



HOUSE USE ONLY

CHAIR:

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2nd SESSION, 66th GENERAL ASSEMBLY
Province of Prince Edward Island
1 CHARLES III, 2022

(Bill No. 72)

Notaries and Commissioners Act

Hon. Darlene Compton
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

Andrea MacRae
Acting Queen's Printer
Charlottetown, Prince Edward Island



NOTARIES AND COMMISSIONERS ACT

BILL NO. 72

2022

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART 1 - INTERPRETATION AND ADMINISTRATION

1. Definitions

In this Act,

- (a) “**commissioner**” means a person who is
 - (i) appointed under section 8, or
 - (ii) a commissioner by virtue of the person’s office, pursuant to section 10;
- (b) “**court**” means a court, person or tribunal in the province that has by law or consent of the parties the authority to receive oaths, affidavits or affirmations and to hear, receive and examine evidence;
- (c) “**extra-provincial court**” means a court, person or tribunal outside the province that has by law or consent of the parties the authority to receive oaths, affidavits or affirmations and to hear, receive and examine evidence;
- (d) “**judge**” means a judge of the Provincial Court, the Supreme Court or the Court of Appeal;
- (e) “**justice**” means a justice of the peace;
- (f) “**lawyer**” means a member in good standing of the Law Society of Prince Edward Island, as defined in clause 1(h) of the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1;
- (g) “**Minister**” means the Minister of Justice and Public Safety and Attorney General;
- (h) “**notary public**” means, except in clause 18(1)(f), a notary public who is
 - (i) appointed under section 3, or
 - (ii) a notary public by virtue of the person’s status as a lawyer, as set out in section 5;
- (i) “**police officer**” means a member of a police service, as defined in clause 1(o) of the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1;
- (j) “**political representative**” means
 - (i) a member of the Legislative Assembly of Prince Edward Island,

- (ii) a member from Prince Edward Island of the House of Commons of Canada,
or
- (iii) a member of the Senate of Canada who at the time of appointment as a senator is a resident of Prince Edward Island;
- (k) “**Prothonotary**” means the Prothonotary as defined in clause 1(p) of the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1;
- (l) “**Registrar of Deeds**” means the Registrar of Deeds appointed under section 2 of the *Registry Act* R.S.P.E.I. 1988, Cap. R-10.

2. Minister responsible

- (1) The Minister is responsible for the administration of this Act.

Delegation by Minister

- (2) The Minister may delegate any of the powers, responsibilities and functions of the Minister under this Act to an employee of the Department of Justice and Public Safety.

PART 2 - NOTARIES PUBLIC

3. Appointment by Minister

- (1) Subject to this Part, the Minister may appoint a person as a notary public in and for the Province of Prince Edward Island.

Nature of appointment

- (2) An appointment under subsection (1) is an appointment at pleasure for a term specified in the appointment.

Conditions, restrictions

- (3) The Minister may add conditions or restrictions to an appointment made under this section as the Minister considers appropriate.

4. Application for appointment

- (1) A person may, in accordance with the regulations, apply for an appointment as a notary public if the person
 - (a) is 18 years of age or older;
 - (b) has not been found guilty of an offence under this Act; and
 - (c) resides in Prince Edward Island.

Requirements for appointment

- (2) The Minister shall not appoint a person as a notary public under subsection (1) unless the Minister is satisfied that
 - (a) the appointment of the person as a notary public is in the public interest; and
 - (b) the appointment of a notary public is necessary for the public convenience
 - (i) in the place where the person to be appointed resides and intends to act as a notary public, or

- (ii) where the person to be appointed is an officer or employee of the Government or the Government of Canada, in the place or places where the person's duties require the person to be from time to time.

5. Lawyer as notary public

A lawyer is, by virtue of the lawyer's status as a member of the Law Society of Prince Edward Island, a notary public in accordance with clause 18(3)(b) of the *Legal Profession Act*.

6. Authority of notary public

- (1) Every notary public may, subject to the regulations,
 - (a) administer oaths or take affirmations or declarations and attest oaths, affidavits, affirmations or declarations in accordance with section 7;
 - (b) certify and attest a true copy of a document in accordance with section 7; and
 - (c) witness or certify and attest the execution of a document in accordance with section 7.

Additional powers

- (2) In addition to the powers described in subsection (1), a notary public who is a lawyer may witness or certify and attest, in accordance with section 7, deeds, contracts and commercial instruments, including, subject to any other applicable law, a deed, contract or commercial instrument issued or prepared by the lawyer in respect of which the lawyer has otherwise provided legal advice.

