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of Canada

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professionnels de juristes
du Canada

**Anti-Money Laundering and Terrorist
Financing Working Group**

**Frequently Asked
Questions on the Client
Identification and
Verification Model Rule**

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Overview of Obligations

Identification versus verification

The rule talks about identification and about verification. What's the difference?

Identification refers to the basic information you must get about your client to know who they are whenever you are retained to provide legal services.

Verification refers to the information you must obtain to confirm that your client is who or what they say they are. Verification is required only when you are acting for a client or giving instructions on behalf of a client regarding the receiving, payment or transferring of funds, i.e. a “financial transaction”.

I work in a law firm. Do I have to personally identify or verify the identity of my clients?

No, the identification and verification of identity may be fulfilled by any member, associate or employee of the firm, wherever located. You may also use an agent. However, as the lawyer, you remain ultimately responsible for meeting these requirements.

Identification requirements

In what circumstances am I required to identify my client?

You must identify your client whenever you are retained to provide legal services, except:

- when you provide legal services to your employer, for example as in-house counsel;
- when you are acting as an agent for another lawyer who has already identified the client;
- when you are acting for a client who has been referred to you by another lawyer who has already identified the client; or
- when you are providing legal services as part of a duty counsel program sponsored by a non-profit organization, except where the legal services involve a financial transaction.

This requirement is in keeping with your obligation to know your client, understand their financial dealings in relation to the retainer, and manage any risks arising from the professional business relationship with the client.



When acting as an agent or acting on a referral, it would be prudent to obtain the identity information from the other lawyer.

Do I have to identify anyone other than my client?

Yes, in some circumstances. You must, for example, identify any third party who is directing or instructing your client. When your client is an organization, such as a company or a public body, you must also identify the person or persons instructing you on behalf of the client.

What information must I obtain when identifying a client if they are an individual?

When you are retained by an individual you must obtain and record, with the applicable date, the person's full name, home address, home telephone number, occupation(s), and the address and telephone number of the person's place(s) of work, where applicable.

What information do I have to obtain when identifying a client that isn't an individual, such as a company or a public body?

When an organization (a corporation, partnership, fund, trust, co-operative or unincorporated association) retains you, you must obtain and record the client's full name, business address, business telephone number, the general nature of the type of business or activities engaged in by the client, and the name, position of and contact information for the individual(s) authorized to provide and give you instructions. Where applicable, you must also get the incorporation/business identification number and the place of issue of the incorporation/business identification number.

Do I have to identify my client before acting for the client?

You must identify the client when you are retained to provide legal services. This can be done in conjunction with identification information to check for legal conflicts.

Verification requirements

What impact does COVID-19 have on the verification requirements?

You should check with your law society to see if the interpretation of the verification requirements has been affected by COVID-19 (e.g. when in-person verification of identify is required and the use of electronic documents).

In what circumstances do I have to verify my client's identity?



You are required to verify the identity of your client when, having been retained to provide legal services, you engage in or give instructions in respect of the receipt, payment or transfer of funds. In such cases you are also required to verify the identity of any third party your client acts for or represents (usually someone who is directing or instructing your client) as well as any individual providing instructions on behalf of an organization.

Does every financial transaction trigger the verification requirement?

No. There are several exceptions included in the rule. You do not have to verify the identity of the client (nor obtain and record information about the source of funds for the financial transaction) if:

- the client is a financial institution, public body or reporting issuer;
- the funds are transferred using an “electronic funds transfer” as defined in the rules; or
- the funds involved are:
 - paid by or to a financial institution, public body or reporting issuer;
 - received by a lawyer from the trust account of another lawyer;
 - received from a peace officer, law enforcement agency or other public official acting in an official capacity;
 - paid or received to pay a fine or penalty or bail; or
 - paid or received for professional fees, disbursements or expenses.

When a client’s matter involves more than one financial transaction and there is an exemption from the verification and source of funds obligations with respect to one of the transactions, the other transactions will be subject to the obligations unless there are exemptions that apply to them.

Note that the former exemption from verification of identity in situations where funds are paid or received pursuant to a court order or settlement of any legal or administrative proceeding no longer applies.

How do I verify the identity of an individual?

To verify the identity of an individual, you must use one of three methods: the government-issued photo ID method, the credit file method, or the dual process method.

How do I verify identity using the government-issued photo ID method?

A valid, authentic and current (not expired) government-issued identification document containing the individual’s name and photograph (e.g. driver’s licence, passport, Secure Certificate of Indian Status, Permanent Resident Card, or certain provincial or territorial health insurance cards) may be used to verify identity. You may rely on an identification document issued by a foreign government if it is equivalent to a Canadian-issued identification document. Documents issued by municipal governments are not



acceptable. You or your agent must view the original document in the presence of the individual to ensure that their name and photograph match.

