



# Agenda

- Client Identification and Verification (CIV)
- November 15, 2023

# Know Your Client : Due Diligence

- As a legal professional, you have a duty to know your client.
- This includes:
  - 1) Knowing your client's identity
  - 2) Understanding the client's financial dealings
  - 3) Managing any risks arising from the retainer



# Know Your Client : Due Diligence

- Based on the Model Rule on Client Identification and Verification as issued by the Federation of Law Societies of Canada, Nova Scotia Barrister Society also has adopted the same and incorporated them within the NSBS' regulations ([Regulation 4.13](#))
- These duties arise from the Society's Regulations on [Client Identification and Verification](#) which aims to ensure that lawyers are not facilitating fraudulent or money laundering activities.



## Federation's Resources

- The Federation of Law Societies of Canada has launched an online learning program on [“Anti-Money Laundering and Terrorist Financing in the Canadian Legal Profession”](#) focusing on the five key areas as follows:
  - Understanding the Problem of Money Laundering and Terrorist Financing
  - Assessing and Managing Money Laundering Risks
  - Key Due Diligence Requirements
  - Proper use of Trust Accounts
  - Cash Transactions
- Refer the Federation's issued [Guidance](#) and [FAQ](#) on the Client Identification and Verification



# Identification Vs Verification

- **Identification**

- When retained to provide legal services
- Obtain basic information such as client's name, address, phone number, occupation and place of work

- **Verification**

- When retained to provide legal services in respect of a financial transaction (triggers source of money obligations)
- Obtain and retain documentation to confirm that your client is who or what they say they are

# Regulations on Client ID and Verification

- NSBS' Regulations outlines the requirements for:
  - Identifying clients,(NSBS Regulation 4.13.2)
  - Verifying a client's identity if the matter involves a financial transaction, (NSBS Regulation 4.13.6)
  - Obtaining information about the source of funds, (NSBS Regulation 4.13.8)
  - Monitoring the professional business relationships, (NSBS Regulation 4.13.28)
  - Maintaining records of information obtained (NSBS Regulation 4.13.22)
  - Withdrawal (NSBS Regulation 4.13.30)



# Client Identification

## How to Identify

	Individual Clients or Representative Clients (individuals)	Organizational Clients Representative Clients (organizations)
<p><b>Identification</b></p> <p>Required when providing legal services, except:</p> <ul style="list-style-type: none"> <li>- For employer</li> <li>- Agent for another lawyer</li> <li>- Referral from lawyer who has already done id</li> <li>- Duty counsel (unless activity re verification)</li> </ul>	<p><b>Obtain and Record</b></p> <ul style="list-style-type: none"> <li>• Full Name</li> <li>• Home address and Telephone #</li> <li>• Occupation(s)</li> <li>• Work Address and Telephone # (if applicable)</li> </ul>	<p><b>Obtain and Record</b></p> <ul style="list-style-type: none"> <li>• Full Name</li> <li>• Business Address</li> <li>• Business Telephone #</li> <li>• Incorporation # or Business ID # (if applicable)</li> <li>• Type of Business</li> <li>• Name, position, and contact information of person authorized to give instructions.</li> </ul>



# Client Identification and Verification-Time

## **When to Identify:**

You must identify individuals and organizations as soon as you are retained to provide legal services.

## **When to Verify:**

- Individuals: immediately upon engaging in or giving instructions on a client matter involving a financial transaction.
- Organization: Within 30 days of engaging in or giving instructions on a client matter involving a financial transaction.

The lawyer must obtain and record the above information with the applicable date([Regulation 4.13.5 and 4.13.8](#)).

**[NSBS Overview on Client identification and Verification](#)**





## Example of Identifying Clients

- Joseph is retained by Earth to Mars Media Inc. on a copyright matter. The company's President and Vice President have been authorized to instruct counsel. Joseph mostly receives instruction from the President, but occasionally from the VP. **Who does Joseph have to identify?**



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- **Joseph must identify the company and both the President and VP as each is authorized to provide and gives instructions.**



# Overview of Verifying Client Identity

- You must verify a client's identity when the retainer involves engaging in or giving instructions in respect of the receiving, paying or transferring of funds, referred to as a 'financial transaction'.
- Verifying a client's identity is the process of confirming that the individual or organization is who they say they are.

