



Province of Alberta

# **NOTARIES AND COMMISSIONERS ACT**

Statutes of Alberta, 2013  
Chapter N-5.5

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### Note

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### Regulations

The following is a list of the regulations made under the *Notaries and Commissioners Act* that are filed as Alberta Regulations under the Regulations Act.

<b>Alta. Reg.</b>	<i>Amendments</i>
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# NOTARIES AND COMMISSIONERS ACT

## Chapter N-5.5

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HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Definitions**

**1** In this Act,

- (a) “judge” means a judge of the Provincial Court, the Court of Queen’s Bench or the Court of Appeal and includes a master in chambers appointed under the *Court of Queen’s Bench Act*;
- (b) “lawyer” means a member of the Law Society of Alberta, other than an honorary member, who has not been suspended or disbarred;
- (c) “Metis settlement councillor” means a councillor as defined in the *Metis Settlements Act*;
- (d) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (e) “municipal councillor” means a councillor within the meaning of the *Municipal Government Act*;
- (f) “political representative” means
  - (i) a member of the Legislative Assembly of Alberta,
  - (ii) a member from Alberta of the House of Commons of Canada, or

- (iii) a member of the Senate of Canada who at the time of appointment as a senator is a resident of Alberta;
- (g) “student-at-law” means a person who is registered as a student-at-law under the *Legal Profession Act* whose registration has not been suspended or terminated.

## **Part 1**

### **Notaries Public**

#### **Appointment of notaries public**

**2(1)** Persons may be appointed as notaries public in accordance with this Part.

**(2)** An appointment under subsection (1) is an appointment at pleasure for a term provided for in the regulations.

#### **Notaries public by virtue of office or status**

**3(1)** The following persons are notaries public by virtue of their office or status:

- (a) a judge;
- (b) a lawyer and a student-at-law;
- (c) a political representative.

**(2)** A person who is a notary public pursuant to subsection (1) ceases to be a notary public when the person ceases to hold the office or to have the status referred to in subsection (1).

#### **Powers of a notary public**

**4(1)** Every notary public may, subject to the Regulations,

- (a) administer oaths or take affidavits, affirmations or declarations and attest the oaths, affidavits, affirmations or declarations in accordance with section 5,
- (b) certify and attest in accordance with section 5 a true copy of a document, and
- (c) witness or certify and attest in accordance with section 5 the execution of a document.

**(2)** In addition to the powers set out in subsection (1), a notary public who is a judge or a lawyer may witness or certify and attest in accordance with section 5 deeds, contracts and commercial instruments, including, subject to any other applicable law, a deed,

contract or commercial instrument issued or prepared by the judge or lawyer or in respect of which the judge or lawyer has otherwise provided legal advice.

(3) A document in respect of which a notary public has exercised a power referred to in subsection (1) or (2) and that is attested in accordance with section 5 may be used and recognized in Alberta, elsewhere in Canada and internationally.

#### **Seal, name and expiry date**

5(1) Before exercising the powers of a notary public, the notary public must obtain a seal on which appear the notary public's name and the words "Notary Public" and "Province of Alberta".

(2) A notary public shall place his or her seal to each document that the notary public attests in that capacity.

(3) A notary public shall, on each document attested by the notary public's seal and signature, legibly print, or stamp in legible printing, next to the notary public's signature,

- (a) the notary public's name,
- (b) if the notary public was appointed under section 2, the date on which the notary public's appointment expires, and
- (c) if the notary public is acting by virtue of his or her office or status, the office or status referred to in section 3 that applies to the notary public.

(4) A notary public who contravenes subsection (2) or (3) is guilty of an offence and liable to a fine of not more than \$1000.

#### **Duties and conduct of a notary public**

6(1) The Minister may, by regulation, establish a code of conduct for notaries public.

(2) The Minister may issue directives governing the duties and conduct of notaries public.

