



NOVA SCOTIA BARRISTERS' SOCIETY

Some Questions and Answers about the new Client Identification and Verification Regulations.*

Q. In what circumstances am I required to identify my client?

- A.** You must identify your client whenever you are retained to provide legal services, except:
1. when you provide legal services to your employer, for example as in-house counsel
 2. when you are acting as an agent for another lawyer who has already identified the client or
 3. when you are acting for a client who has been referred to you by another lawyer who has already identified the client.

Q. I was acting for a client on a matter before the Regulation came into force and the matter is continuing. Do I have to identify this client?

- A.** Not as long as the matter is the same. But if you take on a new matter for this client you must comply with the identification requirements.

Q. 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?

- A.** 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 regulation.

Q. What information do I have to obtain to identify my client when my client is an individual?

- A.** When you are retained by an individual, you must get the person's full name, home address and telephone number, and occupation. Where applicable, you must also get their business address and telephone number.

Q. What if the individual doesn't have an occupation or doesn't want to tell me what it is?

- A.** The regulation requires you to find out what your client does. If your client doesn't want to answer the question you should explain that all lawyers are required to ask all clients for this information and that you need it to properly represent him or her. If the client refuses to provide this information, you must advise the client that you will be in breach of the regulation unless you get it and your professional obligations do not permit you to act in such circumstances.

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.

Q. What information do I have to get from a client that isn't an individual, such as a company or a public body?

- A.** When your client is an organization (a corporation, partnership, fund, trust, co-operative or unincorporated association) or a private company you must get and record its full name, its business address and business telephone number, where applicable, its incorporation or business identification number, and where it was issued, the general nature of the business, and the name, position and contact information of the person or persons instructing you in the matter.

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

- A. Yes. When your client is a financial institution, a public body or a public company (i.e. not a private company), you do not need to obtain or record the nature of the business activities it is engaged in.

Q. What if my client is representing someone else?

- A. If your client is acting for or representing another person you must obtain the same information for that other person as you would if that person was your client: their full name, home address and telephone number, their occupation, and, where applicable, their business address and telephone number.

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

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

- A. **Identification** refers to the basic information you need to get about your client to know who they are whenever you are retained: their name, address, etc. **Verification** refers to the information you need to get 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.

Q. Do I have to verify my client's identity whenever I receive money to cover my fees?

- A. No. Professional fees, disbursements and expenses are all exempted. If those are the only funds being transferred or received you do not have to verify your client's identity.

Q. Are there any other exceptions to the verification requirements?

- A. Yes, there are several.

You don't have to verify your client's identity when the funds involved are paid by or to a financial institution or a public body such as a department of the federal, provincial or territorial government, a city, or a hospital, paid by a company other than a private company, or paid to a client that is a company other than a private company. This means the only companies whose identity must be verified are companies whose shares are not publicly traded (i.e., private companies).

The verification requirements are also not triggered when funds are received from the police or another public official acting in his or her official capacity or when it is paid to satisfy a fine or other penalty imposed by a court. Funds received or paid for bail (judicial interim release) are also exempt.

Q. My client will be receiving (or paying) money to settle a legal proceeding. Will I have to verify her identity in that case?

- A. No. There is no requirement to verify the identity of a client if the only funds involved are paid or received as a settlement of legal or administrative proceedings.

Q. My client has directed me to pay money in trust to another lawyer. Do the verification requirements apply?

- A. No.

Q. Do I have to verify the identity of my client when I receive money from the trust account of another lawyer?

- A. No, the verification requirements are not triggered in such a case.

Q. So how do I verify the identity of my client?

- A. If your client is an individual, you must look at an original identifying document that you reasonably believe to be independent and reliable, such as a government-issued driver's licence, birth certificate, passport, or, where permitted, a provincial or territorial health insurance card. You must also retain a copy of the document for your records.

Q. How do I verify the identity of a corporation?

- A. You are only required to verify the identity of a corporation if it is a private company. To verify the identity of such a company you must consult documentation that is independent and reliable, such as the corporation's annual filing or a certificate of corporate status. Information available from the Registry of Joint Stocks will likely suffice for most Nova Scotia companies.

Q. My client is a partnership. How do I verify its identity?

- A. Reliable documents to verify the identity of a partnership would include, for example, a copy of the partnership agreement. Information available from the Registry of Joint Stocks will likely suffice for most Nova Scotia partnerships.

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

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

Q. The regulation talks about identifying directors and shareholders. What is required?

- A. When your client, or the party your client is representing, is an organization (e.g. a company, public body, or a trust), and receipt, payment or transfer of funds is involved, the regulation imposes special requirements. You have to make reasonable efforts to obtain and record the name and occupation of all directors, except where the client or third party beneficiary is a securities dealer. When someone owns 25 per cent or more of the organization or the shares of the company, you must also make reasonable efforts to obtain and record their address.

