



NOVA SCOTIA
BARRISTERS' SOCIETY

July 28, 2008

Dear Member:

Re: New Client Identification & Verification Regulations

As part of all Law Societies ongoing efforts to reduce the risks of lawyers being used to facilitate money laundering, a new Client Identification Rule is being adopted across the country. This rule was developed by the Federation of Law Societies of Canada and will come into effect later this year.

For property and commercial lawyers, the requirements of our new regulations are not dissimilar to those you currently employ when acting for a financial institution in the placement of mortgages. For other lawyers, these will be new and will require development of systems to ensure compliance.

Our new regulation 4.5 is attached to this letter as are a few questions and a chart designed to help you understand the new requirements. Both the questions and the chart are distilled from the regulations and you should look for the details and the specifics in the regulations themselves.

In Nova Scotia this regulation takes effect on Monday, November 3, 2008.

With these new regulations you will be required to keep records of the identification of all clients. When financial transactions are involved, subject to a few exceptions, you will have to verify the identification of the client and keep that information on file.

Although we recognize these new rules will be a burden, we also recognize that the incidents of lawyers being targeted to assist in a laundering of money or to participate in fraudulent transactions is on the increase. Right across the country we are seeing this. For that reason, the Federation of Law Societies has worked with the Federal Government and all Law Societies to find a means for these new rules to be put in place without government creating the obligation on lawyers that would make them subject to government oversight.

The Society will add questions to the Annual Member Report to ask lawyers and law firms to confirm their compliance with these new rules. We will also seek confirmation of compliance when Society auditors and practice reviewers are engaged in the review of individual lawyers or law firms.

We hope that the material we have provided is of assistance and encourage you to discuss the steps to be taken to comply with the rules with your colleagues and associates.

As information is developed here and in other Law Societies, we will make it available to you to assist in your understanding and adoption of these new regulations.

Sincerely,

Joel E. Pink, QC
President
DIP/krh
Attachments



In Nova Scotia this regulation takes effect on Monday, November 3, 2008.

4.5 Client Identification

4.5.1 In subregulation 4.5

- (a) “financial institution” means
 - a. an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which the *Bank Act* applies,
 - b. a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,
 - c. an association that is regulated by the *Cooperative Associations Act* (Canada),
 - d. a company to which the *Trust and Loan Companies Act* (Canada) applies,
 - e. a trust company or loan company regulated by a provincial Act, or
 - f. a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public;
- (b) “funds” mean cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;
- (c) “organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;
- (d) “private company” means a company whose governing statute or constating documents provides that:
 - a. the right to transfer its shares is restricted,
 - b. the number of its shareholders, exclusive of persons who are in the employ of the company, is limited to 50, two or more persons holding one or more shares jointly being counted as a single shareholder; and
 - c. any invitation to the public to subscribe for its shares or securities is prohibited.
- (e) “public body” means
 - a. a department or agent of Her Majesty in right of Canada or of a province,
 - b. an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them,
 - c. a municipality incorporated by or under an Act of a province or territory of Canada including any body governed by the *Municipal Government Act*, SNS 1998, c.18
 - d. an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization, or
 - e. a body incorporated by or under the law of an Act of a province or territory of Canada for a public purpose.

Client Identity- Exclusion from Rule

4.5.2 Subregulations 4.5.3 – 4.5.16 do not apply to:

- (a) a lawyer who provides legal services, or is engaged in or gives instructions in respect of any activities on behalf of his or her employer;
- (b) a lawyer;



In Nova Scotia this regulation takes effect on Monday, November 3, 2008.

- (i) who is engaged as agent by the lawyer for a client to provide legal services to that client, or
- (ii) to whom a matter for the provision of legal services is referred by the lawyer for a client when the client's lawyer has complied with the requirements of this regulation.

Requirement to Record Client Identification

4.5.3 Subject to subregulation 4.5.2, a lawyer who is retained by a client to provide legal services shall obtain and record the following information:

- (a) the client's full name,
- (b) the client's business address and business telephone number ,if applicable,
- (c) if the client is an individual, the client's home address and home telephone number,
- (d) if the client is an organization, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
- (e) if the client is an individual, the client's occupation or occupations,
- (f) if the client is an organization,
 - (i) other than a financial institution, public body or company that is not a private company, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
 - (ii) the name, position and contact information for those individuals authorized to give instructions with respect to the matter for which the lawyer is retained.
- (g) if the client is acting for or representing a third party beneficiary or a principal, information about the beneficiary or principal as set out in paragraphs (a) to (f) as applicable.