# Overview of Verifying Client Identity

## ▪ **Who to Verify**

Unless an exemption applies, you must verify the identity of:

- the client
- any third party that the client is acting or representing with respect to the matter
- For organizations, each individual authorized to provide and who gives instructions on behalf of the organization with respect to the matter

## Verification of ID- Individuals

- To verify the identity of an individual, you must use one of the three methods below. You must obtain and retain a copy of every document used to verify the client's identity.
  - Government Issued Photo Identification
  - Credit File method
  - Dual process Method





## Verification of ID-Govt Issued Photo ID

- Refer to one of the following:
  - an authentic, valid and current government-issued ID document that includes the individual's name and photograph
  - A foreign issued document that is equivalent to a Canadian issued government ID
- The following are not acceptable: Municipal government issued ID, health cards.
- You(or your agent) must view the original document in the presence of the individual to ensure that they match the photograph.



# Verification of ID-Upcoming Change

- The temporary pandemic relief measure of allowing verification by viewing a government-issued identity document with the client over a video call will end **January 31, 2024**.
- The Federation of Law Societies of Canada has issued new guidance allowing the remote verification of the government-issued photo ID when using a technology product capable of verifying the authenticity.
  - If the individual is not physically present, you or your agent must have a process in place to authenticate the photo ID (additional guidance on the next slide) for example, using a technology capable of determining the document's authenticity, and determine that the authenticated photo ID is valid and current and that the name and photo are those of the individual providing the ID.
- After January 31st, NSBS members must return to in-person verification of Client ID or adopt remote ID authentication technology confirming to the Federation's guidance.



# Verification of ID-Govt Issued Photo ID

- 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.
- See Guidance issued by the Federation of Law Societies  
<https://flsc.ca/wp-content/uploads/2023/06/AML-Guidance-to-Legal-Profession-March-2023.pdf>





# Verification of ID-Govt Issued Photo ID

- Where can I find authentication technology?
  - ✓ This type of technology is relatively new and developing.
- Starting points in identifying solutions may be:
  - Digital Identification and Authentication Council of Canada (“DIACC”) has developed a directory of products that assess identification documents and verify identity (the “DIACC Directory”). The list is not audited, but DIACC is working on an audit and certification program.
  - The Law Society of Alberta’s list of approved [innovation sandbox participants](#).



## Verification of ID-Credit file

- Refer to the individual's credit file if it has been in existence for at least 3 years.
- Confirm that the name, address and date of birth in the credit file match that provided by the individual.
- The credit file must be obtained directly from a Canadian credit bureau.
- This method may be completed without the individual being present.



# Verification of ID-Dual Process

Refer to any two of the following, each from a different reliable source:

- Information from a reliable source that contains the individual's name and address.(eg: Canada Pension Plan Statement, Property tax assessment, CRA document like NOA/refund letter, etc)
- Information from a reliable source that contains the individual's name and date of birth. .(eg: PR card, Citizenship certificate, etc)
- Information from a reliable source that contains the individual's name and confirmation that they have a deposit account, credit card, or other loan amount with a financial institution.(eg: credit card statement, bank statement, loan statement , etc)

Neither you nor an agent acting on your behalf may be the source of the information.

This method may be completed without the individual being present.

See [examples of "Reliable Source"](#)



## Verification of ID- Using an Agent

- You may use an agent to verify the identity of an individual at any time. When you are using an agent to verify identity, you must have a written agreement with the agent. Refer NSBS' portal for the [sample agent agreement](#).
- While anyone may act as an agent, that you trust will provide the information required in accordance with the NSBS Regulations.
- You are ultimately responsible for ensuring the verification requirements are met and the required information is obtained.
- For more information, refer NSBS Regulation(4.13.9 to 4.13.12) and Federation's [Guidance on Using an Agent](#).



# Verification of ID- For an Organization

You must first determine whether the organization is created or registered under legislation, such as a corporation, cooperative, or society, or is another type of organization, such as a trust or partnership.

