

Affidavit

Affidavit Basics

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Affidavit Basics

An affidavit is a form of evidence. It is a written statement of facts. The person making the affidavit promises that the facts are true by taking an “oath” or “solemn affirmation”. The oath or solemn affirmation is done in front of a “commissioner of affidavits” (usually a lawyer, notary public, or registry officer). Affidavits often have “exhibits” attached. Exhibits are documents that relate to the subject of the affidavit. In the BC Supreme Court, there is a form you must fill out for your affidavit. It is called **Form109**. Affidavits are filed in the Court registry, and copies are given to other parties to a lawsuit.



Key Terms

The person who makes the statement in the affidavit is called the “**affiant**” or the “**deponent**”.

The absolute most important thing about making an affidavit is to be truthful. It is illegal to lie in an affidavit. It can be a form of perjury. Further, if you rely on a false or misleading affidavit, and this is discovered, this could seriously hurt your chances of success in court.



Form109 Affidavit



DIY Tools

See [**Resource C: Sample Affidavit.**](#)

Swear or Affirm?

You will need to either “swear” or “affirm” your affidavit. To “swear” an affidavit means to take an oath on a religious text (for example the Bible, the Koran). To “affirm” an affidavit means you make a solemn promise that what you say is true. There is no difference in how the Court will look at your evidence if you choose to swear or affirm. Both are equal.

It does not matter whether you prefer to swear or affirm. However, you must choose one or the other. You cannot do both. If you are using a form that says something like Swear or Affirm, you need to pick one and cross out the other.

Legal Advice

Creating an affidavit can be tricky. Doing a bad job may harm your chance of success. It is therefore a good idea to get legal help with your affidavit if you can. You may get help with your affidavit even if you are not going to use a lawyer for the rest of your case.

See [**Get Help.**](#)

Preparing an Affidavit

An affidavit has seven parts. Most parts of the affidavit are technical. We will look at each of them in turn.

1. Style of proceeding
2. Deponent’s statement (“deponent” is the person making the affidavit, and is also called the “affiant”)
3. Knowledge statement
4. Body of the affidavit (this is the most important part of the affidavit)
5. Ending of the affidavit

6. Exhibits
7. Backing sheet

1. Style of Proceeding

A style of proceeding (also referred to as a style of cause) appears on the first page of all court documents. It states who is suing whom and also gives the file number and court registry name. The style of proceeding remains unchanged throughout the life of the court case unless the judge orders otherwise. The style of proceeding enables the court registry staff to put the document in the right court file.

For example, a style of proceeding might look like:

Start your affidavit with the style of proceeding. You can copy this off of other documents filed in the lawsuit if any exist. For affidavits you must add the following to the style of proceeding.

In the top right hand corner, above the court file, you must write:

- The number of the affidavit (you may have made more than one)
- The name of the person making the statement (your name if it is your affidavit)
- The date on which the affidavit was made

Example: This is the 3rd affidavit of Mary Smith and was made on February 11, 2020.

2. Deponent's Statement



Key Terms

A **deponent** is the person who is making the affidavit.

The deponent has to identify themselves as the person who is making the statements in the affidavit. This deponent's statement has to be put at the beginning of each affidavit. It identifies who you are and what your occupation is.

For example:

- If you are retired, you would put in “retired” or “old age pensioner”
- If you are unemployed, you can simply write “unemployed”

As noted above, the deponent must choose whether you are going to swear or affirm the affidavit. If the deponent will swear, include that the deponent will “MAKE OATH AND SAY”. If the deponent will affirm, include that the deponent will “SOLEMNLY AFFIRM THAT”.

For example (Sworn Affidavit):

- I, MARY SMITH, of 132 Main Street, in the City of Vancouver, Province of British Columbia, electrician, MAKE OATH AND SAY THAT:

For example ((Solemnly Affirmed Affidavit):

- I, MARY SMITH, of 132 Main Street, in the City of Vancouver, Province of British Columbia, electrician, SOLEMNLY AFFIRM THAT:

3. Knowledge Statement

A knowledge statement will be the first paragraph of your affidavit. The knowledge statement explains to the Court who you are and how you know what is set out in the rest of the affidavit.

It looks like:

1. I am the [for example plaintiff, defendant, wife of the plaintiff, etc.] in the matter and as such have personal knowledge of the matters herein referred to:

Or

2. I am the [for example plaintiff, defendant, wife of the plaintiff, etc.] in the matter and as such have personal knowledge of the matters herein referred to, except where indicated to be on information and belief, and where so stated I verily believe them to be true

Which of the two knowledge statements you should use depends on what is in your affidavit.

If your affidavit contains just things you (or the deponent) know to be true from experience, use the first knowledge statement. That is, use the statement “...have personal knowledge of the matters herein referred to”.

If your affidavit contains things that you (or the deponent) were told to be true by someone else, use the second knowledge statement. That is, use the statement “... have personal knowledge of the matters herein referred to, except where indicated to be on information and belief, and where so stated I verily believe them to be true.”

If you can avoid using information you heard from someone else, you should do that. This kind of evidence is called “**hearsay**”. Hearsay evidence is less reliable, for the simple reason that the Court cannot be certain that the person you heard from was telling the truth. Sometimes you are not allowed to use hearsay. For example, if the order you are seeking is “final”, like a summary judgment order, you cannot use hearsay.

This is a tricky part of affidavits, and obtaining legal advice on whether or not you can use hearsay may be valuable. See [Get Help](#).

4. Body of the Affidavit

This is the most important part. Here is where the actual evidence is set out for the Court. Most simply, your job is to tell the story. Stick to things of which you personally know to be true as much as possible. If it is necessary to include something someone else told you, make clear who told you the information, and say whether you believe it to be true.

