

## Virtual Commissioning in the Era of COVID-19

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The spread of COVID-19 is affecting people in many ways. Peoples' health and wellbeing should be the foremost consideration during these times.

Another issue is the manner in which people work. Most of us in the legal profession are working from home. At our firm, it has been an easy transition to work from home since everyone at the firm can connect to our computer system remotely.

However, what happens if an affidavit needs to be commissioned? Can social distancing be maintained? According to the Law Society of Ontario, affidavits may currently be commissioned by videoconference.

The commissioning of affidavits is governed by the [Commissioners for Taking Affidavits Act](#). Section 9 of this act indicates as follows:

Every oath and declaration shall be taken by the deponent in the presence of the commissioner, notary public, justice of the peace or other officer or person administering the oath or declaration who 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.

Therefore, an affidavit is required to be commissioned in the “presence” of a lawyer or other commissioner for taking affidavits. The act does not specify whether “presence” means “physical presence”.

The commissioning of affidavits is not regulated by the Law Society. However, the Law Society states that the best practice for commissioning documents is for the lawyer or paralegal to be in the physical presence of the deponent.

That being said, the Law Society has advised that, **due to COVID-19 and until further notice, it will interpret the “presence” requirement as permitting documents to be commissioned via video conference.** It must be noted that this is not binding on the court.

The Law Society’s website mentions two possible ways to accomplish virtual commissioning:

An example of virtual commissioning is a lawyer who meets with a client via Skype® or FaceTime® and directs the client to sign the relevant legal document that is visible to the lawyer through video. The client then returns the original executed document to the lawyer who, upon receipt, signs the document as a witness to the client’s signature. Another example is a client and a lawyer logging into the same platform to view and electronically sign the same document simultaneously, despite being in different physical locations.

Under section 11 of the [Electronic Commerce Act, 2000](#), most documents can be signed by an electronic signature. However, the court offices in some jurisdictions want to see original signatures. It is, therefore, possible that documents signed electronically will not be accepted for filing by the court. It is best to check with the court office in advance.

The Law Society warns that lawyers and paralegals should be alert to the risks of virtual commissioning, including issues of fraud, identity theft, undue influence, duress, and capacity.

The Law Society has written a helpful resource on [virtual commissioning](#). It has also prepared very useful information on practicing law during COVID-19. Please see the Law Society’s website for its [“LSO: COVID-19 Response”](#).