

## **Amendments Regarding the Nature of Documents for Verifying Identity**

The amendments to Rule 16.06(6) mirror amendments to the Federation of Law Societies CIV Model Rules approved in March 2023 and are consistent with changes made to federal regulations in 2019 which removed a prohibition on relying on scanned or photocopied documents to verify identity.

The previous Rule 16.06(6) required that documents must be “valid, original and current”. The amendment changes “original” to “authentic” and removes the prohibition on use of an electronic image of a document which means that legal professionals can choose to rely on scanned or photocopied documents provided they have access to a process to authenticate the document. For example, in a situation where the client is not physically present and where the legal professional can assess a government-issued photo identification document by using a technology capable of determining the document's authenticity. Using FINTRAC guidance for the purpose of an example, this could involve asking the client to scan the document using the camera on their mobile phone or electronic device. The legal professional would then use a technology to compare the features of the 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, symbols) to be satisfied that it is an authentic document as issued by a federal, provincial, or territorial government. There are several companies that offer products that use authentication technology to verify identity in accordance with this method.

Please note, this method of verifying identity is a choice, not a requirement. Legal professionals may still choose to use original personal identification documents (which are by their nature authentic) in the presence of the client or use an agent when the client is not present, if this type of document is to be used to verify identity. The legal professional may also use other verification methods that do not require that the client be present before them.

## **Amendments Regarding the Use of Agents**

The amendments to Rule 16.06(3) and (4) also mirror amendments to the Federation of Law Societies CIV Model Rules approved in March 2023 and are intended to clarify and simplify the requirement about the use of an agent to verify the identity of a client.

The previous Rule 16.06(2) and (3) read as follows:

(2) A lawyer may rely on an agent to obtain the information described in subsection (6) to verify the identity of an individual client, third party or individual described in paragraph 3(2)(d) provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subsection (4).

(3) Notwithstanding subsection (2), where an individual client, third party or individual described in paragraph 3(2)(d) is not physically present in Canada, a lawyer must rely on an agent to obtain the information described in subsection (4) to verify the person's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subsection (4).

(4) A lawyer who enters into an agreement or arrangement referred to in subsection (2) or (3) must: (a) obtain from the agent the information obtained by the agent under that

agreement or arrangement; and (b) satisfy themselves that the information is valid and current and that the agent verified identity in accordance with subsection (6).

Following a review by the Federation of Law Societies of the corresponding requirements in the federal regulations and FINTRAC guidance on the use of agents, it was noted that:

- An agent can be used at any time by a legal professional who is required to verify the identity of a client;
- The agent, through a written agreement with the legal professional, is required to do what the legal professional would do to verify, in accordance with the CIV Model Rule;
- Some methods of verification do not require that the client be present before the legal professional; in those cases, an agent would not be required, even though the client and legal professional are not face-to-face; and
- When the client is not present, if the legal professional wants to use a client's government-issued photo ID document to verify identity (and the legal professional does not choose to use a technology to authenticate the document), an agent would be required to verify identity in the presence of the client to satisfy the requirement in the CIV Model Rule.

In light of this and given the purpose and intended scope of the provision on the use of agents, subsection (3) is superfluous as it essentially states the obvious for non-face-to-face situations, and does not accurately reflect the situations where agents may or may not be necessary (e.g., where a client is not physically present in Canada), given the types of documents/methods that can be used to verify identity.

The amendment deletes subsection 16.06(3) and removes the reference to 16.06(3) in 16.06(4).