

CLIENT IDENTIFICATION AND VERIFICATION CHECKLIST

Law Society Rules 3-98 to 3-109 require lawyers to follow client identification and verification procedures when retained by a client to provide legal services. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Failure to comply with the rules can have significant disciplinary, insurance, and financial consequences. Trust shortage liability insurance coverage for reliance on fraudulent certified cheques (Part C of the compulsory policy) is contingent upon compliance with the client identification and verification rules. See "Trust Shortage Liability Insurance for Reliance on Fraudulent Certified Cheques or Misrepresentations (Part C)" on the Law Society website at www.lawsociety.bc.ca.

Identification and verification are separate but related concepts. The client *identification* rules require that lawyers make reasonable efforts to obtain basic identification information about clients. Additionally, client *verification* rules apply when a lawyer receives, pays, or transfers money on behalf of a client, or gives instructions on behalf of a client in respect of the receipt, payment, or transfer of money (a "**financial transaction**"). Verification may be required in situations that do not involve the use of a lawyer's trust account. **Lawyers must physically meet clients to verify identity unless exempted under the rules.**

The rules specify timing for identification and verification procedures (Rules 3-105 and 3-106), procedures for clients who are individuals not physically present before the lawyer (Rule 3-104), information and documents to be recorded or copied (Rules 3-100 and 3-102), and retention periods (Rule 3-107). The rules also require lawyers to withdraw if, while retained or when obtaining client identification and verification information, they know or ought to know that they would be assisting in fraud or other illegal conduct (Rule 3-109).

This checklist may be used to record information required under the rules; however, refer to the rules themselves when determining the information necessary to identify clients and verify their identity. In particular, note that "**client**", "**financial institution**", "**financial transaction**", "**interjurisdictional lawyer**", "**money**", "**organization**", "**public authority**", "**reporting issuer**", and "**securities dealer**" are defined. Pay close attention to all of the definitions in Rule 3-98, as they may not be consistent with common usage (e.g., **client** is widely defined), and identification and verification requirements vary according to the type of transaction and entity. (Defined words and phrases appear in boldface type in this checklist.)

Further information on the application of the rules, including FAQs, an online course, and a Discipline Advisory, is available at www.lawsociety.bc.ca (see, under "Support and Resources for Lawyers", "Practice Advice", "Practice Advisors – Frequently Asked Questions").

Currency of checklist and new developments. This checklist is current to September 1, 2018. The Federation of Law Societies has proposed amendments to its Model Rule on Client Identification and Verification Requirements. If the Federation's Council approves the amendments, they will be forwarded to the law societies for adoption. Changes to the Law Society of BC's rules would require the Benchers' approval and, if approved, may affect this checklist.

Contact Barbara Buchanan, QC, Practice Advisor, Conduct and Ethics, at 604.697.5816 or bbuchanan@lsbc.org with questions.

GENERAL EXEMPTIONS

Are you being retained by this client to provide **legal services**?

- No – identification and verification not required (Rule 3-99)

Were you retained in respect of this specific matter before December 31, 2008?

- Yes – identification and verification not required (Rule 3-108)

Are you in-house counsel providing legal services on behalf of your employer?

- Yes – identification and verification not required (Rule 3-99)

Will you provide legal services that do not involve a **financial transaction** (generally, the receipt, payment, or transfer of **money** on behalf of the **client**) as part of a duty counsel program sponsored by a non-profit organization?

- Yes – identification and verification not required (Rule 3-99)

Will you provide legal services in the form of pro bono summary advice that does not involve a **financial transaction** (generally, the receipt, payment, or transfer of **money** on behalf of the **client**)?

- Yes – identification and verification not required (Rule 3-99)

Has this **client** already been identified, and the identity verified and documentation retained, by another B.C. lawyer or **interjurisdictional lawyer** who has engaged you to act as an agent to provide legal services to the **client**?

- Yes – identification and verification not required (Rule 3-99)

Date confirmed: _____

- Copy/copies attached (You are not required to obtain copies, but it would be prudent to do so. Any copied material must be retained: Rule 3-107.)

Has this **client** already been identified, and the identity verified and documentation retained, by another B.C. lawyer or **interjurisdictional lawyer** who has referred the **client** to you for the provision of legal services?

- Yes – identification and verification not required (Rule 3-99)

Date confirmed: _____

- Copy/copies attached (You are not required to obtain copies, but it would be prudent to do so. Any copied material must be retained: Rule 3-107.)