<b>Verifying an organization created or registered under legislation</b>	<b>Verifying an organization <i>other than</i> those created or registered under legislation</b>
<p>You may rely on written confirmation from a government registry as to the existence of the organization. Documents that you can rely on include: certificate of corporate status, annual securities filings, or any other record that confirms the corporation's existence.</p> <p>If an electronic document is used to verify, you should record:</p> <ul style="list-style-type: none"><li>▪ the corporation's registration number</li><li>▪ the type of document referred to</li><li>▪ the source of the electronic version of the document</li></ul> <p>If you refer to a paper copy of a document you should keep the paper document, or a copy of it.</p>	<p>You may rely on documents that formally establish or create the organization. Documents you can rely on include: a partnership agreement, articles of association, or any other similar document that confirms the organization's existence.</p> <p>If an electronic document is used to verify, you should record:</p> <ul style="list-style-type: none"><li>▪ the entity's registration number</li><li>▪ the type of record referred to</li><li>▪ the source of the electronic version of the document</li></ul> <p>If you refer to a paper document, you must keep the paper document, or a copy of it.</p>



# Organizations-Additional Requirements

- When verifying an organizational client, you are required to take steps to obtain and record additional identifying information.
- Criminals try to conceal their ownership in money laundering and terrorist activity financing schemes. Identifying beneficial owners(who own or control, directly or indirectly, 25% or more of an organization or the shares of an organization) is an important step in knowing your client. It removes anonymity to reveal the actual owners in a transaction.
- Please refer NSBS' checklist on [Verification of the identity of an organization](#)



## Example of Verifying Client Identity

- Jamie, a lawyer, is retained by Rachel to provide legal services involving a financial transaction. Rachel is out of town helping to look after an elderly parent for several weeks and is unable to attend at Jamie's office. **What methods can Jamie use to verify Rachel's identity?**



## Example of Verifying Client Identity

- Jamie, a lawyer, is retained by Rachel to provide legal services involving a financial transaction. Rachel is out of town helping to look after an elderly parent for several weeks and is unable to attend at Jamie's office. **What methods can Jamie use to verify Rachel's identity?**
- **Since the client cannot meet in person, Jamie could verify Rachel's identity using the credit file method or the dual process method, or retain an agent to meet Rachel in person and review government issued photo ID to ensure it is valid, authentic and current.**





# Obtaining information for Source of funds

- Money launderers attempt to conceal the origin or source of funds in a financial transaction to avoid detection, usually through placement and layering activities.
- Whenever you are retained to provide legal services that involves a financial transaction, unless an exemption for verifying client identity applies, you must obtain information about the source of funds in the transaction. You must also keep dated records of the information you obtain.
- Obtaining information about the source of funds helps you to assess and mitigate potential money laundering risks.



# Making inquiries into the source of funds

- In making inquiries about the source of funds(origin of the money being used to fund a specific transaction), you must obtain and record with the applicable date, information from the client about:
  - the activity or action that generated the funds (e.g. salary, bank loan, personal savings, sale of property or assets, gift, investment income inheritance, lottery winning, court order, or settlement, etc).
- You should also obtain and record:
  - how the funds are being received (e.g. from a bank account, credit card charge)
  - the payer or owner of the funds
  - the date of the funds were received
- For the Risk Assessment case studies and red flags around the source of funds, You may refer Federation's guidance [Risk Assessment Case Studies for the Legal Profession](#)
- Refer NSBS' checklist on the [Source of Money](#)



## Examples : Source of Fund # 1

Alex is a retail worker with a minimum wage income. Alex wants to retain you in connection with the purchase of high value real estate properties with money purportedly from previous home sales and without any additional financing.

**Potential Red Flag?**



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**What you should do:**



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**Potential Red Flag?** The funds available to purchase high value real estate properties are inconsistent with Alex's occupation and financial means.

**What you should do:** Make further inquiries about the source of funds, keep records of what you receive, and assess the information. If you are not satisfied on reasonable grounds that the source of funds is legitimate, you need to assess whether it is appropriate to act for the client.



## Examples : Source of Fund # 2

Kenneth is your contact at a corporate client seeking to make a large investment in a smaller, struggling company. When asked about the source of funds, Kenneth claimed it was from an unsecured 'shareholder loan', the evidence of which consists of simple email messages between the company and the 'shareholder'.

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**Potential Red Flag?** A large loan with little or no paperwork and no security could be a red flag.