A document is authentic if it is genuine and has the character of an original, credible and reliable document. For example, an original physical government-issued photo identification document is authentic.

When the individual is physically present:

You or your agent must view the original physical document in the presence of the individual to ensure that it is issued by a competent authority, that it is valid and current and that the individual's name and photograph match.

When the individual is not physically present:

You or your agent may use the government-issued photo identification method if you have a process in place to authenticate the government-issued photo identification document and to determine that it is valid and current.

To authenticate the document, you could use a technology capable of determining the document's authenticity. For example, you could:

- ask the individual to scan their government-issued photo identification document using the camera on their mobile phone or electronic device; and
- use a technology to compare the features of the scanned document against known characteristics (for example, size, texture, character spacing, raised lettering, format/design), security features (for example, holograms, barcodes, magnetic strips, watermarks, embedded electronic chips) or markers (for example, logos or symbols) to be satisfied that it is an authentic document as issued by the competent authority.

To determine that the authenticated document is valid and current, and that the name and photo are those of the individual providing the document, you could:

- participate in a live video call with the individual and compare the name and the features of the live video image to the name and photo on the authenticated document; or
- ask the individual to take a "selfie" using the camera on their mobile phone or electronic device and use an application to apply facial recognition technology to compare the features of that "selfie" to the photo on the authenticated document. You would also need a process to compare the name on the document with the name provided by the individual.

How do I verify an individual's identity using the credit file method?

You may verify an individual's identity by relying on information in a Canadian credit file if it has been in existence for at least three years. You must confirm that the name, address and date of birth in the credit file match that provided by the individual. Using the credit file method is not the same as getting a credit assessment or credit report. To



use the credit file method, you must obtain the information directly from a Canadian credit bureau (currently Equifax Canada or TransUnion Canada) or a third-party vendor authorized by a Canadian credit bureau. You cannot rely on credit file information provided by the individual.

The individual does not need to be physically present for you to verify their identity using their credit file. However, to rely on the credit file method, you must conduct the search at the time you are verifying the individual's identity. An individual cannot provide you with a copy of their credit file, nor may a previously obtained credit file be used.

How do I verify an individual's identity using the dual process method?

You may verify an individual's identity by relying on any two of the following:

- information from a reliable source that contains the individual's name and address;
- information from a reliable source that contains the individual's name and date of birth; and
- information containing the individual's name that confirms they have a deposit account or credit card or other loan account with a financial institution.

The information you rely upon must be from two different sources.

A "reliable source" is an originator or issuer of information that you trust. To be considered reliable, the source should be well known and considered reputable. The reliable source cannot be you, your agent, or the individual whose identity you are verifying. Federal, provincial, territorial and municipal levels of government, Crown corporations, financial entities and utility providers are examples of reliable sources.

The information you rely upon may be found in documents originating from or issued by a reliable source or may be provided directly to you through communications with an official or representative of a reliable source.

Examples of reliable source documents include: Canada Pension Plan (CPP) statement, property tax assessment, vehicle registration, Canada Revenue Agency notice of assessment, utility bill (e.g. electricity, water, telecommunications), record of employment, registered investment account statements (e.g. RRSP, TFSA or RRIF), government benefits statement, insurance documents (e.g. home, auto and life), birth certificate, permanent resident card, citizenship certificate, marriage certificate, mortgage statement, bank statement, and credit card statement.

If a document is used, you (or your agent) must view a valid, original and current paper or electronic document, and not a photocopy or electronic image (e.g. digital photograph, screen capture or scanned copy). A utility statement mailed to an individual by the utility provider is an example of an original paper document. A document downloaded directly from the reliable source issuer's website and printed may also be



used. An original electronic document may be a document the individual received by email or downloaded from a reliable source issuer that the individual then shows to you in its original format on your or the individual's electronic device (e.g. a smartphone, tablet, or laptop) or sends to you in its original format. To be acceptable, the document must appear to be valid and unaltered; if any information has been redacted, the document is not acceptable.

Information found through social media is not acceptable.

The individual does not need to be physically present at the time you verify their identity through the dual process method.

How do I verify the identity of an organization, such as a corporation or other entity?

To verify the identity of an organization you must consult documentation that is independent and reliable. If your client is an organization created or registered under federal, provincial or territorial law such as a corporation, cooperative or a society, you will need to obtain confirmation of its existence (e.g. a corporation's annual filing or a certificate of corporate status), name and address, and the names of its directors, where applicable, from the appropriate government registry.

If an organization is not registered in a government registry, you may verify its existence by obtaining its constating documents, for example a partnership agreement, articles of association or trust agreement.

The rule talks about identifying directors, shareholders and owners. What is required?

