

Where Face to Face Meeting Not Possible

▶ Attestation

- ▶ for clients we cannot meet face to face and whose identity we must VERIFY we can obtain an attestation from any of a number of Canadian professionals;
- ▶ if the client is outside Canada, then we must use an agent (no special qualifications) to assist us;
- ▶ we must enter into an agreement with the agent before he or she can act.

SAMPLE FORM

ATTESTATION FOR VERIFICATION OF IDENTITY WHEN THE CLIENT OR THIRD PARTY IS PRESENT IN CANADA AND IS NOT INSTRUCTING THE LAWYER FACE TO FACE

The following sample form document has been prepared to assist lawyers to comply with their professional obligations when obtaining attestations from a commissioner of oaths or other guarantor where the individual whose identity is being verified is present in Canada, but is not meeting with the lawyer face to face. This sample form should be modified to suit the circumstances of the particular matter or transaction.

Instructions

The Attestor should photocopy the identity document being used to verify identity and ensure that it is legible, unexpired and shows the name of the person whose identity is being verified, the number of the document, the name of the issuing authority, the date of issue and a photograph of the person.

The Attestor will print the following attestation on this photocopy and date and sign the attestation.

I, the Attestor named below, hereby certify to [*name of lawyer receiving the attestation*] that I met with [*insert name of person*] on [*insert date*] and verified this person's identity by examining the original of this person's identity document, of which a photocopy is contained on this page. The photograph in the identity document is a true likeness of the said person and to the best of my knowledge and belief, the identity document that I examined is valid and unexpired.

Attested to by me at _____, on _____, 2008

Signature of Attestor: _____

Printed Name of Attestor: _____

Title or Profession of Attestor: _____

Address of Attestor for Service: _____

Telephone Number of Attestor: _____

SAMPLE FORM

VERIFICATION OF IDENTITY AGREEMENT WHERE THE CLIENT OR THIRD PARTY IS NOT PRESENT IN CANADA AND IS NOT INSTRUCTING THE LAWYER FACE TO FACE¹

This sample form agreement in letter format may be used by lawyers retaining agents to verify the identity of clients or third parties where the client or third party is not in Canada and is not instructing the lawyer face to face. In this sample form agreement, the identity of an individual is being verified by the examination of the person's driver's licence or passport. Although the by-law does not require the agent to examine more than one piece of identification, depending on the circumstances of the file, a lawyer may want an agent to examine more than one piece of identification. This sample form agreement should be modified to suit the circumstances of the matter or transaction. Furthermore, if the person is also signing other documents in the presence of the agent, such as an acknowledgment and direction authorizing the lawyer to electronically sign and submit title documents for registration, the lawyer may wish to modify this agreement to set out the additional obligations of the agent.

[Firm Letterhead]

[Delivery Method]

[Name and Address of the Agent]

Dear *[Agent]*:

Re: *[Insert the name of the client "our client"]*
[Insert the nature of the matter or transaction]

We are acting in the above-noted matter and would like to retain you to verify the identity of our client. In this regard, we will require that you meet with our client and take the following steps to verify our client's identity:

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Please note that in situations where the client is an individual present in Canada and is not instructing the lawyer face to face, the lawyer has the option of obtaining either an Attestation (Appendix 4) or a Verification of Identity Agreement (Appendix 5).

1. Examine the original, valid and unexpired passport or driver's licence (identity document) of our client
2. Make a legible photocopy of this identity document and ensure that it contains our client's name, the number of the document, the name of the issuing authority, the date of issue and our client's photograph.
3. Print and certify on this photocopy as follows:

I, the Attestor named below, hereby certify to *[name of lawyer receiving the attestation]* that I met with *[insert name of person]* on *[insert date]* and verified this person's identity by examining the original of the person's identity document, of which a photocopy is reproduced on this page, and which copy legibly shows the name of the person, the number of the identity document, the name of the issuing authority, the date of issue, and a photograph that is a true likeness of the said person. To the best of my knowledge and belief, the identity document that I examined is valid and unexpired.

Attested to by me at *[Insert Place of Signature]*, on
, 2008

Signature of Attestor: _____

Printed Name of Attestor: _____

Title or Profession of Attestor: _____

Address of Attestor for Service: _____

Telephone Number of Attestor: _____

4. Date and sign the photocopy containing the above certification in the spaces set out for the date and signature and return it to us no later than *[insert date]*

Any amendments to these instructions must be approved in writing by our firm.

If you are agreeable to verifying the identity of our client on the terms and conditions set out in this letter, please confirm your agreement by signing two copies of this letter on the signature line below and return one copy to the undersigned.

I hereby agree to verify the identity of the person referred to above on the terms and conditions set out in the above letter.

Dated at *[Insert location]* on *[Insert date]*.

Signature of the Agent

[Insert the Name of the Agent]

Dealing with last minute verification problems

- ▶ What if you need to verify but cannot get the information?
 - ▶ You need the verification information for individuals and the individuals giving instructions for the organization when the transaction is entered into;
 - ▶ You have 60 days to obtain verification information for an organization;

Dealing, continued

- ▶ You only need to use best efforts for names, occupations and addresses of directors and persons owning 25% or more of the organization.

Dealing, continued

- ▶ Use wire transfers so as to take advantage of that exemption;

Dealing, continued

- ▶ If the client was referred to you by another Canadian lawyer who has verified the client's identity we do not really need to verify identity but we must have some proof that the other lawyer did verify identity;

Some Problems

- ▶ **Agency and Third Party Beneficiaries:**
 - ▶ We are obliged to identify and verify:
 - ▶ if the client is acting for or representing a third party beneficiary or a principal.
- ▶ **The rule is simple to apply if our client is an agent-you need to identify and, in some cases, verify the identity of the principal as well as the client.**

Summing Up

- ▶ These new requirements are onerous and time consuming;
- ▶ We will be conducting occasional audits to ensure that we are complying with both the letter and spirit of the by-law;
- ▶ If we fail to comply we are in violation of the Code of Professional Conduct;

Summing Up

- ▶ Don't forget that if you are suspicious about the activities of a client you may well have an obligation not to assist them with the activity or to terminate the retainer;
- ▶ If you encounter such a situation speak to your practice group leader, a member of the executive or myself before taking any action, if possible.



► THE END