(3) The code of conduct and directives referred to in this section must be made available to every notary public in a manner determined by the Minister.

#### **Prohibitions**

7(1) No person shall, unless authorized to do so under this Act or by another law in force in Alberta,

- (a) administer an oath or take an affidavit, affirmation or declaration and attest the oath, affidavit, affirmation or declaration as a notary public,
- (b) certify and attest as a notary public a true copy of a document,
- (c) witness or certify and attest as a notary public the execution of a document,
- (d) issue or prepare a deed, contract or commercial instrument, or otherwise provide legal advice, or
- (e) hold himself or herself out as or represent himself or herself as a notary public, or exercise any powers or rights customarily associated with the office of a notary public.

(2) A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$5000.

#### **Applications**

**8** A person may, in accordance with the regulations, apply for an appointment as a notary public if the person

- (a) is 18 years of age or older,
- (b) is a Canadian citizen or has the status of a permanent resident of Canada, and
- (c) resides in Alberta or in the part of the City of Lloydminster that is located in Saskatchewan.

#### **Proof of appointment**

**9(1)** The Minister may issue a document that the Minister considers appropriate to indicate

- (a) that a person is a notary public, and
- (b) the date when the appointment as a notary public expires.

(2) A document issued pursuant to subsection (1) is admissible in any court as evidence of the appointment without further proof of the appointment or proof of the signature of any person who signed or issued the document.

**Minister may issue written directions**

**10(1)** If it appears that a notary public is not complying with this Act, the regulations, or the code of conduct or a directive referred to in section 6, the Minister may issue written directions to the notary public concerning the notary public's failure to comply.

**(2)** The Minister may provide the written directions and communicate information regarding the written directions that the Minister considers to be appropriate

- (a) if the notary public is a judge, to the Judicial Council established under the *Judicature Act*,
- (b) if the notary public is a lawyer or student-at-law, to The Law Society of Alberta,
- (c) if the notary public exercises his or her powers as a notary public within the scope of his or her employment or in an official capacity, to an employer, supervisor or other person as the Minister considers to be appropriate, and
- (d) to any other person as the Minister considers to be necessary for the administration of this Act.

**Minister may refuse, suspend or revoke**

**11(1)** The Minister may refuse an application for appointment as a notary public or suspend or revoke the appointment of a notary public if

- (a) the applicant or notary public fails to comply with this Act, the regulations, the code of conduct or a directive referred to in section 6 or a written direction referred to in section 10,
- (b) the applicant or notary public is convicted of an offence under this Act,
- (c) the applicant or notary public is charged with misrepresentation, fraud, breach of trust or an offence under the *Criminal Code* (Canada),
- (d) the applicant or notary public made an untrue statement in his or her application for appointment, or
- (e) the Minister considers it appropriate to do so.

**(2)** If the Minister suspends or revokes an appointment under this section, the Minister may

- (a) provide, publish or issue a notice of the suspension or revocation in the manner provided for by regulation or that the Minister considers to be appropriate, and
  - (b) communicate, in the manner that the Minister considers to be appropriate, the information regarding the suspension or revocation that the Minister considers to be necessary for the administration of this Act.
- (3) A decision by the Minister under this section is final.

#### **Advisory Committee**

**12** The Minister may establish a Notaries Public Advisory Committee under section 7 of the *Government Organization Act* for the purposes of

- (a) providing advice to the Minister respecting the appointment of notaries public and the suspension and revocation of appointments of notaries public or the issuance of a written direction to a notary public,
- (b) monitoring, and advising the Minister concerning, the contents or application of this Part, the regulations, the code of conduct and directives referred to in section 6 or a written direction referred to in section 10, and
- (c) exercising the additional powers and performing the additional duties and functions conferred by the Minister in accordance with the *Government Organization Act* or by regulation.