Q. What are “reasonable efforts”?

- A. In most cases asking your client for the information will suffice. It may also be appropriate to consult corporate minute books where readily available or on-line registry information.

Q. If I am not able to get the names of the directors and owners may I continue to act for the client?

- A. Yes, provided you have made reasonable efforts to obtain the information. Although not required by the regulation it would also be prudent to record the efforts you have made.

Q. I am a lawyer in Kentville and my client is in Calgary. Are there any special regulations for verifying his identity?

- A. Yes, when your client is an individual and is in Canada, but you cannot meet with him or her, you have two options for verifying identity. Your first option is to have a commissioner of oaths or a guarantor certify that they have verified the client's identity by looking at the sort of reliable, independent documents discussed above.

Q. What does that involve?

- A. The person looking at the document will have to provide you with a legible photocopy of the document that they have signed and on which they have included their name, profession and address and have identified the type and number of the identification document provided by the client. This is called an attestation in the regulation.

Q. Who can provide an attestation?

- A. An attestation may be provided by a commissioner of oaths or a guarantor in Canada when the client is in Canada. The list of guarantors is similar to the list of guarantors on a passport application and includes such professionals as lawyers, Quebec notaries, doctors, dentists, pharmacists, professional engineers and veterinarians. You must exercise due diligence in ascertaining that the person providing the attestation is a member of one of these professions.

Q. What is the other method of verifying the identity of a client I cannot meet in person?

- A. If your client is an individual and is outside of Canada or if you choose not to use a commissioner of oaths or guarantor you will have to engage an agent to conduct the verification for you. If you use an agent you must have an agreement in writing with that person and they must provide you with the information they obtain. The agent may provide the information in an attestation.

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

- A. As long as you recognize the person you do not have to verify the identity of an individual more than once.

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

- A. No, you don't have to verify the identity of a client that is an organization if you have already done so. This exception also applies to verifying the identity of the person or persons instructing you on behalf of your corporate client and to obtaining names of directors and owners.

Q. I have acted for a corporate client on a number of matters and have complied with the identification requirements. Someone new is now giving me instructions on behalf of the client. Do I have to verify that person's identity?

- A. Yes. In every case involving the receipt, payment or transfer of funds, you must verify the identity of the person instructing you unless you have previously done so.

Q. Do I have to identify my client or verify my client's identity before acting for the client?

- A. In the case of an individual client you must identify the client when retained to act and must verify their identity before or when you give instructions or act on their behalf to receive, pay or transfer funds. The same is true for verifying the identity of the person or persons authorized to instruct counsel for a client that is a corporation or other organization.

Q. Does this mean that I have to verify the identity of my corporate client before I can act for them where the payment, receipt or transfer of funds is involved?

- A. No. When your client is not an individual you have 60 days from the time you give instructions or act on behalf of your client to receive, pay or transfer funds to verify their identity.

Q. What happens if after the funds have moved I am unable to verify the identity of my client in the 60-day window?

- A. You have an obligation to take all reasonable steps to verify your client's identity. The obligation is met if you have taken the reasonable steps to verify the identity of a client that is not an individual within 60 days, even if you are unable to verify the identity. Although you have 60 days within which to comply with the verification requirements if your client is not an individual, you should take steps to verify the identity of your client as early as possible in the retainer in accordance with the regulation.

Q. Do I have to document the steps I take to verify my client's identity?

A. Yes. The regulation requires that you obtain a copy of every document you rely on to verify a client's identity. You must also record the information you obtain to identify your client and any information and copies of documents you rely on to identify the directors and owners of 25 per cent or more of any client that is a company or other organization.

Q. Do I have to keep identification and verification information in a separate file or can I keep it with my client files?

A. The information and documents obtained to identify your client may be kept in your client file. There is no need to maintain a separate file.

Q. Can I keep identification and verification information in electronic form?

A. Yes, as long as a paper copy can be readily produced.

Q. How long do I have to retain client identification and verification information?

A. You have to keep the information for the longer of your professional relationship with the client, as long as is necessary to provide service to the client, and six years following completion of the work the client retained you to do for them.

Q. Do I have to verify the identity of clients I was already working for when this regulation came into force?

A. The regulation does not apply to matters for which you were already retained when it was enacted, but if it does apply to all new matters. That means that you will have to take the necessary steps to identify all clients for any matters for which you are retained after the regulation comes into force even if you have acted for the client in the past or have a general retainer agreement with the client.

Q. My client was very evasive when I tried to get the necessary information to identify him and to verify his identity. What do I do?

A. If you reasonably suspect that your client is trying to get you to assist him in something illegal or dishonest you have a duty to refuse to act for him in that matter. The duty applies whether your suspicions are aroused during the identification and verification process or at any time during your retainer.

** This material has been developed with the assistance of FAQ's published by the Law Society of Upper Canada. See: <http://www.lsuc.on.ca/latest-news/a/hottopics/law-societys-new-know-your-client-requirements-enhance-public-protection/>*