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FOLA Submissions

Modernizing the Notaries Act

Submitted to: Arielle Hercules-Ramcharan, Ministry of the Attorney General
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A. Discussion questions:

1. Should the government **prescribe similar standards of conduct** for remote notarization to those set out for remote commissioning— such as requiring that the notary verify the identity of the person signing the notarized document and that the notary takes reasonable precautions in the execution of their duties?

The notarizing of signatures on sworn documents serves the same purposes as the swearing of the oath by commissioners and the completion of the jurat on the sworn declaration or affidavit. We would suggest that any revisions to rules involving a notary and sworn documents MUST meet the same minimum standards. Notaries must be subject to the same expectations regarding the identity of the individual swearing the oath and the positive confirmation of the veracity and voluntariness of the signature.

2. Is there an equal need for remote commissioning of affidavits or declarations and **remote certification of notarial copies**?

- Why would notarial copies need to be certified remotely (the task of comparing an original PAPER document with a copy is separate from how the copy and certificate are communicated to the client afterward)?
- How could notaries certify true copies remotely?

FOLA does not have any statistical data to be able to compare the demand for remote swearing of affidavits and declarations as compared to the remote certification of notarial copies. Our real estate representatives have not reported any significant volume of requests for the production of notarial copies of physical documents such as will, powers of attorney or identification documents.



The current process of producing notarial copies typically involves physically viewing the original document and then attaching a photocopy to a signed and sealed notarial certificate. The execution of certificates attaching "notarial copies" of documents is not likely to be carried out with sufficient protections at the present time. Those inclined to carry out fraudulent transactions with fake documents are capable of creating high quality forgeries which may not even be ascertained with a physical viewing. Unless technology is created and tested to verify the "original" for the notary there may be a significant reduction in the value of the notarizing process. In the days of rapid courier service, it is our view that traditional notarial copies can be produced rapidly while maintaining safeguards against fraud. The rewards of producing immediate notarial copies of physical documents are outweighed by risks at the present time.

FOLA is aware of significant developments by private companies to develop software which may facilitate electronic notarization. There may be a demand for, and an ability to verify electronic records via a notarizing process. If such actions are to be legislatively permitted, we would urge the Ministry to ensure that the requirements and limits are made very clear for all notaries and that both the physical process and the electronic process remain options for notaries and the public.

B. Discussion questions: Platforms and electronic seals

3. Does your organization currently use any **special platforms** to obtain multiple signatures on a single electronic document, agreement, etc.?

The Ontario real estate bar as a collective has not yet approved any specific method of obtaining multiple signatures on a single electronic document.

- What practices have you established to reduce risks of fraud and end-user error?



At the present time lawyers, who are also notaries are mainly viewing original documents in person prior to providing any notarization service.

4. **Do you anticipate difficulty in devising an electronic seal?**

- Have you ever used a platform or software that produces or validates such a seal?

These systems or programs are not yet in use by real estate lawyers to the best of our knowledge however we are aware of private companies who have made significant progress toward such software.

5. **Would the need to purchase a subscription to a remote online notarization platform influence your decision to offer remote notary services?**

Cost would be a factor in deciding to provide such a service. For most lawyers the production of notarial copies is a service provided at a minimal cost or for nominal free in the majority of circumstances.

6. **Can you describe the ways in which you think your organization would be affected by remote notarization?**

Remote notarization will create two issues. It will increase the cost of professional liability insurance as the number of fraudulent transactions will likely increase, particularly as notaries become familiar with the process and the requirements. While the percentage increase is impossible to predict the fact that fraud will become more prevalent is unavoidable.



Remote notarization will also likely lead to specialized services offering such remote notarization as a convenience at a low cost. While this may assist certain individuals who process high volumes it leads to a lowering of professional standards and increased risk of fraud (see above).

7. Are there limits to your ability to accept and use remotely notarized documents?

Documents are often required to be provided to third parties, including courts, lenders, government agencies (such as CRA), lawyers and title insurers. If remotely notarized documents are not accepted by such parties, then their use will be limited in various litigation, real estate, tax, corporate and estate matters.

- What would your organization need in order to accept documents that have been notarized remotely?

FOLA, as an organization, does not have a need to accept remotely notarized documents.

8. How sure do you have to be that the person acting as commissioner or notary is authorized to do so?

- What evidence would you like to see to assure yourself of this for electronic documents?

There should be a method for those individuals and businesses relying on notarial copies, whether electronic or physical, to determine the current qualifications of the notary if they wish to do so.



9. Do you require your clients to get their notarized documents authenticated (i.e., by a government confirmation of the status of the notary) before sending them to you?

To the best of our knowledge and belief authentication of notarized documents is very rarely carried out by most lawyers in private practice at the present time. We have heard that certain firms have seen a demand for such services.

Appendix A: Additional questions

10. Have those you serve expressed a need for, or interest in, remote notarization? Since Covid19, or independently?

The real estate bar in Ontario has not reported to FOLA any significant interest in remote notarization. Remote commissioning of sworn documents has largely been successful although it is far too early for any problems to have been noticed. The evidence of fraudulent affidavits and declarations will take quite some time to appear in relation to real estate matters.

11. Rules for remote commissioning and notarization generally require that the notary and signatory must be in real-time two-way audio-visual contact. Should an audio-visual record of the remote notarization session be kept by the notary, and for how long?

Notaries, including lawyers, should be keeping detailed records of all transactions however we would suggest that any obligation on the notary to maintain a "recording" of the transaction is problematic and should be avoided.



There are significant concerns around solicitor/client privilege and the extent of the recording which would have to be very carefully considered prior to imposing any specific obligation on the notary.

Respectfully Submitted,

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