When your client, or a third party your client is representing, is an organization and the receipt, payment or transfer of funds is involved, you must obtain and record with the applicable date, the names of all directors (unless the client or third party is a securities dealer).

You are also required to make reasonable efforts to obtain and record, with the applicable date, the names and addresses of all beneficial owners and information about the ownership, control and structure of the organization. Beneficial owners are individuals who own or control, directly or indirectly, 25% or more of the organization or the shares of the organization and the trustees, known beneficiaries or settlors of the trust. The purpose of this requirement is for you to obtain sufficient information about the organization so that you know who effectively owns and controls it.

You are also required to take reasonable measures to confirm the accuracy of information about directors, beneficial owners, and the organization's ownership, control and structure.



What are “reasonable efforts” with respect to identifying beneficial owners?

The reasonable efforts standard requires you to apply sound, sensible judgment about the measures you take to identify beneficial owners. Reasonable efforts include searching through as many levels of information as necessary to identify those individuals. In making reasonable efforts to determine beneficial ownership, it is important to understand that the names on legal documentation may not be the actual owners of an organization. You must assess and determine what is appropriate for each situation to ensure the accuracy of the information obtained, while also taking into account the risk associated.

How do you confirm the accuracy of beneficial ownership information?

To confirm the accuracy of beneficial ownership and information on the ownership, control and structure of an organization you should refer to official documentation or records, such as:

- minute book
- securities register
- shareholder register
- articles of incorporation
- annual returns
- certificate of corporate status
- shareholder agreements
- partnership agreements
- board of director's meeting records of decisions

It is possible for one document to be used to satisfy the two distinct steps, namely, to obtain the information and to confirm the accuracy of it.

You may also have the client sign an attestation to confirm the veracity of the beneficial ownership information provided. This document must include the ownership, control and structure information obtained.

Other reasonable measures to confirm accuracy include:

- asking the client to provide supporting official documentation
- consulting an online registry where available
- conducting an open-source search
- consulting commercially available information

If I am not able to obtain information on the directors and beneficial owners, may I continue to act for the client?

If despite reasonable efforts you are unable to obtain the information, you must then take reasonable measures to ascertain the identity of the most senior managing officer



of the organization and assess the organizational client's activities in the context of any risks that the financial transaction(s) may be part of dishonest, fraudulent or illegal activity. If the organization's structure is more opaque than transparent, this may be a warning that the organization could be engaged in or facilitating unlawful activities. You will need to assess risk accordingly and keep in mind circumstances that may trigger your duty to withdraw.

If my client is an individual, do I have to verify their identity before acting for them?

In the case of an individual you must verify their identity upon engaging in or giving instructions on their behalf to receive, pay or transfer funds.

If my client is an organization, do I have to verify identity before I can act for the client?

When your client is an organization you should verify the client's identity upon engaging in or giving instructions on their behalf to receive, pay or transfer funds, and must do so within 30 days. The 30-day window for verifying the identity of an organization does not apply to your obligation to verify the identity of the individual instructing you on behalf of the organization. You must verify the instructing individual's identity at the time that you would verify the identity of any individual, i.e. when you engage in or give instructions in respect of the receiving, paying or transferring of funds.

What happens if after the funds have moved I am unable to verify the identity of my client in the 30-day window?

You have an obligation to verify your client's identity. Failing to do so within the 30-day window would result in a breach of this requirement.

Although you have 30 days within which to comply with the verification requirements for an organization, as a best practice you should verify the identity of your client as early as possible in the retainer.

When may I use an agent to verify identity?

You may rely on an agent to verify the identity of an individual at any time. When using an agent, you must have an agreement or arrangement in writing for this purpose.

Are there times when I must I use an agent to verify identity?

If the individual is not physically present in Canada, and you are not meeting the individual in person, you must use an agent to verify their identity. You must have an agreement or arrangement with the agent in writing.



Who may act as an agent to verify identity?

Amendments to the Client Identification and Verification rule now permit you to choose any suitable person to act as an agent. Previously, agents had to be individuals in occupations who could provide an attestation respecting compliance with the verification requirements. The rule also provided a list of those occupations. As the attestation requirement has been removed, along with the list, you may now choose any appropriate individual to act as your agent. You should use your professional judgment to choose someone who is suitable.

Keep in mind that the responsibility for verifying an individual's identity is yours, even when using an agent. You should always be the one who chooses the agent; don't rely on your client or the individual whose identity is being verified to find the agent.

You should ensure that the agent is reputable, reliable, accountable, and, where feasible, familiar with anti-money laundering due diligence requirements. If you do not know a suitable candidate, you should check with the regulator for the legal profession in the jurisdiction where the individual is located.

There is a new requirement in the rule to obtain information about the “source of funds” relating to financial transactions. What does this mean and how do I fulfill this obligation?