Has this **client** already been identified, and the identity verified and documentation retained, by another member or employee of your firm who is subject to these rules or similar requirements in another Canadian jurisdiction?

- Yes – identification and verification not required (Rule 3-99)

Date confirmed: _____

- Copy/copies attached (You are not required to obtain copies, but it would be prudent to do so. Any copied material must be retained: Rule 3-107.)

IDENTIFICATION

Identification Exemption

Have you previously identified (and retained a record) for this **client**, including instructing individuals if the **client** is an **organization**? (Note that if the instructing individual of an **organization** changes, you must identify the new individual.)

- Yes – identification not required (Rule 3-100)

Date identified: _____

If the exemptions above do not apply, you must make reasonable efforts to obtain the applicable identification information (Rule 3-100). If you do obtain the information, you must also record it. You are not required to copy documents from which the information is obtained. However, it may be prudent to do so depending on the circumstances and you must retain any copies made (Rule 3-107).

Lawyers have a professional responsibility to safeguard the confidentiality of client information (*BC Code*, s. 3.3, and Law Society Rule 10-4). Lawyers should also be aware of their legal responsibilities under the *Personal Information Protection Act*, S.B.C. 2003, c. 63.

Note: for identification purposes, “**client**” includes another party that your **client** represents, or on whose behalf your **client** otherwise acts when obtaining legal services from you (Rule 3-98). You must also make reasonable efforts to obtain the applicable identification information for these individuals or **organizations** unless the above exemptions apply.

- Client** is an individual:

- Full name _____
- Business address _____
- Business telephone _____
- Home address _____
- Home telephone _____
- Occupation(s) _____

Date identified: _____

- Client** is a **financial institution, public authority, or reporting issuer**:

- Full name _____
- Business address _____
- Business telephone _____
- Name, position, and business contact information for individuals who give instructions with respect to the matter for which the lawyer is retained

Date identified: _____

Client is another type of **organization** (e.g., trust, partnership, association, private company):

- Full name _____
- Business address _____
- Business telephone _____
- Incorporation number or BIN, and place of issue of number _____
- General nature of business or activity _____
- Name, position, and business contact information for individuals who give instructions with respect to the matter for which the lawyer is retained

Date identified: _____

VERIFICATION

Verification Exemptions

Will you provide legal services in respect of a **financial transaction** (generally, the receipt, payment, or transfer of **money** on behalf of the **client**)?

- No – verification not required (Rules 3-99 and 3-102)

Have you previously verified (and retained documentation of) the identity of this **client**, and the identity of instructing individuals if the **client** is an **organization**? In the case of individuals, do you recognize the individual whose identity you previously verified? (Note that if the instructing individual of an **organization** changes, you must verify the identity of the new individual.)

- Yes – verification not required (Rules 3-105 and 3-106)

Date: _____

If you provide legal services with respect to a **financial transaction**:

Is the client:

- A **financial institution, public authority, or reporting issuer**?
- An individual instructing you on behalf of a **financial institution, public authority, or reporting issuer**?
- If yes to any of the above – verification not required (Rule 3-101)

Date: _____

Will the **money** be:

- Paid to or received from a **financial institution, public authority, or reporting issuer**, acting as a principal?
- Received from the trust account of another B.C. lawyer or **interjurisdictional lawyer**?
- Received from a peace officer, law enforcement agency, or other public official acting in an official capacity?
- Paid or received pursuant to the order of a court or other tribunal?
- Paid or received to pay a fine or penalty?
- Paid or received as a settlement of a legal or administrative proceeding that has been commenced?
- Paid or received for professional fees, disbursement, expenses, or bail?
- If yes to any of the above – verification not required (Rule 3-101)

Date: _____

If all funds involved are being transferred by electronic transmission, and the sending and receiving account holders do not handle or transfer the funds:

- Is the transfer occurring between **financial institutions** or financial entities headquartered and operating in countries that are members of the Financial Action Task Force?
- Does the transmission record contain a reference number, date, transfer amount, type of currency, names of sending and receiving account holders, and names of sending and receiving entities?
 - If yes to both of the above – verification not required (Rule 3-101)

Date: _____

If the exemptions above do not apply, you must identify the **client** and also take reasonable steps to verify the identity of the **client**. Use and retain copies of what you reasonably consider to be reliable, independent source documents, data, or information (Rules 3-102 and 3-107).

