

Notice from the Law Society of Yukon on COVID-19

(April 7, 2020)

The Law Society has developed the following FAQ's to provide guidance for lawyers to support them in the delivery of legal services in the COVID-19 pandemic.

Public health agencies have made numerous recommendations to reduce the risk of transmission, including social distancing and self-isolation. Please continue to monitor ongoing news releases to ensure you have current information.

Q: Can a lawyer use a virtual means of identifying or verifying the identify of a client, such as video conferencing or telephone?

The client identification and verification requirements in Rules 168 - 178 continue to apply. However, the Law Society understands that members may face challenges in meeting their obligations. While we continue to expect that lawyers will endeavour to comply with the rules, we recognize that it may be challenging to verify a client's identity where the lawyer and the client are unable to meet in person.

Client Identification involves obtaining certain basic information about the client and any third party directing or instructing the client, such as a name and address. This information is required whenever a lawyer is retained to provide legal services to a client, unless an exemption applies. This step can be done over the phone or by video conference. There is no requirement that it be completed face-to-face.

Client Verification involves reviewing an original identifying document from an independent source, to confirm the identity of clients and third parties. Lawyers are only required to verify the identity of clients and third parties if they are involved in a funds transfer activity, where the lawyer engages in or instructs the payment, receipt or transfer of funds, and an exemption does not apply.

Lawyers should also consider whether they may be able to rely upon the previous verification by another person, as permitted under the rules, or verification by an agent.

Until further notice, the Law Society will not require lawyers to verify the identity of a client by requiring the lawyer to be in the physical presence of the client. Alternative means of verification, such as face-to-face verification via video conference, will be permitted temporarily. This is an interim measure and should not be continued after the current health crisis resolves.

If lawyers choose to verify clients' identity via video conference, they must attempt to manage some of the risks associated with this practice, as outlined below:

- Ensure that the government-issued identification is valid and current;

- Compare the image in the government-issued identification with the client to be reasonably satisfied that it is the same person;
- Take a screen grab or picture of the front and back of the ID and maintain it in your file;
- Record the method used to verify the client's identification and the applicable date;
- Treat the transaction as a high-risk transaction and continue to monitor the business relationship as a high-risk transaction; and
- Document the efforts made to verify the client's identity in accordance with the existing rules, and the reasons why the lawyer was unable to verify the client's identity in accordance with the existing rules.

If a transaction presents too much of a risk, lawyers should decline to act.

Lawyers are reminded that opportunities for fraud and theft can proliferate in the presence of unusual events such as office closures and economic instability. Lawyers should monitor internal controls to ensure the protection of trust funds.

Lawyers should also remember that they do not need to verify the identity of clients for all matters. Keep in mind the distinction between identifying and verifying the identity of a client. If only client identification is required, lawyers are able to comply with their professional obligations without meeting in-person or via video conference.

Managing the Risk of Verification via Video Conference

Where a lawyer uses a video conference to conduct face-to-face verification of client identity, rather than being in the physical presence of the client or by obtaining the attestation of an agent, the following factors should be considered to help manage the risk:

- Consider whether there are any red flags associated with fraud or money laundering, attempt to mitigate risk, and determine if they should proceed.
 - Stay alert to the fact that persons may attempt to use situations like COVID-19 as an opportunity to commit fraud or other illegal acts and be particularly vigilant for red flags of fraud or other illegal activities.
 - Where virtual verification methods are chosen, lawyers must be alert to possible red flags to ensure they are not assisting any illegal activity.
 - Lawyers should document any red flags, any measures they have taken to mitigate risk, and how they arrived at their decision to proceed.
 - If many red flags are present, lawyers must consider whether they should proceed with the matter.

Q: Can a lawyer commission or notarize a sworn document over video?

The commissioning or notarizing of affidavits and other documents is governed by statute. For example, the *Evidence Act* requires that Affidavits be commissioned “before” a commissioner for taking oaths. The Law Society cannot modify or waive statutory requirements. The Law Society has raised this issue with the Government of Yukon and will up-date its members as the situation evolves.

In the meantime, members should be aware of any practice or other directions issued by relevant entities, such as the Land Titles Office and Mining Recorder.