Requirement to Identity and Verify Client

4.5.4 A lawyer who is engaged in or gives instructions on behalf of a client, in respect of the receiving, paying or transferring of funds, including non-face-to-face transactions, shall upon engaging in or giving instructions, take reasonable steps to verify the identity of the client and where appropriate, the third party beneficiary or principal, using what the lawyer reasonably considers to be reliable independent source documents, data or information.

4.5.4.1 The verification required under this subregulation shall be carried out at the time the lawyer engages in or gives instructions regarding receiving, paying or transferring, funds.

Independent Source Documents

4.5.5 For purposes of subregulation 4.5.4, independent source documents may include:

- (a) if the client or third party beneficiary or principal is an individual, valid original government issued identification, including a driver's licence, birth certificate, provincial or territorial health insurance card, passport or similar record;



In Nova Scotia this regulation takes effect on Monday, November 3, 2008.

- (b) if the client or third party beneficiary or principal is an organization such as a corporation or society that is created pursuant to legislative authority, a written confirmation from a government registry as to the existence name and address of the organization, including the name of its directors and officers, such as:
 - (i) a certificate of corporate status issued by a public body,
 - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence; and
- (c) if the client or third party beneficiary or principal is an organization, other than a corporation or society, that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

Exemptions re Certain Funds

4.5.6 Subregulation 4.5.4 does not apply in respect of funds:

- (a) paid by a financial institution, a public body, or a company that is not a private company;
- (b) paid to:
 - (i) a financial institution,
 - (ii) a public body, or
 - (iii) a client that is a company that is not a private company;
- (c) paid to another lawyer in trust, on the direction of the client;
- (d) received by a lawyer from the trust account of another lawyer;
- (e) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- (f) paid pursuant to a court order or to pay a fine or penalty;
- (g) paid as a settlement of any legal or administrative proceedings; or
- (h) received for professional fees, disbursement, expenses or bail.

Verification of Organizations

4.5.7 A lawyer who is engaged in or gives instructions on behalf of a client, that is an organization referred to in 4.5.5(b) or (c), in respect of the receiving, paying or transferring of funds, including non-face-to-face transactions, shall

- (a) verify the identity of the individual or individuals authorized to give instructions on behalf of the organization upon engaging in or giving instructions, and
- (b) make reasonable efforts to obtain and if obtained, record,
 - (i) the name and occupation of all directors of the organization, other than an organization that is a securities dealer, and
 - (ii) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.



In Nova Scotia this regulation takes effect on Monday, November 3, 2008.

Verify Identity Within Sixty Days

4.5.7.1 A lawyer shall verify the identity of a client that is an organization within sixty days of engaging in or giving instructions in respect of the receiving, paying or transferring funds.

Identity of Clients Elsewhere in Canada

4.5.8 A lawyer who is engaged in or gives instructions on behalf of a client who is an individual, who is not physically present before the lawyer, but is present elsewhere in Canada, in respect of the receiving, paying or transferring of funds, including non-face-to-face transactions, shall verify the client's identity by obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen a valid original government issued identification including a driver's licence, birth certificate, provincial or territorial health insurance card, passport or similar record.

Attestation by Guarantor

4.5.9 For purposes of subregulation 4.5.8, an attestation shall be produced on a legible photocopy of the document and shall include:

- (a) the name, profession and address of the person providing the attestation,
- (b) the signature of the person providing the attestation, and
- (c) the type and number of the identifying document provided by the client.

Guarantors

4.5.10 For purposes of subregulation 4.5.8, a guarantor must be one of the professionals listed below:

- (a) dentist;
- (b) medical doctor;
- (c) chiropractor;
- (d) judge;
- (e) magistrate;
- (f) lawyer;
- (g) notary (in Quebec);
- (h) notary public;
- (i) optometrist;
- (j) pharmacist;
- (k) professional accountant, Chartered Accountant, Certified General Accountant, Certified Management Accountant, Public Accountant or Registered Public Accountant;
- (l) professional engineer or Engineer, in Quebec, or
- (m) veterinarian.