Effect of attestation

- (3) A document in respect of which a notary public has exercised a power referred to in subsection (1) or (2) and that is attested in accordance with section 7 may be used and recognized in Prince Edward Island, elsewhere in Canada and internationally.

7. Seal required

- (1) Before exercising the powers of a notary public, the notary public shall obtain a seal on which appears the notary public's name and the words "Notary Public" and "Prince Edward Island".

Document required to be sealed

- (2) A notary public shall place the notary public's seal on each document that the notary public attests in that capacity.

Documentary requirements

- (3) A notary public shall, on each document attested by the notary public's seal and signature, legibly print, or stamp in legible printing, next to the notary public's signature
 - (a) the notary public's name; and
 - (b) if the notary public was appointed under section 3, the date on which the notary public's appointment expires.

PART 3 - COMMISSIONERS

8. Appointment by Prothonotary

- (1) Subject to this Part, the Prothonotary may appoint a person as a commissioner to administer oaths and take and receive affidavits, affirmations and declarations in and for Prince Edward Island.

Nature of appointment

- (2) An appointment under subsection (1) is an appointment at pleasure for a term specified in the appointment.

Conditions, restrictions

- (3) The Prothonotary may add conditions or restrictions to an appointment made under this section as the Prothonotary considers appropriate.

9. Application for appointment

A person may, in accordance with the regulations, apply for an appointment as a commissioner if the person

- (a) is 18 years of age or older;
- (b) has not been found guilty of an offence under this Act; and
- (c) resides in Prince Edward Island.

10. Commissioners by virtue of office, etc.

- (1) The following persons are commissioners, empowered by virtue of their office or status to administer oaths and take and receive affidavits, affirmations and declarations in Prince Edward Island for use in Prince Edward Island:

- (a) a judge or a justice;
- (b) a lawyer;
- (c) a political representative;
- (d) the Prothonotary;
- (e) the Registrar and the deputy registrars of the Court of Appeal and the Supreme Court;
- (f) the Registrar of Deeds;
- (g) a person who holds a commission as an officer in the Canadian Forces and who is on full-time service, whether in Canada or outside Canada;
- (h) a police officer;
- (i) persons or classes of persons specified in the regulations.

Notary public as commissioner

- (2) Every notary public is, by virtue of the notary public's office, a commissioner.

Cessation of authority

- (3) A person who is a commissioner under subsection (1) ceases to be a commissioner when the person ceases to hold the office or to have the status referred to in subsection (1).

11. Documentary requirements

- (1) A commissioner shall, on each document that the commissioner signs in that capacity, legibly print, or stamp in legible printing, next to the commissioner's signature,
 - (a) the commissioner's name;
 - (b) the words "Commissioner" and "Prince Edward Island";
 - (c) if appointed under section 8, the date on which the commissioner's appointment expires; and
 - (d) if the commissioner is acting by virtue of an office or status referred to in subsection 10(1), the commissioner's office or status.

Absence of style, designation - effect

- (2) Where a commissioner is not styled or designated "Commissioner" on a document as required under clause (1)(b), the absence of the style or designation, or an error or omission in it, does not affect the validity of the document.

PART 4 - GENERAL ADMINISTRATION**12. Minister's refusal of application, suspension or revocation of appointment**

- (1) The Minister may refuse an application for appointment under section 4, or suspend or revoke the appointment of a person as a notary public, in accordance with subsection (3).

Prothonotary's refusal of application, suspension or revocation of appointment

- (2) The Prothonotary may refuse an application for appointment under section 9, or suspend or revoke the appointment of a person as a commissioner, in accordance with subsection (3).

Grounds for refusal, suspension, revocation

- (3) The Minister under subsection (1), or the Prothonotary under subsection (2), may act under those subsections where
 - (a) the person is or has become ineligible for appointment under section 3 or 8, as the case may be;
 - (b) the person fails to comply with this Act, the regulations, the code of conduct or a directive referred to in section 13 or a written direction referred to in section 14;
 - (c) the person is found guilty of an offence under this Act;
 - (d) the person is found guilty or convicted of misrepresentation, fraud, breach of trust or an offence under the *Criminal Code* (Canada) for which an absolute discharge or a pardon has not been granted and the Minister or the Prothonotary, as the case may be, believes, based on the nature of the offence, that the appointment of the person under section 4 or 9 is contrary to the best interest of the public;
 - (e) the person made an untrue statement in the person's application for appointment; or
 - (f) the Minister or Prothonotary, as the case may be, considers it in the public interest to do so.

