

TAB 3

## **New Rules for Client Identification and Verification Requirements – From and Estates and Trusts Perspective**

Ian M. Hull, C.S.  
Suzana Popovic-Montag  
*Hull & Hull LLP*

**Practice Gems: Probate Essentials 2009**  
September 17, 2009



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

Continuing Legal Education



**HULL & HULL LLP**  
Barristers and Solicitors

**LAW SOCIETY OF UPPER CANADA**  
**NEW RULES FOR CLIENT IDENTIFICATION AND**  
**VERIFICATION REQUIREMENTS**  
**– FROM AN ESTATES AND TRUSTS PERSPECTIVE**

**Ian M. Hull**

Tel: (416) 369-7826

Fax: (416) 369-1517

Email: [ihull@hullandhull.com](mailto:ihull@hullandhull.com)

**Suzana Popovic-Montag**

Tel: (416) 369-1416

Fax: (416) 369-1517

Email: [spopovic@hullandhull.com](mailto:spopovic@hullandhull.com)

**Hull & Hull LLP**  
Barristers and Solicitors

**TORONTO**

141 Adelaide Street West, Suite 1700

Toronto, Ontario M5H 3L5

TEL: (416) 369-1140

FAX: (416) 369-1517

**OAKVILLE**

228 Lakeshore Road East

Oakville, Ontario L6J 5A2

TEL: (905) 844-2383

FAX: (905) 844-3699

[www.hullandhull.com](http://www.hullandhull.com)  
[www.hullestatemediation.com](http://www.hullestatemediation.com)

Subscribe to **Hull & Hull LLP** blogs and podcasts at <http://estatelaw.hullandhull.com>

## INDEX

Introduction .....	3
Estates and Trusts Identification .....	3
Specific Considerations for Estates and Trusts .....	5
Estates and Trusts Verification.....	5
Conclusion .....	7

## **New Rules for Client Identification and Verification Requirements – From An Estates And Trusts Perspective**

### **Introduction**

In the context of an estates and trusts practice, the newly-approved client identification and verification regulations directly impact on our day to day contentious and non-contentious matters.

Prior to providing services, we need to **IDENTIFY** the client. This includes obtaining their name and contact information, which is something that most of us currently do as a matter of practice. Additional information that must be obtained is the occupation of the client.

If the client is a trust or a corporation, the information that is required is more comprehensive.

As to the question of **VERIFICATION**, this is triggered when money is being received, paid or transferred. There are a number of important exceptions, including the receipt of money to cover fees, money paid by or to a financial institution, or a public company, money paid or received as a settlement of a legal proceeding, or pursuant to a Court Order.

### **Estates and Trusts Identification**

In order to properly verify and identify the client, we are now required to look at an original identification document, such as a Driver's Licence, Passport or Birth Certificate, and to retain a copy of the document for our file. A trust itself can be verified by reviewing documents that establish the trust and documents identifying the trustees. There are special provisions for

circumstances where we cannot meet the client, and in those cases, there is an allowance of an attestation by a Commissioner for Taking Oaths.

At our firm, we keep a separate sub-file for the required identification and verification documentation that is obtained.

The following is a checklist in respect of the identification requirements. The requirements apply to both a lawyer or a paralegal who provides professional services to a client:

The Identification requirements are **not** necessary:

- (i) When providing legal services to your employer, *i.e.* in house counsel;
- (ii) When acting as an agent for another lawyer or paralegal who has already properly identified the client;
- (iii) When acting for a client who has been referred to you by another lawyer or paralegal who has already properly identified the client;
- (iv) If it is the same matter and you are acting for the client before December 31, 2008, you do not have to comply with the identification requirements; and
- (v) When acting for a financial institution, public body or public company you do not need to obtain or record the nature of the business activities it is engaged in.