While lawyers have a general responsibility to safeguard the confidentiality of client information, lawyers should also be aware of their legal responsibilities under the *Personal Information Protection Act*, S.B.C. 2003, c. 63.

Note: for verification purposes, “**client**” includes another party that your **client** represents or on whose behalf your **client** otherwise acts when obtaining legal services from you, and also an individual instructing you on behalf of a **client** in relation to a **financial transaction** (Rule 3-98). You must also take reasonable steps to verify the identity of these individuals or **organizations** unless the above exemptions apply. (You will have recorded business contact information when identifying an instructing individual (Rule 3-100)). To verify the identity of an instructing individual, you must also obtain and record the individual’s home address, home telephone number, and occupation (Rules 3-98 and 3-100).

- Client** is an individual (or instructing individual in relation to the **financial transaction**)

Valid, original, government-issued identification such as:

- Driver’s licence
- Birth certificate
- Health insurance card
- Passport
- Other, similar record _____

Date verified: _____

(must be at time legal services are provided in respect of the financial transaction: Rule 3-105)

- Copy/copies attached

Client is an organization

- Client created or registered pursuant to legislative authority (e.g., company, society, limited partnership, LLP): certificate of corporate status, copy of annual filings required under applicable legislation, or similar written confirmation of existence from government registry or **public authority** (including **organization's** address, and names of directors, where applicable)

Date verified: _____

(must be within 60 days of engaging in a **financial transaction**: Rule 3-106)

- Copy/copies attached

OR

- Client not registered in government registry (e.g., trust, partnership): copy of constating documents: trust or partnership agreement, articles of association, or similar record confirming existence of **organization** not registered in a government registry

Date verified: _____

(must be within 60 days of engaging in a **financial transaction**: Rule 3-106)

- Copy/copies attached

AND

- If **organization** is not a **securities dealer**, take reasonable steps to obtain and record names and occupations of all directors (Rule 3-103)

Date obtained: _____

AND

- Take reasonable steps to obtain and record the name, address, and occupation of all persons with 25% or more ownership of, or shares in, the **organization** (Rule 3-103)

Date obtained: _____

- Client** is an individual **not** physically present before the lawyer (Rule 3-104)

Note: for verification purposes, “**client**” includes another party that your **client** represents or on whose behalf your **client** otherwise acts when obtaining legal services from you, and also an individual instructing you on behalf of a **client** in relation to a **financial transaction** (Rule 3-98). You must also verify the identity of these individuals or **organizations**.

- Is **client** in Canada? Name of individual: _____

(Note that if your firm conducts business in another Canadian jurisdiction, the identity of this **client** may be verified, and documentation retained, by another member or employee of your firm in that jurisdiction (Rule 3-99). If so, you do not need to comply with the following procedures.)

Obtain attestation from:

- commissioner of oaths for a Canadian jurisdiction, or
- guarantor in Canada (dentist, medical doctor, chiropractor, judge, magistrate, lawyer, notary (in Quebec), notary public, optometrist, pharmacist, professional accountant, professional engineer, veterinarian, architect, peace officer, Ontario paralegal licensee, registered nurse, or school principal)

The commissioner or guarantor must:

- examine the **client’s** valid, original, government-issued identification (such as driver’s licence, birth certificate, health insurance card, passport, or similar record)
- include, on a legible photocopy of the identification document:
 - the examiner’s name, occupation, and address
 - the examiner’s signature
 - the type and number of the identification document

Date verified / attested: _____

(must be at time legal services are provided in respect of a **financial transaction**: Rule 3-105)

- Document(s) attached

(A Sample Attestation Form is attached as an Appendix to this checklist.)

- Is **client** outside Canada? Name of individual: _____

- Obtain attestation from an agent who has reviewed documents to verify **client’s** identity. The form of attestation can be similar to that required for verifying the identify of **clients** who are in Canada but not present before the lawyer
- Verification and attestation must be made under an agreement or arrangement in writing for verification between lawyer and agent

Date verified / attested: _____

(must be at time legal services are provided in respect of a **financial transaction**: Rule 3-105)

- Document(s) attached

(A Sample Attestation Form and a Sample Agreement with Agent are attached as Appendices to this checklist.)

APPENDIX I: SAMPLE ATTESTATION FORM FOR VERIFICATION OF IDENTITY

(Client in Canada)

The following form may be used when the lawyer is required by Law Society of British Columbia Rule 3-104 to verify the identity of a client who is in Canada but not physically present before the lawyer. It may be modified to suit the circumstances of the matter or transaction.

