



Olga Garces
Acting Director, Program Modernization and Appointments Branch
Ministry of the Attorney General

(Delivered by email to olga.garces@ontario.ca)

July 24, 2025

Dear Ms. Garces:

Thank you for inviting the Federation of Ontario Law Associations (FOLA) to provide feedback regarding the Ministry of the Attorney General's (MAG) two proposals to modernize Ontario's notaries public and commissioners for taking affidavits approval and granting program. FOLA commends MAG's efforts to assess and consider improvements to this program and broaden the scope of those who could be notaries or commissioners by virtue of their office or position, but it must be done in conjunction with prudence and with regard to the context and importance of the role and function commissioners have in the legal process. It is not a simple act of witnessing signatures. Commissioners perform a function of taking evidence in the litigation process, of recording statements of fact as truth, and allow individuals to exert their rights in important legal activities such as, transacting in real estate, applying for loans, drafting wills or powers of attorney, traveling in and out of Canada, and applying for government services. As such, notaries and commissioners must be individuals who have the public's confidence in matters of credibility, integrity, and the taking of evidence, while being accessible, traceable and accountable. Notarizing and commissioning must be taken seriously and improvements are needed to expand the number of notaries and commissioners but also to regulate their role in a prudent way and to train them in the importance of their role and function in society.

FOLA represents Ontario's 46 county and district law associations, and through them, their members, the practising professionals at the front-lines of legal services in communities throughout the province.

Expansion of Commissioners by Virtue of Office

Certain Positions Valid

FOLA supports extending the grant of commissioning of oaths power to those who occupy certain positions or offices, but only to those who can demonstrate that they maintain that role or office and for the duration they occupy that role. ServiceOntario employees, students-at-law/articling students employed by law firms/organizations, Indigenous community

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representatives, and MPP office staff should qualify for this expansion. MAG should carefully consider how these positions are defined so that the powers are not conferred too broadly and so that it can be ascertained who fills these positions/offices at any given time. Similarly, the power to administer oaths or commission instruments should be limited to the subject matter relevant to their direct employment or position. ServiceOntario employees should not be commissioning court forms for private civil suits, for example. Employers of students-at-law or MPP staff should be held accountable to document their employees so that questions as to the validity of the commissioned action can be traced to the proper individual(s).

For clarity, we maintain that the power to commission and administer oaths should continue to be valid for lawyers, paralegals, and notaries public while they are otherwise lawfully holding those positions with their governing body and without shorter term limits.

Police

FOLA recognizes the hard and difficult work our police officers do across the province. Police are officers of the state, however, and not officers of the courts and as such they play a very specific role and function in the enforcement of state power. They are called upon frequently to provide evidence in judicial proceedings (often criminal proceedings) as witnesses or experts and their testimony is tested by cross examination before a trier of fact. In doing so, police evidence is often scrutinized on the basis of credibility and integrity in collecting evidence. Allowing police officers to be commissioners could lead to conflicts of interest, inappropriate instances of commissioning related evidence in the same proceedings or adding to challenges on the suitability of evidence. Affidavits and exhibits commissioned by police, which often include personal and private medical records, could inappropriately become evidence used against the accused person in a criminal proceeding. With the power to commission, police would inherently exert undue influence when presenting affidavits and exhibits to the accused for commissioning. The veracity of each and every accused affidavit commissioned by police would be questioned. This means further cross-examinations of police in trials, further evidence being questioned, further potential for mis-trials and improperly conducted investigations, further delay, and further miscarriages of justice. Police should not be commissioners by virtue of their office.

Immigration Consultants

FOLA recognizes the access to justice immigration consultants provide. Unfortunately, fraud within this sector is increasingly a problem, as demonstrated from “ungovernable” immigration consultants¹, unregistered immigration consultants², and Ontario’s own efforts to address this in the last 5 years³, which this government recognizes amongst immigration consultants. Clearly the oversight, whether from the regulatory body or otherwise, have been inadequate to combat the problem and it may not be resolved by using careful

¹ <https://nationalpost.com/news/canada/former-immigration-consultant-deemed-ungovernable-vexatious-litigant-by-federal-court>

² <https://ici.radio-canada.ca/rci/en/news/2170853/she-came-to-canada-for-university-but-shed-never-been-accepted-the-scam-cost-her-7k>

³ <https://news.ontario.ca/en/release/1005368/ontario-cracking-down-on-immigration-scams>; more accurately, from May 1, 2019 to April 9, 2024.

definition of ‘immigration consultant’. The public must have significant confidence in the credibility and integrity of the commissioner, which appears to be lacking at present.

Term Length

The proposal to extend term lengths for all commissioners to ten years is too long to support for these added commissioners by virtue of their employment. Because commissioned documents may be challenged, it is important that, to the extent it is reasonably possible, the commissioner can be located, traced and contacted for further information. Lawyers who commission documents, for example, can be traced through their address and personal license number through the Law Society of Ontario. A shorter term for employees can ensure a better system to keep track of commissioners if they change their employment or relocate. We recommend a term that would be the earlier of i) five years; and, ii) the termination of the commissioner’s role or position entitling them to be a commissioner of oaths.

Training

FOLA suggests improvements to the program, specifically, formalized training for commissioners.

As officers of the court, lawyers have a deep understanding of the role commissioners have in society and the process by which the act of commissioning an oath should be made. Lawyers are trained in the law and governed by the Law Society of Ontario to assist with this mandate. Lawyers help clients draft affidavits; commission affidavits; use the affidavits as evidence in court proceedings; and cross-examine witness’ affidavits at trials and out-of-court venues. Lawyers are intimately attuned to the use of affidavits by people and institutions as fact-based tools. While FOLA does not expect all commissioners to have this awareness or knowledge intuitively, formalized training for non-lawyers can impress upon the commissioner the important role of credibility, integrity, process, accountability, record-keeping and the use of affidavits as evidence in everything from court proceedings to navigating government and other institutions functions. Commissioning an affidavit has the same impact as giving oral testimony under oath. It is a significant tool to help people exert their rights, and has significant consequences when done improperly. FOLA encourages MAG to implement a training program for non-lawyers, including publication of manuals, videos or similar developmental programming. This would also ensure a proper standard is created and applied to commissioners to which they can be held to account.

We thank MAG for this opportunity to outline our concerns and recommendations on the expansion of the commissioner of oaths program. This is a hallmark of our judicial system and a means to ensure that the processes that keep government moving are kept in check and respond to needs in society; however, such changes should not be made in haste and should be enacted with thought, purpose and safeguards to prevent long-standing or costly issues to those systems and individuals operating and living within them.

We remain available to discuss this with you should you require.

Sincerely,

Allen Wynperle

Allen Wynperle, Chair