In addition to the requirement to verify the identity of your client when engaged in or giving instructions in respect of a financial transaction, you are also required to inquire about the *expected* source of the funds related to the transaction as well as the *actual* source of funds if the transaction proceeds. The source of funds is the economic activity or action generating the funds (e.g. savings from salary, insurance proceeds, inheritance, bank loan) and may be apparent from the information obtained from the client for the retainer. You are required to record this information. You should also obtain and record the following information regarding the funds:

- the payer's full name, occupation and contact information
- the relationship of the payer to the client (the payer may be the client)
- the date on which the funds were received from or transferred by the payer
- the form in which the funds were received or transferred (e.g. bank draft, cheque)
- the full name and address of all financial institutions or other entities through which the payer processed or transmitted the funds

You should make sufficient inquiries to assess whether there is anything that suggests the information about the source of funds, together with the proposed transaction, is inconsistent with what you know about the client, their occupation, economic profile, activities, and risk profile, and the circumstances of the transaction.

You should also retain any supporting documents that relate to how you determined the source of funds.



This requirement applies to both individual and organizational clients and also relates to the new periodic monitoring and risk assessment requirement.

Can I accept a client’s explanation as to the “source of funds”?

Where the source of funds is clear and there are no inconsistencies with the client’s profile and activities, the client’s explanation will likely be sufficient to satisfy the requirement. In other cases, it may be appropriate to obtain supporting documentation to confirm the source of funds. In circumstances that raise suspicions, for example where the client’s explanation is unusual or inconsistent with your knowledge of or experience with the client, you may need to undertake enhanced due diligence, including obtaining supporting documents.

In all cases, you should practice within your area of competence and exercise your professional judgment to assess risk. Seek advice from a law society practice advisor or equivalent in your jurisdiction for further guidance and resources with respect to addressing risks.

There is a new requirement in the rule to monitor the professional business relationship. What is the requirement and what does it entail?

You are required to periodically monitor the professional business relationship with your client while retained in respect of matters involving financial transactions. It may be useful to conceive of this obligation as a periodic “check-in” with a client during an ongoing retainer following the initial verification of identity and once information about the source of funds is obtained.

You must periodically assess whether the client’s information in respect of their activities and the source of their funds is consistent with the purpose of the retainer and the information you have obtained about the client. You also need to periodically assess whether there is a risk that you might be assisting in dishonesty, fraud, or other illegal activity. Monitoring inquiries may be triggered when your client provides you with new facts about their activities or source of funds, or when you are faced with unexpected client behaviour. This obligation is consistent with your professional duty to be vigilant about potential client dishonesty and diligent in avoiding fraud and other illegal activity.

You should use your discretion in defining the frequency of the monitoring. It will depend on factors such as the client, the nature of the work, the anticipated duration of the retainer, and the type of services provided.

You are required to keep a record of your monitoring inquiries and copies of any documents that arise from your inquiries.



Client Identification – Detailed Questions

General

Another lawyer in my firm already identified the client I am acting for. Am I permitted to rely on this identification?

You may rely on the identification information obtained by another lawyer in your firm provided the information was obtained in accordance with the current rules.

I had a general retainer to provide legal services to a client before the rules were enacted. I have just been asked to provide legal advice on a new matter. I have not opened a new file. Do I have to identify this client?

Yes. The question is not whether you have opened a new file since the rules were enacted, but whether you are providing legal services on a new matter. Since the matter on which you are providing legal advice arose after implementation of the rules, you are required to identify your client.

I am representing the plaintiffs in a class action. Do I have to identify all of the plaintiffs?

No. You need only identify the representative plaintiff.

Difficulty obtaining required information

The rule requires me to obtain and record my client’s occupation. What do I do if the individual doesn’t have an occupation or doesn’t want to tell me what it is?

The rule requires you to find out what your client does. If your client doesn’t want to answer the question you should explain that all members of the legal profession are required to ask all clients for this information and that you need it to properly represent him or her. If the client still refuses to provide the information, you must advise the client that you will be in breach of the rule unless you get it and your professional obligations do not permit you to act in such circumstances. Of course, if your client is unemployed or not actively engaged in an occupation, you may simply record this and continue to act for the client.

Note that “occupation” does not need to be “employment”. If your client is retired, a homemaker, a volunteer caregiver or otherwise occupied, you should record that information.



If my client is unable to provide some of the identification information required, for example an address or a phone number, am I obliged to withdraw?

Where a client is unable to provide the information, for example where they have no address because they are homeless, or where they have no telephone number, you are not obliged to withdraw. Where the information does not exist, you should make a record of that fact. It would be prudent to document how you will contact the client. For example, there may be an address where the client can pick up mail.

This situation is to be distinguished from one in which the client refuses to provide the information.

