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Backgrounder

LRC 115—Report on Affidavits: Alternatives to Oaths

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An affidavit is a written statement made under oath, which must be sworn before a person appointed as a Commissioner of Oaths. It is predominantly used either in the course of judicial proceedings or for a multitude of occasions where provincial enactments require information to be given by statement under oath such as certain information to agencies of the government. The reason why some statements are required to be made under oath is to provide an additional step to ensure the honesty and accuracy of the statement made.

This Report focuses on affidavits used in the course of judicial proceedings with the aim of exploring ways of reducing the inconvenience, which often results from having to swear the affidavit before a Commissioner of Oaths. As a starting point, the report examines the use of sworn affidavits in two American jurisdictions, California and New York. In California, the need to swear the affidavit before a Commissioner has virtually disappeared by adding a simple certification to the statement that it is made “under penalty of perjury.” The procedure in New York is similar but slightly more restrictive in that it only applies to statements made in the context of court proceedings and only to statements made by a short list of designated professionals such as lawyers and physicians.

The approach taken in New York is the one preferred in the Report. The concern with permitting anyone to sign a certified statement is that many people might fail to fully appreciate the legal significance of the affidavit and the requirement for honesty. It should therefore only be available to persons who have a general familiarity with the process of making affidavits such as those individuals empowered as Commissioners to administer oaths. The Report also favours restricting the use of the certified affidavit for court proceedings only and sets out reasons for this.

The final part of the Report looks at a minor issue concerning the making of an affidavit by solemn affirmation rather than under oath. This situation arises where an individual does not wish to swear an affidavit under oath due to religious beliefs. The issue under discussion is a fairly technical one but in essence there is some doubt as to the right to create a valid affidavit by a solemn affirmation as to the truth of its contents. The Report recom-

mends a simple amendment to the *Affirmation Regulation* made under the *Evidence Act* as a way of resolving the problem.

Further Developments

See *Affirmation Regulation*, B.C. Reg. 396/89, as am. by B.C. Reg. 314/91.