

Tips for drafting an affidavit

 familylaw.lss.bc.ca/resources/fact_sheets/tipsForDraftingAffidavits.php

An affidavit is a document that contains facts that you swear under oath or affirm to be true. You can use an affidavit instead of sitting in the witness box to give your evidence to the judge. A good affidavit provides just enough important information to enable the judge to make a quick decision.

Because the judge relies on affidavits to make important decisions, there are strict rules about how they should be written, what they can include, and how they must be sworn or affirmed.

This fact sheet provides some tips about how to prepare a proper and effective affidavit without legal help.

What to say in an affidavit

The affidavit is your evidence. The three most important rules about what you say in an affidavit are:

- Everything you say in your affidavit must be true to the best of your knowledge.
- An affidavit must contain only facts.
- The information in your affidavit must be relevant (related) to your case.

Tell the truth

If the judge believes your affidavit is false or misleading, they won't accept your evidence. It's a serious matter to make a false or misleading affidavit.

Just the facts

Only include facts that you have first-hand knowledge of. That means you can only describe what you saw, heard, did, or said.

If any of your sentences start or could start with "I believe that" or "I think that," don't include them. Opinions are allowed only if they're provided by an expert (for example, a mental health professional or an accountant).

There are some important exceptions to the rule that you must only describe what you saw, heard, did, or said.

- If you're quoting something another party said, write down the name of the person and the date it was said (or your best estimate of that date if you're not sure). You can't quote something that another party heard from someone else.
- If your affidavit is part of a Supreme Court Chambers application for an interim order, you can include information that you don't have first-hand knowledge of. But you must also include information about the source of your knowledge (how you learned what you are writing in your affidavit). Include:
 - who told you
 - when they told you
 - that you believe it to be true

Here's an example:

My son's teacher, Mary Oakes, told me on or about November 23, 2013, that my son did not attend school on

October 28, 29, 30, or 31, and I believe this to be true.

- You can sometimes write down something your child said. The court will often allow what a child said to be put into an affidavit to avoid having to call the child as a witness.

Guidelines for affidavit statements

Here are some examples of right and wrong ways to write affidavit statements.

Avoid opinions and conclusions even if they are based on the facts.

Instead of: He was drinking before he arrived at the house.

Write: When he arrived, he smelled strongly of alcohol and was slurring his words.

OR

Instead of: I could tell she was unhappy about going to her dad's house.

Write: When her dad comes to pick her up she cries and clings to me. OR She told me she didn't want to go to her dad's house.

Avoid descriptions of how you felt or reacted.

Instead of: I was shocked to discover her new boyfriend had stayed overnight.

Write: Her new boyfriend has stayed at the house overnight.

Avoid arguing.

Instead of: Why should I have to be the one to always pick up the children?

Write: I pick up the children every day after school and from their music lessons.

OR

Instead of: It's unfair that he gets to see the kids even though he is behind in his child support payments.

Write: He is three months behind in his child support payments. He sees the children three times during the week and every other weekend.

Avoid legal arguments:

Instead of: Under the child support guidelines, he should be paying me \$500 a month.

Write: His guideline income is \$54,000.

Keep it relevant

The information in your affidavit must be relevant to what you are asking the court to decide on. Although you start your affidavit with a general background section, you don't need to include all the details about your relationship and the arguments you've had.

In a court case, information is considered relevant only if it can be used to prove or disprove an important fact or issue in your case.

To help you figure out:

- what to include in the background section and
- what is relevant to your case,

see the fact sheet [Checklist of information to include in an affidavit or present in court](#).

Some other important tips

Remember that your affidavit is not intended to tell the judge what conclusion to reach. Rather, it must persuade the judge to come to the same conclusion that you did, based on the facts that you put into your affidavit. Here are some tips to help you do that.

1. Use plain language

You don't need to use complicated or legal-sounding language. Write simply and use short sentences.

2. Be brief and to the point

Keep your details concise and directly related to what you are asking the judge to order.

3. Be organized and clear

Number each paragraph and list facts in chronological order (in the order they happened) or by topic. Put one fact or piece of information in each paragraph. Use our fact sheet [Checklist of information to include in an affidavit or present in court](#) to help you organize your information. Headings and subheadings can be helpful.

Check over your affidavit for spelling mistakes or typos. If you have handwritten your affidavit, the judge must be able to read your writing.

Make sure the pages are numbered.

4. Be precise

Think about who, what, when, where, and how. Provide exact dates and dollar amounts wherever possible. If you can't be exact, make your best estimate.

5. Use the word "I"

Write in the first person, using "I" whenever possible, instead of "the claimant," "he/she," or "they." This will help you stick to the rules about facts and relevance.