Publication, communication of information

- (4) Where an appointment is suspended or revoked under this section, the Minister or Prothonotary, as the case may be, may

- (a) provide, publish or issue a notice of the suspension or revocation in the manner provided for by regulation or that the Minister or Prothonotary considers to be appropriate; and
- (b) make available, in the manner that the Minister or Prothonotary considers to be appropriate, the information regarding the suspension or revocation that the Minister or Prothonotary considers to be necessary for the administration of this Act.

Decision final

- (5) A decision by the Minister under this section is final.

Appeal of Prothonotary's decision

- (6) A decision of the Prothonotary under this section may be appealed to the Supreme Court.

13. Establishment of code of conduct

- (1) The Lieutenant Governor in Council, on the advice of the Minister may, by regulation, establish a code of conduct for
 - (a) notaries public; and
 - (b) commissioners.

Issuance of directives

- (2) The Minister may issue directives governing the duties and conduct of
 - (a) notaries public; and
 - (b) commissioners.

Code of conduct, etc., to be made available

- (3) The code of conduct and directives referred to in this section shall be made available to every person who is a notary public or commissioner, as the case may be, in a manner determined by the Minister.

14. Issuance of written directions to person

- (1) Where, in the opinion of the Minister, a person who is a notary public or commissioner appears to be in contravention of this Act, the regulations, the code of conduct or a directive referred to in section 13, the Minister may issue written directions to the person concerning the matter.

Provision to others

- (2) The Minister may provide the written directions and communicate information regarding the written directions that the Minister considers appropriate
 - (a) if the person is a lawyer, to the Law Society of Prince Edward Island;
 - (b) if the person exercises the powers of a notary public or commissioner within the scope of the person's employment or in an official capacity, to an employer, supervisor or other person as the Minister considers appropriate; and
 - (c) to any other person as the Minister considers necessary for the administration of this Act.

Exception

- (3) Subsection (1) does not apply to a judge, the Prothonotary or the Registrar and deputy registrars of the Court of Appeal and the Supreme Court.

15. Proof of appointment - notary public

- (1) The Minister may issue a document that the Minister considers appropriate to indicate
- (a) that a person has been appointed as a notary public; and
 - (b) the date when the appointment expires.

Proof of appointment - commissioner

- (2) The Prothonotary may issue a document that the Prothonotary considers appropriate to indicate
- (a) that a person has been appointed as a commissioner; and
 - (b) the date when the appointment expires.

Admissibility of proof of appointment

- (3) A document issued under subsection (1) or (2) is admissible in any court as evidence of the appointment of the person named in it without further proof of the appointment or proof of the signature of the person who signed or issued the document.

16. Minister's authority to request information

- (1) The Minister may request all or any of the following information that is shown on a record in the custody or control of a public body as defined in the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01, as the Minister considers to be necessary for the purpose of locating a person who is, or who has represented that the person is, a notary public or a commissioner and authenticating a signature of or otherwise administering this Act in respect of that person:
- (a) the name, residential address, telephone number and email address of the person;
 - (b) the name, address, telephone number and email address of the person's current or past employer;
 - (c) whether the person has an office or status referred to in section 5 or subsection 10(1).

Compliance by public body required

- (2) On receipt of a request under subsection (1), the public body shall provide the requested information.

PART 5 - OATHS, AFFIRMATIONS AND DECLARATIONS

17. Making oath, affirmation or declaration

- (1) An oath, affirmation or declaration required under an enactment or for use in Prince Edward Island may be sworn, affirmed or declared before
- (a) a notary public;
 - (b) a commissioner; or
 - (c) in the case of an oath, affirmation or declaration made outside of Prince Edward Island, a person specified in subsection 18(1).

Exception

- (2) Despite subsection (1), an oath, affirmation or declaration may be sworn, affirmed or declared in accordance with the regulations by a person who is not in the physical presence of a person specified in clauses (1)(a) to (c).

Proof of execution of document for purpose of *Registry Act*

- (3) For greater certainty, where proof of execution of a document is required for the purpose of registration under the *Registry Act*, the process to be followed is the process set out in section 19 of that Act.