#### **Regulations**

**13** The Minister may make regulations

- (a) respecting the term of appointments for the purposes of section 2(2);
- (b) limiting or clarifying the powers of a notary public referred to in section 4(1) and their exercise by a notary public who is not a lawyer or a judge;
- (c) establishing the code of conduct referred to in section 6;
- (d) respecting the directives referred to in section 6;
- (e) respecting the form and manner in which an application under section 8 must be made, including, without limitation, regulations

- (i) requiring the payment of fees in respect of an application and the manner in which the fees must be paid,
- (ii) respecting the requirements that must be satisfied or the information or evidence that must be provided by a person who applies for appointment as a notary public, including but not limited to the requirement
  - (A) to provide references or other evidence that the applicant is a person of good character, and
  - (B) to submit the results of a criminal record check in a form satisfactory to the Minister;
- (f) respecting the collection, use and disclosure of information, including personal information, for the purposes of
  - (i) confirming that a notary public has an office or status referred to in section 3(1),
  - (ii) authenticating a notary public's signature,
  - (iii) considering and approving or refusing applications, issuing written directions or suspending or revoking appointments under this Part and providing, publishing or issuing notices of suspensions or revocations, and
  - (iv) any other purpose necessary for the administration of this Act;
- (g) respecting written directions referred to in section 10 or decisions under section 11 to refuse, suspend or revoke appointments, including regulations respecting any notices and documents that may or must be provided, published or issued;
- (h) respecting the exercise of additional powers or the performance of additional duties and functions by the Notaries Public Advisory Committee under section 12;
- (i) respecting any other matter or thing that the Minister considers advisable for the administration of this Part.

**Transitional**

**14** Every notary public appointed pursuant to section 2 of the *Notaries Public Act*, RSA 2000 cN-6, or under any predecessor of that Act, continues as a notary public for Alberta until the expiry of his or her appointment pursuant to that Act, and may be dealt with

pursuant to this Part as if he or she had been appointed pursuant to this Part.

## **Part 2 Commissioners for Oaths**

### **Appointment of commissioners for oaths**

**15(1)** Persons may be appointed as commissioners for oaths in accordance with this Part to administer oaths and take and receive affidavits, affirmations and declarations in and for Alberta.

**(2)** An appointment under subsection (1) is an appointment at pleasure for a term provided for in the regulations.

### **Commissioners for oaths by virtue of office or status**

**16(1)** The following persons are commissioners for oaths, empowered by virtue of their office or status to administer oaths and take and receive affidavits, affirmations and declarations in Alberta for use in Alberta:

- (a) a judge;
- (b) a lawyer and a student-at-law;
- (c) a political representative;
- (d) a Metis settlement councillor and a municipal councillor;
- (e) a trustee of a board of a school division within the meaning of section 125(4)(b) of the *Education Act*;
- (f) a person who holds a commission as an officer in the Canadian Forces and who is on full-time service, whether in Canada or outside Canada;
- (g) a police officer.

**(2)** Every notary public is, by virtue of the notary public's office, a commissioner for oaths.

**(3)** Despite subsection (1), an oath, affidavit, declaration or affirmation may be administered, taken, sworn, affirmed or made outside Alberta for use in Alberta by

- (a) a political representative,
- (b) an officer in the Canadian Forces referred to in subsection (1)(f), or

(c) a commissioner for oaths by virtue of an office or status referred to in subsection (1) who actually resides in, or who provides his or her services as a commissioner for oaths in, the part of the City of Lloydminster that is located in Saskatchewan.

(4) A person who is a commissioner for oaths pursuant to subsection (1) ceases to be a commissioner for oaths when the person ceases to hold the office or to have the status referred to in subsection (1).

(5) The Minister may request all or any of the following information that is shown on a record in the custody or control of a public body as defined in the *Freedom of Information and Protection of Privacy Act* as the Minister considers to be necessary for the purpose of locating a person who is, or has represented himself or herself as, a commissioner for oaths pursuant to subsection (1) and authenticating a signature of or otherwise administering this Act in respect of that person:

- (a) the name, residential address, residential telephone number, cellular telephone number and e-mail address of the person;
- (b) the name, address, telephone number and e-mail address of the person's current or past employer;
- (c) whether the person has an office or status referred to in subsection (1).

