

## DUAL PROCESS INDIVIDUAL CLIENT VERIFICATION

### When is client verification necessary?

Rule 134.7 requires that when a lawyer is receiving, paying or transferring funds, client verification is necessary.

This requirement does not apply to lawyers who are receiving funds for payment of the lawyer's account, or as a retainer towards future work to be done by the lawyer for the client.

Client verification also does not apply:

- When the client is a financial institution as defined in Rule 95;
- With respect of funds
  - Paid by or to a financial institution, public body (defined in Rule 95) or reporting issuer (defined in Rule 134.4);
  - Received by the lawyer from the trust account of another lawyer;
  - Received from a peace officer, law enforcement agency or public official acting in their professional capacity;
  - Paid or received to pay a fine, penalty or bail, or
  - Paid for the lawyers' fees, disbursements and expenses (defined in Rule 95)
- To an electronic funds transfer (defined in Rule 134.4). (Note, many of the transfers you are familiar with do not fit the definition of electronic funds transfer – which is a wire transfer.)

### Methods of individual client verification

There are three methods of client verification:

- Lawyer meets with client in person and examines the original identification document of the client which contains the client's name and photograph, and which is issued by a federal, territorial, provincial or foreign government. Lawyer has to be satisfied, after examining the document, that the name and photograph on the document are those of the client. Lawyer keeps a copy of the identification document. (Rule 134.8(7)(a)(i)).
- Lawyer reviews information on the client's credit file of the client, located in Canada, which has been in existence for three years. Lawyer reviews the information to verify that the name, address and date of birth of the client are correct. Lawyer keeps a copy of this information. Client does not have to be present when lawyer reviews this information. (Rule 134.8(7)(a)(ii)).
- The "dual process" method. (Rule 134.8(7)(a)(iii)).

### Dual process method of individual client identification

The lawyer verifies the individual client by referring to any two of the following three classes of information, which must be current and valid:

- Information from a reliable source that contains the client's name and address – to verify the client's name and address;

- Information from a reliable source that contains the client's name and date of birth – to verify the client's name and date of birth; or
- Information that contains the client's name and confirms they have a deposit account, credit card or loan with a financial institution – to verify the client.

This information must be from different sources. For example, a client's current, valid driver's license may have the client's name, address and date of birth. It cannot be used to both verify the client's name and address, and the client's name and date of birth. In addition to the driver's license there would need to be one additional piece of additional information that is current and valid.

Neither the lawyer nor the client can be the source of this information. The client cannot provide a letter confirming their name and address, or name and date of birth.

#### Information to be used to verify the client's name and address

These are examples of information which can be used to verify a client's name and address. It is not an exhaustive list;

- Any card or statement issued by the Canadian, territorial, provincial or municipal government which contains the client's name and address ( for example driver's license, general identification card, government employee identification card, vehicle registration, property tax assessment or other municipal statement, correspondence from a government addressed to the employee);
- Any benefit statement sent to the individual client from any level of government (for example CPP, Employment Insurance, or other government benefit statement);
- Documents from the Canada Revenue Agency addressed to the employee (for example, notice of assessment, installment payment reminder, requirement to pay notice, refund notice);
- Utility bills (electricity, telephone, mobile phone, water, heating fuel supplier);
- Proof of vehicle insurance (pink card)
- T4 statement;
- Record of Employment.

This information has to be valid and current. And it needs to be from a source which the lawyer considers reliable.

This information cannot be a photocopy of a document. It can be a notarially certified copy of a document.

It can be the electronic statement (for example in PDF form) that the client receives or downloads, and then forwards to the lawyer, including forwarding by electronic means. The information must appear to be complete and unaltered, it cannot have any redacted portions.

Whatever documents are received, the lawyer needs to have confidence that they are from a reliable source, that the documents can be trusted and relied upon.

### Information to be used to verify client's name and date of birth

- Any card or statement issued by the Canadian, territorial, provincial or municipal government which contains the client's name and date of birth (for example passport, driver's license, general identification card);
- Original birth certificate;
- Original marriage certificate or other government-issued proof of marriage which contains client's date of birth;
- Divorce documentation which contains client's date of birth;
- Permanent resident card;
- Citizenship certificate;
- Temporary driver's license (which may or may not have a photo);
- Current school or other educational institution identification which has client's name and date of birth;
- CPP statement of contributions;
- Insurance documents which include client's date of birth.

(Note, NWT Health Care cards do not qualify as a form of identification, as they do not contain the client's date of birth.)

This information has to be valid and current. And it needs to be from a source which the lawyer considers reliable.

This information cannot be a photocopy of a document.

It can be a notarially certified copy of a document. (Note though that because of the differences in the Rule, you cannot use a notarized copy of a document to perform client verification under Rule 134.8(7)(a)(i). For that form of verification the lawyer must be looking at the original document.)

Whatever documents are received, the lawyer needs to have confidence that they are from a reliable source, that the documents can be trusted and relied upon.

### Information from financial institution

What is required is information to confirm that a claim has an account, a loan or a credit card with a financial institution. Here are some examples of information which could be relied upon, again not an exhaustive list:

- Credit card statement;
- Bank statement;
- Cancelled cheque;
- Loan or mortgage statement
- Payout statement.

This information can also be provided through an e-mail, a letter or a telephone call from a bank official confirming the client's information at the bank. Any bank documentation that confirms that the client has an account with the bank, or a loan or credit card with the bank will suffice. For telephone calls, the lawyer would want to have some confidence that the call came from an official at the bank.

Again, this information has to be complete and unaltered. Recognizing that some clients might not want to provide their complete bank, credit card or mortgage statements, cancelled cheques (even if NSF) or emails from the bank might be the better solution.

#### Use of an agent for client verification

A lawyer can use an agent to verify client information. If an agent is going to be used, the lawyer and the agent have to have an agreement in writing setting out that the agent will be providing client verification services for the lawyer (Rule 134.8(3)). This “agreement” can be an email with the agent confirming that they will verify the client’s identification.

An agent must be used if the client is not physically in Canada (Rule 134.9(4)).

If a lawyer uses an agent, the lawyer has to obtain from the agent the information that the agent obtained for client verification. The lawyer has to be satisfied that the information is valid and current and that the agent properly verified the client’s identity. (Rule 134.8(5)).

#### How can dual process verification work?

The lawyer needs to have information from any two of these three sources.

The client can provide to the lawyer:

- Notarial copies of birth certificate (proof of name and date of birth) and driver’s license (proof of name and address);
- Driver’s license (proof of name and date of birth) and PDF copy of utility bill (proof of name and address);
- Vehicle registration (proof of name and address) and a cancelled cheque (information from financial institution);
- Cell phone bill (proof of name and address) downloaded from cell phone provider’s website and sent to lawyer, and birth certificate (proof of name and date of birth);
- Insurance documents showing the client’s date of birth (proof of name and date of birth) and email from bank confirming that client has an account with the bank (information from financial institution);
- Notice of assessment (proof of name and address) and CPP statement of contributions (proof of name and date of birth).

These are a few examples of the combinations of documents that can be used for client verification.