6. Be balanced

The judge will be more likely to accept your evidence if it is balanced and fair. Avoid melodramatic or inflammatory language. Avoid words like "always," "never," or "all the time." Don't exaggerate or provide only the information that supports your case if you know there is other information the judge needs to make a fair decision. Don't guess about someone's state of mind. Be careful about making accusations about lying or stealing. Instead, describe the facts that led you to the conclusion that lying or stealing have happened.

Format

Each court has its own affidavit format. See our [Court forms page](#) to find links to blank forms.

Provincial Court affidavits

The format of these affidavits is already set out on the form. You just fill in the blanks for these sections:

- Court File Number/FMEP Case Number/Court Location
- Case name
- Name, occupation and current address for service of the person filing this affidavit
- What is the affidavit for?

Then insert your content beside "What are the facts" using numbered paragraphs.

Supreme Court affidavits

Here's what the parts of a Supreme Court affidavit look like.

The top right-hand corner has information to help the court identify your affidavit. (You'll have to keep track of the number of affidavits you fill out in your family law case and number them accordingly. The date will be the date that you get the affidavit sworn or affirmed.)

Fill it in like this:

This is the 2nd affidavit of Jane Doe in
this case and was made on 30/Oct/2013

Court File No.: copy this from your Notice of Family Claim
Court Registry: copy this from your Notice of Family Claim

Style of proceeding

The style of proceeding is the part of your affidavit where you state the court file number, the court registry, the names of the parties, and your roles (claimant and respondent, claimant 1 and claimant 2). Copy this information from the court document that started your family law case, which is usually the Notice of Family Claim (Form F3 or F1).

Deponent's statement

The person who writes the affidavit is called the deponent. The deponent's statement is the part that says:

I, Jane Doe of 123 Oak Street, Victoria, BC, teacher, SWEAR (OR AFFIRM) THAT:

You need to put in your occupation to help identify you.

Knowledge statement

The knowledge statement is where you say that you believe what is in your affidavit is true:

I know or believe the following facts to be true. If my belief about facts is based on information from others, I have named the source of the information, and I believe that information to be true.

Swear the affidavit

To swear or affirm your affidavit, take it to a lawyer, notary public, or commissioner for taking affidavits. Sometimes courthouse staff will swear affidavits. Call your local courthouse to find out. If you're going to a lawyer or notary public, call ahead to make an appointment and to make sure that they can swear or affirm the affidavit for you. Find out how much they charge. See [Swearing an affidavit — Who can do it](#).

When you go to have the affidavit sworn or affirmed, **take government-issued photo identification with you**. The person who swears the documents for you must be sure you are who you say you are. After they identify you, they will ask if you've read the affidavit and if you swear (or affirm) that the contents are true to the best of your knowledge and belief. You answer yes, sign the affidavit, and then the person witnesses your signature.

The lawyer, notary, or commissioner must also print their name below their signature, or use an ink stamp of their name.

If the judge believes your affidavit is false or misleading, they won't accept your evidence. It's a serious matter to make a false or misleading affidavit.

If you have to change the affidavit after it's been sworn, you'll have to make the change in handwriting, initialize each change (both you and the person who swore the affidavit) and get the affidavit re-signed and re-sworn.

Exhibits

If you want the judge to see a document that is not an affidavit — like a bank statement or letter — you must refer to it in your affidavit and then attach the document to your affidavit as an exhibit.

Exhibits can be all sorts of things: an email, a photograph, or a receipt, for example. Here are some examples, along with what you could write in your affidavit to describe them:

- Report cards, letter from tutor: "Lydia is doing well at her new school."
- Airline ticket: "I had to cancel the trip."
- Tax return: "I made \$64K in 2010."

However, a "character reference" (a letter from someone saying you are a good person) is not a proper exhibit. If someone has first-hand knowledge of the facts that the court needs to make a decision in your case, that person must make and swear an affidavit of their own.

When you refer to the exhibit in your affidavit, you have to tell the judge about it. Here's an example:

On October 30th, I received an email from John Doe that said he would not be taking the children over Christmas break as we had agreed. That letter is attached to this affidavit as **Exhibit A**.

Put just the first reference to the exhibit in boldface. When you take the affidavit to the commissioner for taking affidavits to be sworn, you must also take all your exhibits. The commissioner must identify each exhibit referred to in the affidavit. To do this, they sign a certificate that they stamp on the exhibit. The certificate looks like this:

This is Exhibit A referred to in the affidavit of Jane Doe sworn (or affirmed) before me on 30/Oct/2014.

If you have more than one exhibit, mark them A, B, C, etc., in order, and arrange them alphabetically. Number the pages of each exhibit starting from page 1.

Just like affidavits, each exhibit must be short and to the point. The judge can only consider what is relevant. So you wouldn't include a long email chain, for example, since much of what is included in that might not be relevant. Find the most important part and just refer to that.

Tip: See also our [sample affidavit](#) to see what a completed affidavit looks like.

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