The Supreme Court of Yukon has advised that it may make allowances where it is not possible to have an Affidavit properly sworn/affirmed and signed by the deponent in the presence of a Notary Public or Commissioner for Taking Oaths due to disruptions caused by the COVID-19 public health emergency. If a deponent cannot physically attend to swear or affirm an Affidavit before a Notary or Commissioner due to COVID-19 restrictions, the lawyer should indicate this in writing to the Clerk of the Supreme Court when filing their unsworn affidavit and it will be addressed on a case by case basis.

In the absence of a modification to the relevant statutory requirement, and regardless of whether the member is following any direction provided by the relevant entity, members should:

- be alert to advising their clients as to the risks of executing affidavits and other documents other than in the statutorily-required manner; and
- be careful to amend the jurat to explain how the affidavit or other document was commissioned so as to not misrepresent its execution.

Q: How can lawyers communicate with clients while using social distancing to reduce the risk of transmission?

Public health officials recommend many measures, including social distancing. Lawyers should consider conducting routine meetings with clients by phone or using video-conferencing options such as Zoom, Skype, FaceTime and other platforms. Lawyers must also be aware that some client matters require an in-person meeting. If unable or unwilling to meet in person, lawyers and clients need to be aware of both their legal risks and their health-related risks.

Lawyers should be mindful of their obligations to communicate effectively with clients, even when selecting an alternative means of communication:

- effective communication with the client will vary depending on the nature of the retainer, the needs and sophistication of the client, and the need for the client to make fully informed decisions and provide instructions.
- lawyers must communicate with the client at all relevant stages of a matter, and answer reasonable client requests in a timely and effective manner.

If a firm chooses to change its means of client communication, it should notify clients as soon as practicable.

Q: What should lawyers do to prepare for practice interruptions associated with COVID-19?

If lawyers have disaster or business continuity plans in place for their workplaces, they should review these now and consider to what extent the plans should be implemented at this time.

If lawyers do not have plans in place, or existing plans do not adequately address the concerns raised by COVID-19, they should review the below resources and consider the recommended planning steps:

- Law Society of Alberta: [Disaster planning and recovery resources](#)
- Canadian Bar Association: [Pandemics in the Workplace: A Resource for Lawyers](#)
- LawPRO®: [Managing Practice Interruptions](#)
- American Bar Association: [A Lawyer's Guide to Disaster Planning](#)

Other specific practice management considerations for lawyers and firms preparing for practice interruptions include:

Working from Home

If lawyers or law firm staff choose to work remotely from home, they should consider whether all the key information they require is readily accessible and current. This includes client contact information, client files, staff and service provider contact information, bank account information, and passwords for personal and staff voicemail, computers and emails.

Lawyers and staff should also consider how they will:

- keep client information confidential from family members or others
- communicate with clients and other firm members
- secure and receive deliveries to their offices
- continue to delegate to, and appropriately supervise, other staff.

Consider these practices and tips if working from home:

- Protect your passwords
- Lock your computer if leaving it unattended
- Work in a private area, particularly if you are video-conferencing or dialing into meetings
- Safeguard physical records and documents – ensure that the information is only visible to you and emphasize to others that no one else is permitted to look at the documents. Lock them away if necessary.
- Avoiding downloading firm or client documents onto home computers and devices where they can be accessed by others.
- be alert to cyber-security hazards and phishing, particularly in a disrupted environment. Home computer systems may also not have the same security levels as those in the office. If possible, it is best for staff to work remotely using a work-issued laptop with updated security. If not, they should ensure they have updated security and are using strong passwords.

Illness or Absence of Lawyers or Staff

Lawyers and staff should consider what tasks are affected if they are unable to attend the office, and ensure that coverage is provided so that clients are not prejudiced. Consult the firm's diary

system to ensure filing deadlines can be met and other scheduled events may be managed or rescheduled.

Ongoing Communication

Firms should engage in timely communication with clients and staff if changing their business hours, using alternative means of communication, anticipating delays in communication, or changing firm operations. Consider using email updates, notices on websites, or other means, based on the needs of clients and staff.

Communication with employees is key. There is no ‘business as usual’ in the current environment. Firms should reassure their professional and support staff of measures they are taking to provide for their safety and to maintain business continuity.

