



The Advocates' Society

La Société des plaideurs

July 22, 2020

Ministry of the Attorney General
Corporate Policy Unit
720 Bay Street, 7th Floor
Toronto, ON M7A 2S9

To whom it may concern,

RE: Proposal to Establish a Regulatory Framework that Enables Virtual Acts of Commissioning

The Advocates' Society, established in 1963, is a not-for-profit association of more than 6,000 members throughout Canada, including approximately 5,000 in Ontario. The mandate of The Advocates' Society includes, among other things, making submissions to governments and others on matters that affect access to justice, the administration of justice, and the practice of law by advocates.

The Society appreciates the opportunity to provide input on the government's development of regulations with respect to virtual notarization and commissioning. As you know, the Society participated in a stakeholder consultation session on these topics held on June 2, 2020. The Society has further reviewed the *Proposal to Establish a Regulatory Framework that Enables Virtual Acts of Commissioning*, posted on July 14, 2020.

We generally support the proposal to permit virtual commissioning in Ontario. However, we are concerned that two sections of the government's proposal may have unintended consequences.

Our first comment relates to the proposal that the regulation “[r]equire that participants can see, hear and communicate with one another in real-time during the transaction”. The Society would like to ensure that accessibility is considered when fleshing out this requirement. Ontarians with disabilities should benefit equally from the opportunity to have their documents commissioned using a virtual process.

Our second comment relates to the proposal that the regulation “[r]equire the commissioner to take reasonable precautions in the execution of his/her duties as a commissioner, such as ensuring that clients are fully informed and understand what they are signing”.

Requiring a commissioner to ensure that clients are “fully informed and understand what they are signing” appears to go beyond what is currently required of commissioners by s. 9 of the *Commissioners for Taking Affidavits Act*, R.S.O. 1990, c. C.17. The language in s. 9 regarding the duty of commissioners will not change once the amendments to the Act passed as part of Bill 190, the *COVID-19 Response and Reforms to Modernize Ontario Act, 2020*, come into force. Once amended, s. 9(3) of the Act will say:

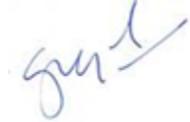
Duty of commissioner, etc.

(3) A commissioner, notary public or other person administering an oath or declaration shall satisfy himself or herself of the genuineness of the signature of the deponent or declarant and shall administer the oath or declaration in the manner required by law before signing the jurat or declaration.

As indicated, a commissioner's role is not to make inquiries on the content of the document or to provide advice to an affiant or declarant. Whether an oath is administered in person or virtually, the affiant, not the commissioner, is responsible for the truthfulness of a statement. Commissioners, including lawyers and non-lawyers, are often called upon to commission documents (such as affidavits) prepared by others, and may not be familiar with the content of the document. Moreover, ensuring affiants are fully informed and understand what they are signing may, in some circumstances, constitute legal advice, which not all commissioners are qualified to give. Furthermore, adding this requirement may actually result in restricting rapid or affordable access to commissioners. It will require commissioners to take more time when commissioning affidavits. Commissioners may need to charge more for their services, and law firms may no longer be willing to provide commissioning services on a low-cost or *pro bono* basis. We think the addition of this requirement is not necessary or advisable.

Thank you for considering our comments. I would be pleased to answer any questions you may have.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Guy J. Pratte".

Guy J. Pratte
President

CC: Amanda Iarusso, Director of Policy and Legal Affairs to the Attorney General of Ontario
Vicki White, Chief Executive Officer, The Advocates' Society