(6) On receipt of a request under subsection (5) the public body shall provide the requested information.

2012 cE-0.3 s280.1;2013 cN-5.5 s16

#### **Name and expiry date**

**17(1)** A commissioner for oaths shall, on each document that the commissioner for oaths signs in that capacity, legibly print, or stamp in legible printing, next to the commissioner for oaths' signature,

- (a) the commissioner for oaths' name,
- (b) the words "A Commissioner for Oaths in and for Alberta",
- (c) if appointed under section 15, the date on which the commissioner for oaths' appointment expires, and
- (d) if the commissioner for oaths is acting by virtue of an office or status referred to in section 16(1) or (2), the office or status that applies to the commissioner for oaths.

(2) A commissioner for oaths who fails to comply with this section is guilty of an offence and liable to a fine of not more than \$1000.

#### **Duties and conduct of a commissioner**

**18(1)** The Minister may, by regulation, establish a code of conduct for commissioners for oaths.

(2) The Minister may issue directives governing the duties and conduct of commissioners for oaths.

(3) The code of conduct and directives referred to in this section must be made available to every commissioner for oaths in a manner determined by the Minister.

#### **Prohibitions**

**19(1)** No person shall, unless authorized to do so under this Part or by another law in force in Alberta,

- (a) administer an oath,
- (b) take or receive an affidavit, affirmation or declaration, or
- (c) hold himself or herself out as or represent himself or herself as a commissioner for oaths.

(2) Subsection (1) does not apply to the administering of an oath or the taking or receiving of an affidavit, declaration or affirmation in Alberta for use only in another jurisdiction by a person who is authorized to do so by the laws of that other jurisdiction.

(3) A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$5000.

#### **Applications**

**20** A person may, in accordance with the regulations, apply for an appointment as a commissioner for oaths if the person

- (a) is 18 years of age or older, and
- (b) repealed 2016 c23 s4,
- (c) resides in Alberta or in the part of the City of Lloydminster that is located in Saskatchewan.

2013 cN-5.5 s20;2016 c23 s4

**Proof of appointment**

**21(1)** The Minister may issue a document that the Minister considers appropriate to indicate

- (a) that a person is a commissioner for oaths, and
- (b) the date when the appointment as a commissioner for oaths expires.

**(2)** A document issued pursuant to subsection (1) is admissible in any court as evidence of the appointment without further proof of the appointment or proof of the signature of any person who signed or issued the document.

**Minister may issue written directions**

**22(1)** If it appears that a commissioner for oaths is not complying with this Act, the regulations, or the code of conduct or a directive referred to in section 18, the Minister may issue written directions to the commissioner for oaths concerning the commissioner for oaths' failure to comply.

**(2)** The Minister may provide the written directions and communicate information regarding the written directions that the Minister considers to be appropriate

- (a) if the commissioner for oaths is a judge, to the Judicial Council established under the *Judicature Act*,
- (b) if the commissioner for oaths is a lawyer or student-at-law, to The Law Society of Alberta,
- (c) if the commissioner for oaths administers oaths or takes or receives affidavits, affirmations and declarations within the scope of his or her employment or in an official capacity, to an employer, supervisor or other person as the Minister considers to be appropriate, and
- (d) to any other person as the Minister considers to be necessary for the administration of this Act.