Working for the client of another lawyer

I have been retained by another lawyer to do work for her client. Do I have to identify the client?

Whether you have to identify the client of the other lawyer depends on two things: whether the lawyer who has retained you is licensed to practice law in a Canadian jurisdiction and whether the lawyer has complied with the identification obligations. If the lawyer is a member of the bar in a province or territory and has fulfilled her obligations to identify the client, you do not have to do so. It would be prudent to obtain a copy of the identity information from the lawyer before acting.

What are my obligations in determining whether a lawyer for whom I am acting as agent or a lawyer who has referred a client to me has taken the necessary steps to identify that client?

You are expected to exercise due diligence to satisfy yourself that the other lawyer has already identified the client. This would involve asking the other lawyer to confirm that he or she has complied with the requirements of the rule. It would be prudent to obtain a copy of the identity information.

The lawyer who referred the client to me identified the client, but I have now learned that the matter will involve a financial transaction. Do I have to verify the client's identity?

Unless the referring lawyer also verified the client's identity you must do so.

I have been retained by a law firm to provide a legal opinion on an issue arising in a matter for which they are acting for a client. Do I have to identify or verify the identity of that client?



Generally, unless the law firm's client is actively instructing you, you would not have to identify or verify the identity of the law firm's client. In any event, if the law firm that has asked you to provide the legal opinion is a Canadian law firm, the exemption in section 2(3)(b) of the Model Rule may apply.

Identifying organizations and instructing individuals

Are there any exceptions to the requirement to obtain information about organizations?

Yes. When your client is a financial institution, a public body or a reporting issuer, you do not need to obtain or record the organization's incorporation or business identification number or the nature of the business activities it is engaged in.

The corporation I have been retained by has authorized several people to instruct counsel. Do I have to identify all of them?

No. The rule requires you to identify the individual(s) actually instructing you.

Do I have an obligation to look behind the assertion that an individual is authorized to instruct me on behalf of an organizational client?

The rule does not require that you investigate such an assertion. You should always exercise prudence, however, and if you have concerns about the assertion it would be advisable to make further inquiries to satisfy yourself that the individual is indeed authorized to instruct you on behalf of the organizational client.

Providing summary advice

Am I required to identify a person who exercises their right to counsel upon being detained by the police and calls me from detention?

You are required to identify an individual when you are *retained* by a client to provide legal services. Whether you have been retained by the detained individual will depend on the circumstances. For instance, if you provide only summary legal advice relating to their detention, you do not charge a fee, and you confirm with the individual that you are not retained to represent them, you may not be required to identify the individual. Check with the law society to confirm whether an exemption from the client identification requirement applies where a lawyer provides pro bono summary legal advice.

You are not required to identify your client if you provide legal services as part of a duty counsel program sponsored by a non-profit organization, and you are retained to provide legal services that do not involve a financial transaction. If however you do



engage in or give instructions in respect of the receiving, paying or transferring of funds, you must identify the individual and unless an exemption applies, you must also verify the individual's identity and obtain information regarding the source of funds.

I provide summary legal advice through a non-profit “law line” service. Do I have to identify the callers to whom I give advice?

No. This is akin to providing summary legal services as part of a duty counsel program sponsored by a non-profit organization.

I sometimes commission or notarize a document for someone I am not otherwise retained to represent. Do I have to identify that person?

Check with your law society for its position on identification when providing these legal services. However, it would be prudent to identify a person for whom you are providing commissioning or notarial services and to be satisfied that the individual is who they represent themselves to be.

Verification of Identity – Detailed Questions

Verification of instructing individuals

Although there is one senior person giving me instructions on behalf of my corporate client, I am also receiving instructions on discrete aspects of the matter from several other employees of the corporation. Do I have to verify the identity of each of them?

You must use your judgment in this situation. If you are satisfied that an individual is responsible for the instructions you are receiving from others in the corporation it may be sufficient to verify his or her identity only. If, however, no instructing individual has overall responsibility for the instructions given by others, you must verify the identity of each person instructing you on behalf of the corporation.

Exemptions

What is covered by the exemption for funds “paid by a financial institution”?

This exemption is meant to cover a financial institution's own funds, for example those advanced pursuant to a mortgage or loan agreement. Cheques, whether regular or certified, bank drafts or other forms of payment that are provided by anyone other than the financial institution directly on its own behalf, are not included in the exemption. For the exemption to apply, the financial institution must be a bank regulated by the *Bank*



Act, an authorized foreign bank, a credit union or trust company or must otherwise meet the definition provided in the rule.

Are funds received from the trust account of a lawyer in another part of Canada exempt?