18. Out-of-province oaths, affirmations, declarations

- (1) An oath, affirmation or declaration sworn, affirmed or declared outside the province before the following persons has the same force and effect as if sworn, affirmed or declared before a commissioner within the province, subject to the *Registry Act*:
- (a) a judge, magistrate or an officer of a court of justice or a commissioner authorized to administer oaths in an extra-provincial court;
 - (b) a commissioner;
 - (c) an officer of any of the Sovereign's diplomatic or consular service while exercising the officer's functions outside of Canada;
 - (d) an officer of the Canadian diplomatic or consular services while exercising the officer's functions outside of Canada;
 - (e) a Government of Canada trade commissioner and assistant trade commissioner while exercising that person's functions outside of Canada;
 - (f) a notary public acting within the territorial limits of the notary public's authority, and certified under the notary public's signature and seal;
 - (g) a person authorized under the laws of Quebec to administer oaths in that province.

Evidentiary effect

- (2) Subject to subsection (3), an affidavit, declaration or other document sworn, affirmed or declared outside of the province by a person referred to in subsection (1) shall be admitted in evidence, without proof of the person's seal, signature or official character.

Seal required

- (3) Where an affidavit, declaration or other document to be used in Prince Edward Island is sworn, affirmed or declared outside the province by a person who does not have an official seal, the signature of the person shall be attested, under seal, by another person who
- (a) is specified in subsection (1); and
 - (b) has an official seal.

19. Proof by affidavit of signature

Where the affidavit of a person is required to prove the execution of a document and that person is dead, cannot be located, refuses to provide an affidavit or is otherwise unable to provide the affidavit, execution of the document may be proven by affidavit of the signature of the person.

20. Application of *Evidence Act* provisions

Sections 12.1 to 12.3 and 13 of the *Evidence Act* R.S.P.E.I. 1988, Cap. E-11, apply where an affidavit or statutory declaration is required to be sworn or affirmed.

21. Effect of defect in form, etc.

No defect, by misdescription of parties or otherwise, in the title or jurat of an affidavit, and no other irregularity in the form of an affidavit, affirmation or statutory declaration, is an objection to its admission in evidence, if the court before or to whom it is tendered thinks proper to admit it.

PART 6 - LIABILITY, OFFENCES AND PENALTIES

22. Protection from liability

No action for damages or other legal proceedings lies or shall be instituted against the Minister, the Prothonotary or a delegate of the Minister for anything done or omitted to be done in good faith in the exercise or intended exercise of a power or the performance or intended performance of a duty under this Act or the regulations.

23. Prohibition

- (1) No person shall, unless authorized to do so under this Act or by another law in force in the province,
- (a) administer an oath or take an affidavit, affirmation or declaration, and attest the oath, affidavit, affirmation or declaration as a notary public or a commissioner;
 - (b) certify and attest a true copy of a document as a notary public;
 - (c) witness or certify and attest the execution of a document as a notary public;
 - (d) hold out as or represent that the person is a notary public or a commissioner; or
 - (e) exercise any powers or rights customarily associated with the office of a notary public or of a commissioner.

Offence and penalty

- (2) A person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000.

24. Regulations

The Lieutenant Governor in Council may make regulations

- (a) respecting the terms of appointments for the purposes of section 3 and 8;
- (b) for the purposes of subsection 10(1), prescribing persons or classes of persons who are commissioners by virtue of their office;
- (c) limiting or clarifying the powers of a notary public referred to in subsection 6(1) and the exercise of those powers by a notary public who is not a lawyer or judge;
- (d) establishing a code of conduct referred to in section 13;
- (e) respecting directives referred to in section 13;
- (f) respecting the content and manner in which an application under section 4 or 9 shall be made, including, without limitation, regulations
 - (i) requiring the payment of fees in respect of an application and the manner in which the fees are to be paid,
 - (ii) respecting the requirements to be satisfied or the information and evidence that is to be provided by a person who applies for appointment as a notary public or commissioner, including but not limited to the requirement