You can write for example:

I was advised by my husband, Steve Smith, that the letter was delivered on February 11, 2020, and I believe that to be true.

Write affidavits thinking of making them as helpful as possible for the judge who is going to read them. The judge may not know much about your case. However, they are very intelligent and capable people. They want you to get to the point and stick to the facts. Above all, they want to know they can trust you. Do not lie. Do not exaggerate. It will only hurt your case.

5. Ending of the Affidavit

You must swear your affidavit in front of a lawyer or a commissioner for taking affidavits. A court official such as a registry clerk is a commissioner for taking affidavits. (Registry staff will perform this service for a fee of around \$40.) You both sign the affidavit in each other's presence at the time you swear the affidavit (promise you are telling the truth). It is a serious offence to make a false or misleading affidavit.

The lawyer or court official must also print his/her name below his/her signature. Check to see if a lawyer or court official has printed the name. Ink stamps bearing the name of the lawyer or court official are acceptable.

6. Exhibits

You may attach letters or other important documents you want the judge to consider. These are exhibits to the affidavit. Here is an example of what you can say in the body of the affidavit:



DYI Tools

[Sample Affidavit for Fee Waiver](#), BC Judicial review Help Guide. Note: this sample may contain information not relevant to your situation.

7. Backing Sheet

A backing sheet is part of an affidavit. This document is attached to the back of all court documents with the type facing out. A backing sheet helps the court staff to file the document in the correct court file. A backing sheet is not a necessity. Registry staff will let you file your affidavit without a backing sheet. However, a backing sheet is considered more professional.

The backing sheet consists of three parts on one page:

1. Style of proceedings (see above)
2. Description of the document set between two lines. For an affidavit it would say "Affidavit of John Smith"

3. In the third part you put in your name, address and phone number. Also put in your fax number and e-mail address, if you have these

Writing Tips

One way to write an effective affidavit is to follow the “S.O.S.” principle. That is, keep your affidavit **S**imple, **O**rganized, and **S**hort.

1. **Simple:** Try to make your affidavit as simple as possible. Use simple words and sentences. A simple affidavit is easier for you to prepare and to present to the Court. Use ordinary language
2. **Organized:** If your affidavit is organized, it is easier for the judge to understand what is going on. Judges like to see facts, not broad general statements. Here are some tips for being organized:
 - In most cases it is best to tell what happened in chronological order (date wise). Do not jump all over the place from one time period to another. Tell your story in a straight line
 - Try as much as possible to give specific dates (e.g. July 13, 2010, or, the middle of July, 2010)
 - When you refer to people it is best to use their names, such as John Smith. Try to avoid using pronouns. It can get confusing
 - Each page and paragraph should be numbered
 - Consider putting headings in the affidavit to make it easier to organize
3. **Short:** Keep your affidavit short. It is more effective. First, decide what is necessary to put in your affidavit. Don't fall into the trap that more means better. Keep paragraphs and sentences short. A paragraph should be no more than 2 or 3 sentences. If your sentences are long, break them into shorter sentences

Avoid Vague or Overbroad Statements

Affidavits should avoid vague statements. The following is an example of a vague statement:

I met the defendant contractor John Smith on several occasions. I walked away from these meetings with the impression that he would not charge me for the extra paint put on the porch.

A better statement to put into the affidavit would be:

I had a meeting with the defendant contractor John Smith on April 3, 2010 at my home in the late afternoon. He specifically stated to me “I will not charge you for the extra paint on the porch.” I relied on this statement that he would not charge me for this extra paint.

Avoid overbroad or absolute statements like “always” or “never”. Absolute statements of frequency are rarely true and can undermine your credibility. For example saying “Joe never came to work on time. He was always late.” Isn’t as credible as “Joe was frequently late for work.” Even better if you can list all the days Joe was late for work or have a record of Joe’s lateness you can attach as an exhibit.

Relying on

You have to indicate the specific person you are relying on for the information and belief. You also have to add a statement to the effect that you believe it to be true. For example, you would probably have to say something like:

On or about August 30, 2009 John Smith (her husband) told me that Mary Smith had not gone to work the day before and I believe this to be true.

Check for Consistency

Check to make sure your affidavit is consistent throughout. Make sure it does not say one thing in one place, and something that contradicts it in another place. Also check the affidavit for consistency with your other documents, including any other affidavits you have made.

Read It Over

Have a friend check your affidavit to make sure there are no typing errors and the language is clear. Then revisit the checklist to make sure everything has been completed.

What Is a Judge Looking for in an Affidavit?

People who are representing themselves often ask: What do judges look for in an affidavit? Judges assess credibility of an affidavit based on the following factors:

- Are there internal inconsistencies in the affidavit?
- Are statements made in the affidavit inconsistent with other statements made in other affidavits or documents outside the affidavit?
- Is the statement inherently unbelievable?
- Is there a statement of conclusion with no details to back up the statement? Remember, judges like to see facts, not broad general statements
- Are there statements in the affidavit that are evasive? In other words, does the person making the affidavit attempt to avoid an issue or statement?
- Does the person use language that one would not expect a normal person to use? Judges prefer people to use their ordinary language
- Is the second-best evidence used instead of the first source? Even if you are allowed to make an affidavit on information and belief, it may be in your interest to get the person who had the original information to swear an affidavit. This is more effective than relying on hearsay (information and belief)
- Is there a lack of precision in the affidavit? Does the person making the affidavit use imprecise dates or imprecise information?
- Are there mistakes that indicate the person making the affidavit has not read it? This would include typing and grammatical errors
- Are important facts left out? If important facts are left out, this may indicate the person making the affidavit is hiding something



DIY Tools

Look at Resource B, **Checklist**. Use this checklist to make sure you have completed all the steps and done everything right.