Verification of Independent Source Documents

4.5.11 The verification of an individual client's identity may, and in the case of a non-face-to-face transaction involving a client who is not present in Canada, shall be carried out by an agent on behalf of the lawyer provided that:



In Nova Scotia this regulation takes effect on Monday, November 3, 2008.

- (a) the lawyer and the agent have an agreement in writing for that purpose, and
- (b) the lawyer obtains from the agent the information obtained by the agent to verify the client's identity.

Attestation by Agent

4.5.12 A lawyer who enters into an agreement or an arrangement referred to in subregulation 4.5.11 shall obtain from the agent the information obtained, which may include, where applicable, an attestation described in this section, by the agent under that agreement or arrangement.

No Subsequent Verification

4.5.13 Where a lawyer has verified the identity of a client:

- (a) who is an individual, the lawyer, or another lawyer in the same law firm, is not required to subsequently verify that same identity, if the original lawyer recognizes the person;
- (b) which is an organization, and obtained information pursuant to subregulation 4.5.7, the lawyer is not required to subsequently verify that identity or obtain that information.

Record Keeping and Retention

4.5.14.1 A lawyer shall obtain and retain a copy of every document used to verify the identity of any individual or organization pursuant to this regulation.

4.5.14.2 The documents referred to in subregulation 4.5.14.1 may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

4.5.14.3 A lawyer shall retain a record of the information and any documents obtained for the purposes of subregulations 4.5.4 and 4.5.5 and copies of all documents received for the purposes of subregulation 4.5.7 for the longer of

- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing service to the client, and
- (b) a period of at least six years following completion of the work for which the lawyer was retained.

Application

4.5.15 Subregulations 4.5.3, 4.5.4, 4.5.7 and 4.5.8 do not apply to matters in respect of which a lawyer was retained before this regulation comes into force but they do apply to all matters for which he or she is retained after that time regardless of whether the client is a new or existing client.

Criminal Activity, Duty to Withdraw at Time of Taking Information

4.5.16.1 In the course of obtaining information and taking the steps required by this regulation, a lawyer shall act in accordance with the *Legal Ethics Handbook*, including, but not



NOVA SCOTIA BARRISTERS' SOCIETY

In Nova Scotia this regulation takes effect on Monday, November 3, 2008.

limited to, Chapters 4.7, 4.8, 4.9 and 11.1, and if the lawyer withdraws from representing the client, he or she must record the reasons for doing so.

4.5.16.2 Subregulation 4.5.16.1 applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Rule comes into force.

4.5.17 Criminal Activity, Duty to Withdraw after being Retained

4.5.17.1 While retained by a client, a lawyer shall act in accordance with the *Legal Ethics Handbook*, including, but not limited to, Chapters 4.7, 4.8, 4.9 and 11.1, and if the lawyer withdraws from representing the client, he or she must record the reasons for doing so.

Application

4.15.17.2 This subregulation applies to all matters for which a lawyer was retained before this regulation comes into force and to all matters for which he or she is retained after that time.



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/>*



NOVA SCOTIA BARRISTERS' SOCIETY

Client Identification & Verification Overview

	Individual Clients	Organizational Clients	Representative Clients Such as Trusts or Estates
Identification	<ul style="list-style-type: none">• Full Name• Business Address• Business Telephone #• Occupation	<ul style="list-style-type: none">• Full Name• Business Address• Business Telephone #• Incorporation # or Business ID #• Type of Business• Name of person authorized to give instructions.	<ul style="list-style-type: none">• Full Name• Business Address• Business Telephone #• Information about beneficiary or principle represented by the client.
Verification	<ul style="list-style-type: none">• Reliable, independent source documents, eg., Driver's License, Birth Certificate, etc.	<ul style="list-style-type: none">• Written confirmation from Government Agency or copy of constating documents.• Record names of directors.• Record names of persons who own more than 25% of the shares.• Do so within sixty (60) days.	<ul style="list-style-type: none">• Written confirmation from Government or copy of constating documents.
	<ul style="list-style-type: none">• If client is elsewhere in Canada, guarantor required.• If client is outside of Canada use agent to verify identity.		