of justice or a commissioner authorized to administer oaths in the courts of justice of the province, territory or country;
 - (b) a commissioner appointed under section 6;
 - (c) an officer of any of Her Majesty's diplomatic or consular services exercising his functions in any country other than Canada, including an ambassador, envoy, minister, chargé d'affaires, counsellor, secretary, attaché, consul general, consul, vice consul, proconsul, consular agent, acting consul general, acting consul, acting vice consul and acting consular agent;
 - (d) an officer of the Canadian diplomatic and consular service exercising his functions in any country other than Canada, including, in addition to the diplomatic and consular officers mentioned in clause (c), a high commissioner, permanent delegate, acting high commissioner, acting permanent delegate, counsellor and secretary;
 - (e) a Canadian government trade commissioner and assistant Canadian government trade commissioner while exercising his functions in any country other than Canada;
 - (f) a notary public acting within the territorial limits of his authority, and certified under his hand and official seal; or
 - (g) a commissioner authorized by the laws of the province to take affidavits,

are as valid and effectual, and are of the same force and effect, to all intents and for all purposes as if the oath, affidavit, affirmation or statutory declaration had been administered, sworn, affirmed or made in the province before a commissioner for taking affidavits or other competent authority of the same nature.

Affidavits taken before an officer in the Canadian Forces

- (2) Every person holding a commission as an officer in the Canadian Forces and being on full-time service whether in Canada or outside Canada, shall be empowered to administer oaths and to take and receive affidavits, declarations and affirmations within or outside the province for use within the province, and the provisions of section 5 shall not apply thereto. *R.S.P.E.I. 1974, Cap. A-2, s.4; 1985, c.4, s.1; 1987, c.1, s.1.*

5. Attestation of signature of person taking affidavit

If the affidavit, affirmation or acknowledgment is sworn or made outside the province before a person not having an official seal, the signature of such person shall be attested by some other person by this Act authorized to take affidavits, affirmations and acknowledgments, who has an official seal, and under his hand and seal. *R.S.P.E.I. 1974, Cap. A-2, s.5.*

6. Commissioners appointed from outside province

The Lieutenant Governor in Council may by commission, appoint commissioners outside this province who may be authorized by the commission to take affidavits, affirmations or acknowledgments for use within the province. *R.S.P.E.I. 1974, Cap. A-2, s.6.*

7. Certificate that oath administered filed with Registrar of Deeds

Before any commissioner appointed under section 6 acts under his commission, he shall be sworn to the due and faithful discharge of his duty as a commissioner and he shall not act under the commission until the commission, with a certificate thereon endorsed, under the hand of the person administering the oath, certifying that the oath was duly administered to the commissioner, has been registered in the office of the Registrar of Deeds for Queens and Kings Counties and on the registration the Registrar of Deeds for Queens and Kings Counties shall forthwith transmit the name and address of the commissioner to the Registrar of Deeds for Prince County. *R.S.P.E.I. 1974, Cap. A-2, s.7.*

8. Commission, registration of

The oath may be administered by any of the persons authorized to take affidavits by section 4, and certified in the same manner, and the commission with the endorsements thereon shall be registered as aforesaid without charge and without proof of the signature or seal of the person administering the oath. *R.S.P.E.I. 1974, Cap. A-2, s.8.*

9. Forms to be used

The Forms 3 and 4 in the Schedule to the *Registry Act* R.S.P.E.I. 1988 Cap. R-10 shall be used, where applicable, under this Act. *R.S.P.E.I. 1974, Cap. A-2, s.10.*

10. Informality in affidavit, effect of

No informality in the heading or other formal requisites to any affidavit, declaration or affirmation made or taken before any person authorized to take affidavits outside the province, shall be an objection to its reception in evidence, except upon a ruling of the court or a judge. *R.S.P.E.I. 1974, Cap. A-2, s.11.*

11. Affidavit, sufficient proof of

- (1) Any affidavit or acknowledgment sworn or made outside the province before any of the persons thereunto authorized by this Act, shall be sufficient proof of any document for use anywhere whatsoever within the province, including the purposes of the *Registry Act*.

Death, proof in case of

- (2) Where, for the purposes of registration or filing, the execution of any document is required to be proved by affidavit, and every person whose affidavit would otherwise be sufficient proof thereof is dead, or absent from the province with address unknown, or mentally incompetent or otherwise incapable of furnishing such proof, or being outside the province declines so to do, proof by affidavit of the signature of any such person shall be sufficient evidence of the execution thereof for the purposes aforesaid.

Application of section

- (3) This section shall not affect the rights and interests of parties to a document whose signatures thereto are not proved. *R.S.P.E.I. 1974, Cap. A-2, s.12.*

12. Act to prevail

The provisions of this Act prevail notwithstanding the provisions of any statute of this province which may be inconsistent herewith. *R.S.P.E.I. 1974, Cap. A-2, s.13.*

13. Evidence Act, section 13

Section 13 of the *Evidence Act* R.S.P.E.I. 1988, Cap. E-11 applies to this Act where necessary. *R.S.P.E.I. 1974, Cap. A-2, s.14.*

14. Seal required outside province, where proof of unnecessary

- (1) Any document that purports to have affixed, impressed or subscribed thereon or thereto, the signature of any person authorized by this Act to administer an oath, together with his seal of office, or of the office to which he is attached, in testimony of any oath, affidavit, affirmation or declaration being administered, or taken before him outside the province, shall be admitted in evidence, without proof of the seal or of his signature or of his official character.

Application of section

- (2) This section applies, with the necessary changes, to the seal and signature of any officer who authenticates another officer under the provisions of section 5. *R.S.P.E.I. 1974, Cap. A-2, s.15.*

15. Administering oath, procedure

Whenever any person is required to take, or is desirous of taking an oath in any court, or of making an affidavit for use in any court, or in any proceeding or matter when an oath is required to be taken or administered, it shall not be necessary to kiss the Book containing the Gospels, it shall be sufficient for the party to place his hand upon the Bible, declaring his intention to tell the truth, and such declaration shall have the same force and effect as if such person had kissed the said Book. *R.S.P.E.I. 1974, Cap.A-2,s.16; 1975,c.39,s.1.*