If you receive funds from the trust account of a lawyer who holds a license to practise in one of the provinces or territories you are not required to obtain information about the source of funds or verify the identity of the client (or, where applicable, the third party). This exemption does not apply to funds received from the trust account of a lawyer regulated by a foreign jurisdiction nor does it apply to other financial transactions (i.e. transactions that are not transfers from the trust account of a lawyer licensed in Canada) that may occur in relation to the same client matter.

I am acting for the vendor in a real estate transaction. I will be receiving the proceeds of the sale from the trust account of the purchaser's lawyer and, after paying off the outstanding mortgage, will be giving my client a cheque drawn on my trust account for the balance. Do I have to verify my client's identity?

Yes. The payment to your client is a financial transaction that triggers the verification requirements. Although there is an exemption from verification with respect to the funds you received from the trust account of another Canadian lawyer you are acting as a financial intermediary when you provide funds to your client. In any event, in all real estate transactions it is prudent practice to verify your client's identity.

I settled a matter for my client. Do I have to verify my client's identity?

Yes. There is no longer an exemption from the verification requirements in respect of funds received or paid in settlement of a legal proceeding. You have an obligation to verify the client's identity and obtain information about the source of the settlement funds unless another exemption applies.

I am acting for a client in a matter where money is being paid pursuant to a court order. Do the verification requirements apply?

Yes. There is no longer an exemption when monies are paid pursuant to a court order. You will have to verify the client's identity and obtain the source of funds information unless another exemption applies.

Giving instructions in respect of funds

My client has come to me for tax advice in connection with some investments. Is this a situation in which I have to verify my client's identity?



The verification obligations kick in when you are engaged in or give instructions in respect of the receiving, paying or transferring of funds. Simply providing legal advice about a money matter does not trigger the verification obligations unless you are also engaged in or giving instructions for the movement of the money.

I am acting for a client with respect to the completion of a commercial transaction. I have prepared the necessary documentation to complete the transaction, but the closing funds will not be flowing through my trust account as my client will be paying these directly to the other side in accordance with the agreement and closing documentation. Is this a situation in which I have to verify my client's identity?

Yes. The verification obligations apply whenever you engage in or give instructions in respect of the receiving, paying or transfer of funds, unless an exemption applies. Although the funds are not passing through your trust account in this transaction, you are instructing with respect to the transfer of funds.

Reliable source documents

I did the legal work to incorporate a business and am now acting for that business on another matter. May I rely on documents already in my possession to verify the client's identity or must I rely on documents from a government registry?

As long as the documents are current and qualify as written confirmation from a government registry as to the existence of the corporation, relying on documents in your possession is fine. The documents referred to in the rule are examples of independent, reliable documents, but the list is not exhaustive. As you incorporated the business, you likely have a copy of the certificate of incorporation, which is an acceptable source.

My client is a law firm partnership that is reluctant to provide me with a copy of the partnership agreement. What should I do?

Obtaining the partnership agreement from the law firm is only one way to verify the client's identity. Some partnerships, such as limited liability partnerships, are registered in searchable provincial government registries. Also, with the instructing lawyer's consent, you may be able to obtain information from the law society in the client's jurisdiction. You may also be able to obtain proof of the firm's identity through a government registry, such as the GST / HST Registry available on the website of the Canada Revenue Agency.

If the client will not provide a copy of the partnership agreement and you are unable to obtain information from other sources, you cannot act for the client.



I am acting for a trust. How do I verify its identity?

The documentation you will need to verify the identity of a trust will vary depending on the nature of the trust. Examples of appropriate documentation include the trust agreement or other documents establishing the trust, documents amending the trust, and documents identifying the trustees.

The verification requirements also require you to make reasonable efforts to obtain the names and addresses of all trustees, all known beneficiaries, and settlors of the trust. You must also make reasonable efforts to obtain, and if obtained, record with the applicable date, information establishing the ownership, control and structure of an organization.

Non-face-to-face situations

I am a lawyer in Vancouver and my client is an individual located in Calgary. What methods can I use for verifying their identity?

When your client is an individual and is in Canada, but you cannot meet with them in person, you can use the credit file method or the dual process method to verify their identity. You may also retain an agent to verify the individual's identity. The agent may use any one of the three verification methods.

Using an agent

Do I have to pay the agent?

Nothing in the rule requires you to pay an agent to verify a client's identity. You should establish with the agent at the outset whether they will be charging for the service and if so what the charge will be. You are required to enter into a written agreement or arrangement with the agent and may wish to include information on the fee in the agreement. If you agree to pay a fee to the agent, you must comply with the requirement to meet all financial obligations in relation to your practice.

May I rely on verification documents faxed or emailed from the agent?

