

**INFORMATION FROM THE
LAW SOCIETY OF ONTARIO CORPORATE STATEMENT RE: COVID-19**
<https://www.lso.ca/news-events/news/corporate-statement-re-covid-19>

In the context of COVID-19, can a lawyer or paralegal use a virtual means of identifying or verifying the identity of a client such as video conferencing or telephone?

At this time, the client identification and verification requirements of By-Law 7.1 continue to apply. However:

- Lawyers and paralegals should review the information below as they do not need to verify the identity of their clients for all matters.
- If only client identification is required, lawyers and paralegals are able to comply with their professional obligations without meeting face-to-face or via video conference.
- As a result of COVID-19, until further notice, the Law Society will interpret the requirement that lawyers and paralegals verify the identity of their client face-to-face as not requiring the lawyer or paralegal to be in the physical presence of the client. Rather, alternative means of verification such as face-to-face verification via video conference will be permitted. If lawyers and paralegals choose to verify identity clients via video conference, they should attempt to manage some of the risks associated with this practice as outlined below.

Current Requirements:

Because there is **no obligation to meet with a client face-to-face to identify the client**, lawyers and paralegals should

- Keep in mind the distinction between identifying and verifying the identity of a client:

Identifying the client means obtaining certain basic information about your client and any third party directing, instructing or who has the authority to direct or instruct your client, such as a name and address. You must obtain this information whenever you are 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.

Verifying the identity of a client means actually looking at an original identifying document from an independent source to ensure that your clients and any third parties are who they say they are. You are only required to verify the identity of your client and such third parties if you are involved in a funds transfer activity, that is, you engage in or instruct with respect to the payment, receipt or transfer of funds, and an exception does not apply.

- Assess whether verification of identity is required in the matter.

Verification of client identity occurs face-to-face unless

- The individual whose identity is being verified is present in Canada and an attestation from a commissioner of oaths or other guarantor is provided; or
- The individual whose identity is being verified is not present in Canada and verification is provided by an agent.

For more information, please review the Law Society's [Client Identification and Verification Requirements](#) resources. For specific information about attestations or retaining an agent, please see Appendices 4, 5, 7, and 8.

Managing the Risk of Face-to-Face Verification via Video Conference:

Where a lawyer or paralegal employs video conference as a means to conduct face-to-face verification of client identity instead of being in the physical presence of the client or by attestation or an agent, the following factors should be considered to help manage some of 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.
 - To review these red flags, see the Federation of Law Societies' [Risk Advisories for the Legal Profession](#) resource.
 - 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 to be particularly vigilant for red flags of fraud or other illegal activities.
 - Where virtual methods are chosen lawyers and paralegals must be particularly alert to these red flags to ensure they are not assisting in or being reckless in respect of any illegal activity.
 - Lawyers and paralegals should document any red flags, what measures they have taken to mitigate that risk, and their decision on how they proceeded.
 - If many red flags are present, lawyers and paralegals should consider whether they should proceed with the matter.
- Consider using another method of verifying identity that may reduce the risk of fraud or money laundering such as the dual process or credit file methods.
 - For more information about these methods, review the Federation of Law Societies' [Guidance for the Legal Profession](#) resource.

Can a lawyer or paralegal use virtual commissioning in the context of COVID-19?

Commissioning is governed by the [Commissioners for Taking Affidavits Act](#) and is not regulated by the Law Society. Although the law is evolving in this area, the best practice for commissioning documents remains for the lawyer or paralegal who is acting as a commissioner to be in the *physical presence of the deponent* to commission the document(s).

For more information, please review the Law Society's [Virtual Commissioning](#) resource.

However, as a result of COVID-19, until further notice:

- The Law Society will interpret the requirement in section 9 of the *Commissioners for Taking Affidavits Act* that “every oath and declaration shall be taken by the deponent in the presence of the commissioner or notary public” as not requiring the lawyer or paralegal to be in the physical presence of the client.
- Rather, alternative means of commissioning such as commissioning via video conference will be permitted.
- If lawyers and paralegals choose to use virtual commissioning, they should attempt to manage some of the risks associated with this practice as outlined below.

Managing the Risk of Virtual Commissioning:

If a lawyer or paralegal chooses to use virtual commissioning, the lawyer or paralegal should be alert to the risks of doing so, which may include the following issues:

- Fraud
- Identity theft
- Undue influence
- Duress
- Capacity
- Client left without copies of the documents executed remotely
- Client feels that they did not have an adequate opportunity to ask questions or request clarifying information about the documents they are executing.

To manage some of the risks:

- Consider whether there are red flags of fraud in the matter. To review these red flags, see the Federation of Law Societies' [Risk Advisories for the Legal Profession](#) resource.
- Assess whether there is a risk that the client may be subject to undue influence or duress. If there is such a risk, consider if you are able to assist the client at this time without meeting in person.
- Determine how to provide the client with copies of the document executed remotely.
- Confirm your client's understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the video conference.
- Be alert to the fact that persons may attempt to use the current circumstances and resulting confusion as an opportunity to commit fraud or other illegal acts. Where lawyers and paralegals choose to use virtual commissioning, they must be particularly alert to these red flags in order to ensure that they are not assisting, or being reckless in respect of any illegal activity.