

Ontario Works Policy Directives

11.4 Statutory Declarations and Affidavits

Legislative Authority

Section 69 of the Act.

Audit Requirements

Documentation is on file to support decisions made.

Application of Policy

A statutory declaration is authorized by the **Canada Evidence Act** or section 5.3 of the **Ontario Evidence Act** and is used to assert the truth of any fact or facts, or of any account rendered in writing.

A person is guilty of an offence if he/she makes a false statutory declaration. The declaration is of the same force and effect as if made under oath and therefore has value as evidence.

In most cases, the Administrator will be dealing with statutory declarations rather than affidavits. Affidavits should be used only as a last resort when regular means of verification cannot be used.

The Administrator and/or person designated as a commissioner by the administrator for taking affidavits or declarations must follow the correct procedures as outlined in the **Commissioner for Taking Affidavits Act**.

A person who does not follow the correct procedures as outlined in the **Commissioner for Taking Affidavits Act** is guilty of an offence.

Before completing a statutory declaration or taking an affidavit, the Administrator must advise the applicant or recipient of their authority as a commissioner for taking affidavits.

Statutory Declaration

Completing the Statutory Declaration

The designated staff may write out the declaration or use a preprinted form with blanks to be filled in, that the applicant or recipient will sign. The declaration contains only information communicated by the applicant or recipient. The designated person acts as the intermediary and writes down the information that

they are told which must not include inferences or assumptions of the Administrator.

Once the declaration is completed, it can be either read to the applicant or recipient, or the applicant or recipient can read it out loud if possible. The applicant or recipient must be asked if they understand the declaration and are satisfied that the contents of the declaration are accurate and complete.

The applicant or recipient must sign the declaration form in front of the designated staff. If the declaration has been signed in the absence of designated staff, the applicant or recipient is required to sign the declaration a second time in the presence of the designated staff.

The designated staff must verify that the signature is authentic and genuinely identifies the applicant or recipient for legal purposes. The applicant or recipient should provide a signature that is generally used to sign forms or letters.

When an Eligibility Review Officer completes a statutory declaration, in all cases they must read the following statement to the applicant or recipient:

"The Criminal Code of Canada, section 380 (1) states that everyone who by deceit, falsehood or other fraudulent means defrauds the public of any property, money or valuable security, is guilty of,

1. an indictable offence and liable to a term of imprisonment not exceeding ten years, where the subject matter of the offence is a testamentary instrument or the value of the subject matter of the offence exceeds five thousand dollars; or
2. an indictable offence and liable to imprisonment for a term not exceeding two years; or
3. an offence punishable on summary conviction, where the value of the subject matter of the offence does not exceed five thousand dollars."

Affidavits

An affidavit is the written equivalent of giving oral evidence under oath by the "deponent", who is the person who makes the affidavit.

If a deponent chooses to swear an oath, the deponent shall be asked: "Do you solemnly swear that this is your true affidavit so help you God?" An affirmation is used where the applicant or recipient, for religious or other reasons, will not swear an oath. In the latter case, the following question shall be used: "Do you solemnly affirm that this is your true affidavit?" It is not necessary that the deponent hold a religious book, or raise their hand to undertake an oath.

The designated staff is not required to be satisfied of the truth of the facts

asserted other than in the administration of the oath. However, the Administrator is required to verify all information pertaining to assistance.

Hearsay evidence is allowed as long as the source of the deponent's information is identified, and the deponent takes an oath that they believe the evidence is true.