Yes, you may rely on an email or fax from the agent including copies of the documents he or she relied on to verify the individual's identity. As a best practice, you should obtain a copy of the original(s) for your records. You must be satisfied that the information is valid and current and that the agent verified identity in accordance with the rule. You must also retain these documents for your records. It is important that all documents used to verify identity are clear and legible. You may store the document electronically as long as you can readily produce a hard copy.



My client is not in Canada. What method must I use to verify my client's identity?

When your client is outside of Canada, and you are not meeting with them in person, you must use an agent to verify their identity. As in all cases in which you use an agent, you must have a written agreement or arrangement with the agent.

I am acting for an organization located outside of Canada. Do I have to use an agent to verify the identity of the organization?

No. Unlike for individuals, you do not need to use an agent to verify the identity of an organization outside Canada. You may verify the organization through documents. However, you will have to use an agent to verify the identity of the instructing individual(s) if they are not located in Canada and you are not able to meet with them in person.

My client is acting on behalf of a third party located in Canada. I will not be meeting that third party in person. How do I verify the identity of this third party?

You may verify the identity of the third party in the same way that you would verify the identity of any client in Canada. If the third party is an organization, you may rely on documents to verify its identity. To verify the identity of an individual (or an individual providing instructions on behalf of an organization) you will have to use either the credit file method or the dual process method since you will not be meeting with the individual in person.

Alternatively, you may arrange for an agent to take the necessary steps to verify the third party's identity. The agent may use any of the three methods: government-issued photo ID, credit file or dual process.

My client is a lawyer licensed to practise in a Canadian province or territory and the matter I am acting for them on involves a financial transaction. I am not able to meet them in person. Do I have to verify their identity?

Yes. As with any client matter involving the receipt, payment or transfer of funds, you must verify the client's identity unless a specific exemption applies. There is no exemption from the rules when the client is a lawyer. If you are not meeting the client in person, you may use the credit file method or the dual process method. Alternatively, you may engage an agent to verify the client's identity.

Subsequent verification

I have acted for an individual client before and have already verified the client's identity under the current rules. Do I have to do it again?



As long as you recognize the person and have no reason to believe their identification information or the accuracy of it has changed, you do not have to verify the identity of an individual more than once. However, the rule requires that you periodically monitor the professional business relationship while you are retained in respect of a financial transaction.

My client is a corporation or a partnership. Do I have to verify its identity again if I have already done so under the current rules?

No, you don't have to verify the identity of a client that is an organization if you have already done so, you retained the recorded information and you have no reason to believe that the information, or the accuracy of it has changed. This exception also applies to verifying the identity of the individual(s) instructing you on behalf of the organization (see the question above) and to obtaining names of directors and owners. However, while retained in respect of a financial transaction, you are required to periodically monitor the professional business relationship with the client, which may include ascertaining whether there has been any change in the identity or ownership of the corporation and determining that the instructing individual is still authorized to act in that capacity.

I have acted for a corporate client on several matters and previously verified identity in accordance with the rules. Someone new is now giving me instructions on behalf of the client. Do I have to verify that new individual's identity?

Yes. In every case involving the receipt, payment or transfer of funds, you must verify the identity of the person instructing you unless you or an authorized person (i.e. an agent, another legal professional, or employee of the firm) have previously done so.

Source of funds inquiries

If a corporate client indicates that the funds for a financial transaction are from a "shareholder's loan," do I have to inquire into the source of funds of the shareholder who lent the money to the corporation?

It will depend on the circumstances, including the structure of the corporate entity, the size of the loan and whether there is a loan agreement. A large loan with little or no paperwork and no security might be a red flag. The source of money for the lender would be relevant in assessing potential risks. As a matter of good practice, it would be prudent to obtain the name of the shareholder who provided the loan.

Note that if a client is a public company (a "reporting issuer"), you are not required to confirm the source of funds.



Third Parties – Detailed Questions

General

My client is representing someone else. What are my obligations?

If your client is acting for or representing a third party (e.g. an attorney acting under a power of attorney), you must identify both your client and the third party. The third party may or may not be directly instructing your client, for example as a principal instructs an agent. If the third party is instructing your client in relation to a financial transaction, you must verify the identity of both the client and the third party. When your client is acting for someone else you must obtain the same information for that other person as you would if they were your client: their full name, home address and telephone number, their occupation, and where applicable their workplace or business address and telephone number.

The same requirement applies if the third party is an organization such as a company: you have to get all of the information you would get if you were representing the organization directly.

Do I have an obligation to ask my client if they are acting for a third party?

While not required, it would be prudent practice to ask the client if a third party is involved. If the client is acting for or representing a third party, the rule requires you to obtain the identification information about the third party. If there is a financial transaction, you must verify the identity of both the client (including the individual instructing you on the client's behalf if the client is an organization) and the third party. Accordingly, you should take reasonable measures to determine if a third party is involved if there is a financial transaction.