The person attesting must be a commissioner of oaths, or a guarantor who is a dentist, medical doctor, chiropractor, judge, magistrate, lawyer, notary (in Quebec), notary public, optometrist, pharmacist, professional accountant, professional engineer, veterinarian, architect, peace officer, Ontario paralegal licensee, registered nurse, or school principal. The commissioner or guarantor must physically meet with the client and:

- examine the client's valid, original, government-issued identification (such as driver's licence, birth certificate, health insurance card, passport, or similar record),
- attest, on a legible photocopy of the identification document, that they have seen the identification document, and
- place, on the photocopy of the identification document:
 - their name, occupation, and address;
 - their signature; and
 - the type and number of the identification document.

[THE FOLLOWING MUST BE PLACED ON THE PHOTOCOPY
OF THE IDENTIFICATION DOCUMENT]

I attest that:

1. I am a [*commissioner of oaths*] [*guarantor's occupation from type specified above*] in the province/territory of [*province/territory*] with a place of business at [*business address and telephone number*];
2. I met with [*name of client of the lawyer*] on the [*specify*] day of [*month*], [20__] and examined his/her original [*type of government-issued identification document*], issued by [*name of government authority*] on [*date of issue*] and bearing document number [*number*];
3. To the best of my knowledge and belief, the document is valid and unexpired and the information on it is current, correct, and complete; and
4. This copy is a true copy of the document, the original of which I examined.

Signed by me on the [*specify*] day of [*month*], [20__] at [*place and province/territory*].

Signature of commissioner of oaths or guarantor

APPENDIX II: SAMPLE AGREEMENT WITH AGENT FOR
VERIFICATION OF CLIENT IDENTITY

(Client outside Canada)

The following agreement may be used when the lawyer is required, by Law Society of British Columbia Rule 3-104, to engage an agent outside Canada to verify the identity of a client who is not in Canada. It may be modified to suit the circumstances of the matter or transaction.

BETWEEN:

[Name of the lawyer and business address]
the "Lawyer"

AND:

[Name of agent and business address]
the "Agent"

RE:

[Name of client of the Lawyer]
the "Client"

WHEREAS:

The Lawyer has been retained by the Client to provide legal services in Canada;

The Lawyer is required to verify the identity of the Client; and

The Agent has agreed to examine an identification document or documents for the purpose of verifying the Client's identity on behalf of the Lawyer;

FOR VALUABLE CONSIDERATION (the receipt and sufficiency of which is acknowledged), the parties agree that:

1. The Agent will meet, in person, with the Client and examine the Client's valid, original, government-issued identification documents such as a driver's licence, birth certificate, health insurance card, passport, or similar record (the "Documents");
2. The Agent will make legible photocopies of all Documents examined;
3. The Agent will attest, on each photocopy and in a form similar to that attached as an Appendix to this agreement, that the Agent has examined the Documents;
4. The Agent will provide each original signed attestation, on which the Agent has placed the information required under paragraph 3 above, to the Lawyer no later than [date];
5. This agreement may be signed in counterparts, and will be read with any changes of gender and number as may be required by context; and
6. This agreement will be governed and interpreted according to the laws of the Province of British Columbia and the laws of Canada, as applicable.

Dated this [*specify*] day of [*month*], [20__] at [*place and country*].

[*name of law firm*]

[*name of the Lawyer*]

Signature of the Lawyer

[*name of the Agent's firm or business, if applicable*]

[*name of the Agent*]

Signature of the Agent

Appendix to Agent Agreement: Sample Attestation Form for Use Outside Canada

[THE FOLLOWING MUST BE PLACED ON THE PHOTOCOPY
OF THE IDENTIFICATION DOCUMENT]

I attest that:

1. I am a [*agent status or occupation*] in [*location*] with a place of business at [*business address and telephone number*];
2. I met with [*name of client of the lawyer*] on the [*specify*] day of [*month*], [20__] and examined his/her original [*type of government-issued identification document*], issued by [*name of government authority*] on [*date of issue*] and bearing document number [*number*];
3. To the best of my knowledge and belief, the document is valid and unexpired and the information on it is current, correct, and complete; and
4. This copy is a true copy of the document, the original of which I examined.

Signed by me on the [*specify*] day of [*month*], [20__] at [*place*].

Signature of the Agent