When the Identification requirements **are** necessary:

- (i) You are expected to exercise due diligence to satisfy yourself that the client has been identified;
- (ii) You must get the person's full name;
- (iii) Home address;
- (iv) Telephone number and occupation;
- (v) E-mail is also helpful;
- (vi) Where applicable, you must get a business address and telephone number;

- (vii) Occupation does not need to be "employment" *i.e.* homemaker, volunteer, caregiver etc.; and
- (viii) If the client is an organization, corporation, partnership, or trust, you must record it's full name, business address and phone number, business identification number (where applicable), general nature of the business and name and position of any contact person.

### **Specific Considerations for Estates and Trusts**

- (i) Generally speaking, when acting in respect of an administration of an estate, proper identification of the beneficiary is not required. However, from a practical standpoint, it may be worthwhile obtaining this information when distributions are going to be made;
- (ii) In circumstances where a Power of Attorney is being used and the document was not prepared by you as lawyer, it is not typically required, in the absence of suspicion or fraud, that the lawyer verifies the identify of the donor;
- (iii) Identification of intestate heirs may be required in circumstances where the solicitor is also acting for the Estate Trustee in respect of the administration and, in particular, in respect of the appointment of an Estate Trustee Without A Will;
- (iv) Again, in an intestate succession situation, verifying the next-of-kin may be a prudent step as you consider this issue of confirming all of the next-of-kin, which is a requirement in any event; and
- (v) When registering a survivorship application, it is probably prudent to properly verify the surviving spouse. While the surviving spouse may technically be a beneficiary in that circumstance, it is up to the solicitor to determine if he or she needs that extra safeguard.

### **Estates and Trusts Verification**

The following is a checklist in respect of the verification requirements:

- (i) Verification defined – It is the information you will need to get to confirm that your client is who or what they say they are;
- (ii) Only required when you are acting for a client or giving instructions on behalf of a client regarding receiving, paying or transferring of funds;
- (iii) Verification is not required to pay professional fees, disbursements and expenses;

- (iv) Not required for financial institutions, public body or department of the federal, provincial or territorial government, city or hospital;
- (v) Verification required for a private company;
- (vi) Verification requirements are not triggered when the funds received are from the Police or other public official;
- (vii) Verification not required if the funds are paid or received as a settlement of legal or administrative proceedings;
- (viii) Verification is not required to pay money into trust to another lawyer or paralegal;
- (ix) Verification is not required when receiving money from the trust account of another lawyer or paralegal;
- (x) Verification documents must be looked at in original form and you must reasonably believe them to be independent and reliable, *i.e.* Government issued Driver's Licence, Birth Certificate, Passport ... You must retain a copy;
- (xi) Corporate verification of a private company includes constating documentation that is independent and reliable, such as the corporation's annual filing or certificate of corporate status;
- (xii) Copy of the Partnership Agreement is appropriate with a partnership;
- (xiii) Reviewing the Trust Agreement or other documents establishing the trust are appropriate with regard to identifying trustees;
- (xiv) "Reasonable Efforts" is usually simply asking the client for information; however, you may need to review Minute Books;
- (xv) It is prudent to obtain the names of the Directors and owners of a private corporation;
- (xvi) When you cannot meet with your client, such as circumstances where a client lives in Vancouver and you practice in Toronto, 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 reliable, independent documents referred to above;
- (xvii) An attestation is where you are provided with a legible photocopy of the document signed by the Commissioner of Oaths or Guarantor on which they have included their name, profession, and address and they have identified the type and number of identification document provided by the client;
- (xviii) An attestation can be provided by a Commissioner of Oaths or a Guarantor in Canada where the client lives in Canada (*i.e.* similar to those

Guarantors on a Passport application such as lawyers, Quebec Notaries, Doctors, Dentists;

- (xix) If your client is an individual and is outside of Canada, you must engage an agent to conduct the verification for you and you must have an agreement in writing with that person, that they must provide you with the information they obtain. The agent may provide the information in an attestation; and
- (xx) As long as you recognize the person, you do not have to verify the identity of an individual more than once.

## **Conclusion**

As prudent estates and trusts practitioners, we are wise to review the new rules for client identification and to adapt them in a flexible fashion to our respective practices.