My client is acting on behalf of a minor. Do I have to identify the minor?

Yes, you must identify the minor, and if there is a financial transaction, you must verify the minor's identity. You must record the details with the applicable date.

If the minor is under 12 years of age you must verify the identity of one of the child's parents or guardians.

If the minor is at least 12 years of age but not more than 15 years of age, you may refer to information from a reliable source that contains the name and address of one of the individual's parents or their guardian and verifying that the address is that of the individual.

Are beneficiaries to an estate considered third parties within the meaning of the rule?



No, the beneficiaries are not considered to be third parties unless they are instructing you or your client. The fact that an individual or organization might benefit from or be affected by the actions of the client does not by itself trigger the obligation to identify them or verify their identities.

I am acting for a developer of a new condominium project and am holding in trust the monies paid as deposits by the purchasers of the condo units. Do I have to identify the purchasers?

No. In that case the developer is not acting for or representing the purchasers with respect to the legal services you are providing to the developer. However, note that a real estate developer selling condominiums to the public may be a reporting entity to FINTRAC. As such, the real estate developer would have obligations to verify the purchasers' identities, keep client information and source of funds records with respect to the purchasers and to take reasonable measures to determine if a purchaser is acting on behalf of a third party.

I have been retained by a joint venture. Do I have to identify and verify the identity of the parties to the joint venture?

Yes. Generally, a joint venture is not an independent legal entity; it is a business model in which two or more organizations (corporations, partnerships trusts) or individuals share resources for the purpose of a common venture. In such a case, each of the parties to the joint venture is a client.

I am acting for a living trust that makes ongoing disbursements to the beneficiaries of the trust. Do the identification and verification obligations apply to these beneficiaries?

The rule requires that you make reasonable efforts to obtain, and if obtained, record with the applicable date, the names and addresses of all trustees and all known beneficiaries and settlors of the trust as well as information establishing the ownership, control and structure of the trust. If a beneficiary is directing you or your client in relation to the disbursement of funds from the trust, you will also have to verify the beneficiary's identity. You should also be aware that the trust account rules prohibit you from holding funds in your trust account unless they are directly related to the provision of legal services. In this example, where you are making ongoing disbursements to the beneficiaries, you may not hold the funds in your trust account unless you are providing legal services related to the disbursements.



What are the obligations of insurance defence counsel, when defending an insured on the instructions of an insurer pursuant to a liability policy?

The client identification and verification rules will normally apply with respect to the insurer and the individuals instructing you on behalf of the insurer. Special considerations may apply with regard to an obligation to verify the identity of the insured. If the matter involves the receipt, payment or transfer of funds, you must verify the identity of the insurer and instructing individuals. The status of the insurance company (i.e., if it is a “financial institution”, “public authority” or a “reporting issuer”) will determine if the insurer (and consequently its instructing individual) is exempt from the verification process and the obligation to obtain information about the source of funds.

Different issues arise when considering an obligation to verify the identity of the insured. If the insured has a right under the policy to guide and instruct counsel, and is doing so, you must verify the identity of the insured.

If the insured is difficult or impossible to locate during the course of the retainer, defence counsel is not obliged to decline the retainer simply because the insured cannot be located for the purpose of completing the identification process, nor will verification of the insured be required in the event funds are transferred. If counsel is able to make contact with the insured, identification and verification information will, however, be required.

I am acting for the vendor in a real estate transaction. My client has directed me to pay the proceeds of the sale to another party. Do I have to verify the identity of that party?

Unless the vendor is acting for or representing the other party, there is no obligation to verify that party’s identity. However, prior to accepting the client’s instructions to pay the proceeds to another party, you should make reasonable inquiries about the purpose of the payment and the relationship between your client and the other party. You should not be disbursing trust funds to pay client obligations that are unrelated to the legal services being provided. Further, depending on the circumstances, these instructions may trigger your duty to periodically monitor the professional business relationship and assess the potential money laundering risk associated with the retainer.

Client behaviour and the duty to withdraw

My client was evasive when I tried to get the necessary identification and verification information. What should I do?

This type of behaviour should raise suspicions that your client may be trying to get you to assist them in something illegal or dishonest. At the core of the client identification and verification rule is the professional responsibility not to participate in, or facilitate,



money laundering or terrorist financing. You have a duty to make reasonable inquiries in the face of this suspicion before acting or continuing to act.

If you know or ought to know that you would be assisting the client in fraud or other illegal conduct, you have a duty to refuse to act for them in that matter and withdraw from representation. The duty applies whether you become aware of this during the identification and verification process or at any time during your retainer.

I need advice about a specific situation that is not addressed in these questions. What should I do?

If you have any unanswered questions or concerns about compliance with the rule you should contact a practice advisor or the equivalent with the law society in your jurisdiction.