Firms should also be alert to the well-being of their staff. Many will feel personally isolated, or may be facing financial stress. Provide reassurance and set up a regular schedule to keep in touch by video or phone, not just through email.

Q: If lawyers are required to meet with clients or others face-to-face, what can they do to reduce the risk of exposure to COVID-19?

First consider whether matters need to be addressed on an urgent basis or whether they can be delayed. Is an in-person meeting necessary? Can a closing be delayed?

In some cases, face-to-face meetings with clients may be required if the legal services are considered to be an essential service. This might be a difficult decision for some lawyers, staff and clients to make. It is otherwise reasonable to limit direct contact with clients up to the point where documents must be personally executed, witnessed or commissioned, or personal attendance is necessary.

In the case of wills, consider whether it is possible to assist the client to write a holographic will over the phone or by video, as one example. Also consider whether it is possible to engage health care professionals or staff at a residential facility to act as witnesses, if they are already working in the setting where the client is located and where the document will be executed. If this is a possibility, the lawyer can review the will by video-conference with the client, and conduct the assessment of the testator’s capacity, while the staff at the facility can witness the physical document.

In circumstances where in-person attendance is an essential service, and may be required for the execution of certain documents or for other purposes, firms should engage in a number of best practices to maintain the safety of their lawyers, staff and clients. Follow all [Health Canada](#) recommendations to limit exposure to and the spread of the virus. This includes hand hygiene, respiratory etiquette, environmental cleaning and social distancing.

Some suggestions to prevent or minimize the risk of infection that might arise from meeting clients include the following:

- Before arranging any meetings, ask clients and other visitors about symptoms and possible exposure to COVID-19.
- Place signs at the office entrance, listing the COVID-19 symptoms and asking those with symptoms not to enter.
- Discourage those who are sick from visiting the office. If they must leave their homes, they should wear masks.
- Do not allow people to linger in the firm's lobby. Consider removing chairs from the lobby.
- Meeting in-person does not necessarily mean being in the same room. If you can see the client in-person while they are signing, you do not have to be in the same room with them. Clients might execute a document in their cars while the lawyer stands nearby, as one example.
- Identify a designated board room where all firm meetings with clients will take place. This will make it easier to disinfect the surfaces of the table and chairs before and after each client meeting.
- Have sanitizing gel on hand in the boardroom, or a wash station nearby, and ensure all participants clean their hands before and after the meeting.
- Consider asking clients to bring their own pens.
- Keep a distance of least two metres from the client during the meeting and keep the meeting as brief as possible. Do not shake hands.
- Have the documents ready at the opposite end of the table for the client to review and sign. The lawyer should have a separate set of copies, to allow them to explain the documents to the client and to answer questions. If possible, try to have these discussions in advance of the meeting.
- Minimize the number of people in the office who handle the executed documents and ensure they wash their hands after doing so. Gloves are another alternative.

Q: What are some best practices for using video conferencing when providing legal advice or services?

Some legal services may be offered by video conferencing. When able to use video conferencing for the provision of legal advice or services, lawyers should:

- Confirm the client's consent to proceed in this manner.
- Ask that all individuals in the remote location introduce themselves.
- Ensure that there is no one else at the remote location who may be improperly influencing the client.
- Ensure that audio and video feeds are stable and that you can hear and see all parties.
- Where identification is produced to support verification of identity, ensure that the client sends a copy of the document in advance of the online meeting and that, when it is produced, the entire document is visible and legible.
- Determine how to provide the client with copies of documents to be discussed or which may be executed remotely.
- Confirm the client's understanding about the services they are receiving and provide adequate opportunity for them to ask questions during the video conference.

- Maintain detailed records including the date, start and end time, method of communication, identity of all present, and the details of the discussion.
- Ensure the platform you are using is adequately secure.

Q: Can I still reach out to the Practice Advisors?

Yes, the Practice Advisors are working remotely and can be contacted at:

- <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/about-practice-advice/>
- <https://www.lawsociety.ab.ca/lawyers-and-students/practice-advisors/>

If you have a specific question about how to comply with your professional obligations or how to navigate practice management issues in the context of COVID-19, please contact our office. We will respond to inquiries by email or telephone as soon as possible.