**Minister may refuse, suspend or revoke**

**23(1)** The Minister may refuse an application for appointment or suspend or revoke the appointment of a commissioner for oaths if

- (a) the applicant or commissioner for oaths fails to comply with this Act, the regulations, the code of conduct or a directive referred to in section 18 or a written direction referred to in section 22,

- (b) the applicant or commissioner for oaths is convicted of an offence under this Act,
  - (c) the applicant or commissioner for oaths is charged with misrepresentation, fraud, breach of trust or an offence under the *Criminal Code* (Canada),
  - (d) the applicant or commissioner for oaths made an untrue statement in his or her application for appointment, or
  - (e) the Minister considers it appropriate to do so.
- (2) If the Minister suspends or revokes an appointment under this section, the Minister may
- (a) provide, publish or issue a notice of the suspension or revocation in the manner provided for by regulation or that the Minister considers to be appropriate, and
  - (b) communicate, in the manner that the Minister considers to be appropriate, the information regarding the suspension or revocation that the Minister considers to be necessary for the administration of this Act.
- (3) A decision made by the Minister under this section is final.

### Regulations

**24** The Minister may make regulations

- (a) respecting the term of appointments for the purposes of section 15(2);
- (b) establishing the code of conduct referred to in section 18;
- (c) respecting the directives referred to in section 18;
- (d) respecting the form and manner in which an application under section 20 must be made, including, without limitation, regulations
  - (i) requiring the payment of fees in respect of an application and the manner in which the fees must be paid, and
  - (ii) respecting the requirements that must be satisfied or the information that must be provided by a person who applies for appointment as a commissioner for oaths;
- (e) respecting the collection, use and disclosure of information, including personal information, for the purposes of

- (i) confirming that a commissioner for oaths has an office or status referred to in section 16(1) or (2),
  - (ii) authenticating a commissioner for oaths' signature,
  - (iii) considering and approving applications, issuing written directions or suspending or revoking appointments under this Part and providing, publishing or issuing notices of suspensions or revocations, and
  - (iv) any other purpose necessary for the administration of this Act;
- (f) respecting written directions referred to in section 22 or a decision under section 23 to refuse, suspend or revoke an appointment, including regulations respecting any notices and documents that may or must be provided, published or issued;
- (g) respecting any other matter or thing that the Minister considers advisable for the administration of this Part.

#### **Transitional**

**25** Every commissioner for oaths appointed pursuant to section 6 of the *Commissioners for Oaths Act*, RSA 2000 cC-20, or under any predecessor of that Act, continues as a commissioner for oaths until the expiry of his or her appointment pursuant to that Act and may be dealt with pursuant to this Part as if he or she had been appointed pursuant to this Part.

### **Part 3 General Matters**

#### **Investigation if required**

**26(1)** The Minister may, on the Minister's own initiative, appoint a qualified person to conduct any investigation that the Minister considers to be necessary for the protection of the public interest, regarding any matter that may be in contravention of this Act, the regulations, an applicable code of conduct, a directive issued under section 6 or 18, or a written direction issued under section 10 or 22.

**(2)** A person appointed to conduct an investigation under subsection (1), in the course of an investigation, may exercise the powers and shall perform the duties provided for by regulation.

#### **Protection from liability**

**27(1)** No action lies against the Minister, a designate of the Minister or a person appointed to conduct an investigation under

section 26 for anything done or omitted to be done in good faith and in purporting to act under this Act or the regulations.

(2) No action for defamation may be founded on a communication if the communication is requested, made, issued or published in good faith and in purporting to act under this Act or the regulations by the Minister, a designate of the Minister or a person appointed to conduct an investigation under section 26.

#### **Regulations**

**28** The Minister may make regulations

- (a) respecting appointments under section 26;
- (b) respecting the powers and duties of a person appointed to conduct an investigation.

### **Part 4 Consequential Amendments, Repeals and Coming into Force**

**29 to 32** *(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.)*

#### **Repeals**

**33(1)** *The Commissioners for Oaths Act, RSA 2000 cC-20, is repealed.*

**(2)** *The Notaries Public Act, RSA 2000 cN-6, is repealed.*

#### **Coming into force**

**34** This Act comes into force on Proclamation.

*(NOTE: Proclaimed in force April 30, 2015.)*







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