



Ontario

Ministry of
Consumer and
Commercial
Relations

Property
Rights
Division

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TO:
ALL LAND REGISTRARS

AFFIDAVITS SWORN OUTSIDE ONTARIO

THE EVIDENCE ACT - SECTION 46
THE REGISTRY ACT - SECTION 27
THE NOTARIES ACT - SECTION 4

Under Section 46(1) of The Evidence Act, an affidavit sworn outside Ontario before a commissioner or notary public having authority as such in the place in which it is sworn "is as valid and effectual to all intents and purposes as if it had been duly sworn in Ontario before a commissioner for taking affidavits in Ontario". Section 46(2) provides that an affidavit sworn outside Ontario before a notary public for Ontario or before a commissioner for taking affidavits in Ontario has the same effect. However, section 27(2) of The Registry Act provides that an affidavit is not sufficient for the purposes of that Act unless it is admissible in evidence without proof of signature under The Evidence Act. Section 46(3) of The Evidence Act reads, in part:

(3) A document that purports to be signed by a person mentioned in subsection 1 or 2 in testimony of an affidavit having been sworn before him, and on which his office is shown below his signature, and

(a) in the case of a notary public, that purports to have impressed thereon or attached thereto his official seal;

.....

is admissible in evidence without proof of his signature.

There appears to be some uncertainty with respect to the acceptability, under The Registry Act, of an affidavit sworn outside Ontario before a person

having authority as commissioner in the place where the affidavit is sworn or before a commissioner for taking affidavits in Ontario. Particularly, there have been suggestions that section 46(3) is intended to mean that an affidavit is not admissible without proof of signature unless it is sworn before a person mentioned in clause (a), (b) or (c) of that section. However, it is the position of this office that an affidavit sworn outside Ontario before any other person referred to in section 46(1) or (2) complies with section 27(2) if his office is shown below his signature. Accordingly, an affidavit sworn outside Ontario before a commissioner should be accepted, provided his office is properly shown. In this connection, the jurisdiction in which he is empowered to act as a commissioner should be indicated as part of his office; e.g., "A commissioner for taking affidavits in Alberta", or similar wording.

Section 46(3)(a) provides that an affidavit sworn before a notary public outside Ontario is not admissible in evidence without proof of signature unless it purports to have his official seal impressed thereon or attached thereto. This applies only to foreign notaries and should be contrasted with section 4 of The Notaries Act, which refers to affidavits sworn before Ontario notaries:

4(1) A notary public has and may exercise the powers of a commissioner for taking affidavits in Ontario.

(2) Where a notary public is authorized by any Act of the Legislature to administer oaths or to take affidavits or declarations in Ontario, it is not necessary to the validity of any such oath, affidavit or declaration that he affix his seal thereto.

It should be noted that the foregoing comments apply to registrations under The Land Titles Act as well. There is no provision in that Act that creates a problem similar to that raised by section 27 of The Registry Act.



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RB:pc