



## **Guidance for Legal Professionals Filing A Non-compliant Document in Court**

During this pandemic, the Court is prepared to accept unsworn versions of affidavits and declarations provided the lawyer gives an undertaking to perfect the document before the hearing. The Court notice says it requires “an undertaking by the lawyer that an original of the affidavit or declaration that complies with the formal requisites will be filed prior to the hearing date, failing which the party would not be entitled to rely on it or would be required to withdraw it.”

An undertaking must be something that you, as the lawyer, can do. It must be within your control. With that in mind, The Law Society of Manitoba offers this sample undertaking as an example and recommends that this, or a similar written undertaking, dated and signed by the lawyer be submitted with the filing in court of an affidavit or declaration that does not comply with the formal requirements.

### **Sample Undertaking**

In the Matter of [enter title of Proceeding] and the [affidavit/declaration of named person] submitted for filing on [insert date], I confirm that I have told my client that:

- the filing of a non-compliant document is a temporary solution during the 2020 COVID-19 pandemic and the requirement for physical distancing; and
- the court will not permit a party to rely on a non-compliant document; and
- before the hearing, an original compliant document must be filed or the non-compliant document must be withdrawn from the court record and cannot be relied on by the party; and
- the client’s case may be prejudiced if a compliant document is not filed before the hearing date.

If I am unable to obtain and file an original affidavit or declaration that complies with the formal requirements I will advise the court of that fact before the hearing date and I undertake not to rely on the non-compliant document in my argument.

Date \_\_\_\_\_  
Signature \_\_\_\_\_