**What you should do:** You should inquire about the source of funds. If you are not satisfied that the source of funds is legitimate, you need to assess whether it is appropriate to act for the client.





# Monitoring business relationships

- If the legal services being provided relate to a financial transaction, you must periodically monitor the professional business relationship with your client to ensure the information you have is current and valid and to assess risk. The monitoring requirement applies even to longstanding clients.

## Frequency of Monitoring:

The frequency of monitoring depends on the circumstances of each client matter. Use your professional judgment to determine when monitoring is required, considering factors related to:

- The client (e.g. new facts arise about the client, the client exhibits unusual behaviour, or suddenly changes instructions without reasonable explanation)
- The nature of the work or transaction (e.g. a transaction posing an elevated risk may require more frequent monitoring such as a high value purchase without financing )
- The anticipated duration of the retainer (e.g. files of a very short duration may not require additional monitoring steps as the obligations would be subsumed in the initial steps of verifying identity and assessing the source of funds)
- The type of legal services provided (e.g. services related to real estate, private lending, or creating shell corporations may require more frequent monitoring)
- Refer to NSBS Regulations ([4.13.28](#) and [4.13.29](#)) and Federation's [Guidance on Monitoring Obligations](#)



## Examples of Monitoring #1

Daniel is a lawyer acting for a client who is selling a condominium for \$500,000. The sale is scheduled to close in three weeks. **What are Daniel's monitoring obligations?**



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**As the retainer is for a single transaction that will take only a few weeks to complete, the monitoring obligations would likely be subsumed in the due diligence work done to complete the retainer, including the steps taken to verify client identity and inquire about the source of funds.**



## Examples of Monitoring #2

Ghadeer is a lawyer acting for Shirley who is seeking to purchase the assets of several companies over the span of 20 months. Shirley has not yet secured funding for all of the purchases and is seeking international investors. What should Ghadeer do with respect to monitoring?



## Examples of Monitoring #2

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**Given the duration and nature of the retainer, Ghadeer should ensure that the client instructions and information on the expected source of funds are consistent and remain so over the period of the retainer, including when new investors have been identified.**



# Record Keeping

## **Overview:**

You must record and retain information required to identify the client, keep a copy of every document used to verify the client's identity, and record and retain any information related to the source of funds and monitoring the professional relationship.

## **Acceptable formats:**

You may keep records in machine-readable or electronic form if a paper copy can be readily produced from it.



# Record Keeping

## **Duration of Record keeping :**

You must retain the records for the longer of:

- the duration of the professional relationship with the client and for as long as is necessary for the purpose of providing service to the client; and
- at least six years following completion of the work on the client matter(s) for which you were retained.



# Key Information to Record

<b>For Individual and organizational clients</b>	<b>Additionally, for organizational clients</b>
Copies of every document used to verify the identity of the client and any third party if the client is acting for or representing a third party	Information and any related documents on the directors, beneficial owners and trustees, as the case may be
Information about the source of funds	Information and any related documents on the ownership, control and structure
Any measures taken and information obtained in monitoring of the professional business relationship with the client	Information and any related documents that confirm the accuracy of the information on directors, beneficial owners and trustees, and the ownership, control and structure





## Example of Record Keeping

Adex Business Corp. is one of Patrick's corporate clients. Patrick routinely provides legal services to the client. During the retainer, the client informs Patrick of changes to the company's beneficial owners. **What should Patrick do?**



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Adex Business Corp. is one of Patrick's corporate clients. Patrick routinely provides legal services to the client. During the retainer, the client informs Patrick of changes to the company's beneficial owners. **What should Patrick do?**

**Patrick should obtain and record the names and addresses of the new beneficial owners and keep a proper record of these details.**



## Duty to withdraw

- At the core of the NSBS Regulations and the obligation to know your client is the professional responsibility to not facilitate money laundering, fraud or other illegal conduct.
- You must withdraw from representation of a client if, in completing your due diligence or at any time during the relationship, you know or ought to know that you are, or would be, assisting a client in money laundering, fraud or other illegal conduct.



# QUESTIONS?



Email us at [TrustAccounts@nsbs.org](mailto:TrustAccounts@nsbs.org) for any questions related to Trust Accounts