- (A) to provide references or other evidence that the applicant is a person of good character, and
 - (B) to submit the results of a criminal record check in a form satisfactory to the Minister or the Prothonotary, as the case may be;
- (g) requiring an applicant to complete an examination established or adopted by the Minister to demonstrate the applicant's qualifications to be appointed as a notary public or commissioner;
 - (h) respecting the information and evidence to be provided on request of the Minister or Prothonotary, as the case may be, by a person appointed under section 3 or 8 for the purposes of section 12, including but not limited to the requirement to provide the results of a criminal record check in a form satisfactory to the Minister or Prothonotary;
 - (i) respecting the collection, use and disclosure of information, including personal information, for the purpose of
 - (i) confirming that a notary public or commissioner has an office or status referred to in section 5 or subsection 10(1), as the case may be,
 - (ii) authenticating the signature of a notary public or commissioner,
 - (iii) considering and approving or refusing applications, issuing written directions or suspending or revoking appointments under this Act and providing, publishing or issuing notices of suspensions or revocations, and
 - (iv) any other purpose necessary for the administration of this Act;
 - (j) respecting written directions referred to in section 14 or decisions under section 12 to refuse, suspend or revoke appointments, including regulations respecting any notices and documents that may or shall be provided, published or issued;
 - (k) requiring a person to take and subscribe an oath or affirmation of office before commencing the person's duties as a notary public or commissioner, and prescribing the form of the oath or affirmation of office;
 - (l) respecting the circumstances in which a person may swear an oath or make an affirmation or declaration without being in the physical presence of a person specified in clauses 17(1)(a) to (c);
 - (m) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

25. Continuance of lawyer as notary public

- (1) For greater certainty, on the coming into force of this section, a lawyer who is a notary public under clause 18(3)(b) of the *Legal Profession Act* continues to be a notary public under this Act.

Continuance of appointment of notary public

- (2) On the coming into force of this section, the appointment under section 52 of the *Legal Profession Act* of a person as a notary public that was in effect on the coming into force of this section is continued as an appointment of the person as a notary public under this Act.

Continuance of appointment of commissioner - *Affidavits Act*

- (3) On the coming into force of this section, the appointment under the *Affidavits Act* R.S.P.E.I. 1988, Cap. A-7, of a commissioner that was in effect on the coming into force of this section is continued as an appointment of the person as a commissioner under this Act.

Expiry of appointment

- (4) An appointment referred to in subsection (2) or (3) expires as specified in the original appointment.

PART 7 - CONSEQUENTIAL AMENDMENTS, REPEAL, COMMENCEMENT

26. Business Corporations Act

- (1) **The *Business Corporations Act* R.S.P.E.I. 1988, Cap. B-6.01, is amended as provided by this section.**
- (2) **Subsection 218(2) of the Act is amended by the deletion of the words “*Affidavits Act* R.S.P.E.I. 1988, Cap. A-7, before any commissioner for oaths or for taking affidavits” and the substitution of the words “*Notaries and Commissioners Act* R.S.P.E.I. 1988, Cap. N-3.3, before a commissioner or notary public”.**

27. Judgment and Execution Act

- (1) **The *Judgment and Execution Act* R.S.P.E.I. 1988, Cap. J-2, is amended as provided by this section.**
- (2) **Section 14 of the Act is amended by the deletion of the words “in the manner prescribed by the *Affidavits Act* R.S.P.E.I. 1988, Cap. A-7” and the substitution of the words “in the manner provided by the *Notaries and Commissioners Act* R.S.P.E.I. 1988, Cap. N-3.3”.**
- (3) **Subsection 15(1) of the Act is amended by the deletion of the words “in the manner prescribed by the *Affidavits Act*” and the substitution of the words “in the manner provided by the *Notaries and Commissioners Act*”.**

28. Legal Profession Act

- (1) **The *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1, is amended as provided by this section.**
- (2) **Part VIII of the Act is repealed.**

29. Probate Act

- (1) **The *Probate Act* R.S.P.E.I. 1988, Cap. P-21, is amended as provided by this section.**
- (2) **Section 25 of the Act is repealed and the following substituted:**

25. Procedures respecting affidavits

Any affidavit to be read or filed may be sworn or affirmed as provided in the *Notaries and Commissioners Act* R.S.P.E.I. 1988, Cap. N-3.3, or before the judge or the Registrar.

30. Registry Act

- (1) **The *Registry Act* R.S.P.E.I. 1988, Cap. R-10, is amended as provided by this section.**
- (2) **Subsection 32(1) of the Act is amended by the deletion of the words “appointed under the *Affidavits Act* R.S.P.E.I. 1988, Cap. A-7” and the substitution of the words “appointed under or authorized pursuant to the *Notaries and Commissioners Act* R.S.P.E.I. 1988, Cap. N-3.3”.**

31. Repeal

The *Affidavits Act* R.S.P.E.I. 1988, Cap. A-7, is repealed.

32. Commencement

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

(Bill No. 72)

Notaries and Commissioners Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	November 1, 2022
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Colin LaVie, Speaker

Joseph Jeffrey, Clerk

Hon. Darlene Compton
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

2022
2nd SESSION, 66th GENERAL ASSEMBLY