

Filip de Sagher

## INTERNATIONAL AUTHENTICATION: More than Formalities . . . a Cultural Challenge



**B**uenos días, bonjour,  
goedemorgen, how are  
you?

Hilde and I don't even notice anymore that we are constantly switching languages. Because Canada is a society based on emigration, it would have been a surprise if we had to speak only English when we established our Vancouver office about 8 years ago.

We are originally from Belgium which has three official languages: Flemish (Dutch), French, and German—all taught in high school.

On top of that, I followed the “classical direction” and studied Latin and Greek. Nine hours of Latin a week for 6 long years made it quite easy to pick up Latin languages such as Spanish and Portuguese—hence the reason we attract so many Hispanic clients to our office.

But the work of a BC Notary is more than having an ear for languages. When we assist our clients, we have a feeling for a person's culture. Will they shake hands, hug you, or give two kisses? Some cultures are engrained to negotiate prices while others insist on as many stamps and Seals as possible on their documents to make them look “very official.”

While some countries don't have Notaries, some of our clients have an inflated understanding of our position, comparing us to their esteemed Notary “back home.”

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Our cultural understanding and knowledge of their country, its history, and customs and traditions help us every day to assist clients with their notarial transactions, in particular the international authentication process.

The Greek origin of the word *authentic* refers to something original, genuine, not false or copied.

In law it can refer to the fact that unquestionable evidence supports a document or that the document has been executed with all due formalities. A document is reliable or trustworthy because it has been verified—authenticated. This we do every day when we certify copies to be true or when we take people's oaths for statutory declarations and affidavits.

International authentication refers to the verification of a person's identity and his or her signature to confirm

- the signing of a document on a certain date in a certain place, and
- the process of making that verification acceptable to a foreign authority.

The process entails various formalities that must be executed before the document signed in our office will be considered valid by a foreign jurisdiction. More often than not, clients experience the process as tedious, time-consuming, and costly.

- It's no wonder many people question the process. They walk into our office and ask for “an *apostille* to be used in Venezuela,” obviously unsure what the word *apostille* means.
- A lawyer in Bogota, Columbia, may request “notarial and consular authentication.”
- The consulate in Toronto of yet another country confirms via email that the document must be “notarized, because only then can the consulate ‘legalize’ the document.”
- Then there's the Notary in a European country who refers to the Treaty of The Hague in explaining her authentication requirements.

To address this confusion, I personally start by establishing the reason for the requested authentication. I ask the client some questions.

- How does your Notary in France know you are who you say you are?
- Why would the Notary in Portugal trust my word that I am indeed a Notary?

Canada is a common law country, except for the Province of Quebec, which follows Latin law.

- Why would the lawyer in Brazil believe there are Notaries in British Columbia?

In other words, by helping the client understand why international authentication is necessary, I am in a better position to explain the formalities that will be required.

Next, I explain that the process is not determined by Canada or the Province of British Columbia. It is determined by the country where the document is needed. That is a common misunderstanding.

The one place that can clarify the requirements is their consulate. The country's consular representation might have an office in Vancouver but sometimes only an embassy in Ottawa. Perhaps a consulate in Toronto is authorized to determine the formalities.



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The Society of Notaries Public of BC has a list of the various countries and their authentication requirements. Depending on the document, the country, or the particular circumstances and challenges, I quite often will refer the client to his or her consulate to confirm the procedure or to the Notary or lawyer in the originating country to clarify the authentication request. After all, they are the ones who started this process!

If only Canada had signed The Hague Convention of 1961! That Convention greatly simplified the procedure for official acknowledgement of documents from other countries. Under The Hague Convention, our clients would be able to come to our offices with, for example, their foreign Powers of Attorney and we would be able to attach an apostille.

**If only Canada had signed The Hague Convention of 1961!**

The origin of the word apostille refers to “words written after words” or explanatory notes written in the margin—originally commentaries on the Gospel. Under The Hague Convention, apostille refers to a special certificate added to the end of the document, thus making it immediately authenticated and ready for use in a country that signed the Convention.

Unfortunately, Canada did not sign the Convention. Consequently, we are stuck with what is sometimes called chain authentication—a lineup of officials that in turn verifies the document before it can be recognized by the other country.

The longest possible part of the process involves the local BC Notary, The Society of Notaries Public of BC, the Deputy Attorney General in Victoria, the respective Consulate, and the Ministry of Foreign Affairs in Ottawa. Sometimes a country will require only two or three of these steps.

At our office, we verify the client's identity and have the person sign the particular document. Once we have witnessed the signature, we prepare a Form 10 Notarial Certificate of Identity, thereby confirming the person's identity and the place and time of the signing of the document.

Usually, The Society of Notaries Public of BC will be required to confirm the Notary's signature and, depending on the other country's requirements, Victoria and/or Ottawa might have to become involved to confirm the correct legal execution of the documents in our province and/or in Canada, respectively.

After this, “legalization” is usually the last step. That happens when the duly authenticated document is finally presented to the consulate of the relevant foreign country for certification—confirmation that the correct procedure was followed in our province and/or country. Only then will the document be ready and valid for use in that foreign country.

You might ask why this whole process cannot be digitalized through email, the Internet, and our digital signature that we use so diligently for real estate transactions.

I believe this international authentication process goes back to the roots of a Notary's role in society: Someone must assume the authority to say that something happened in a certain place at a certain time. Each and every country throughout history had to trust at least one person to establish a person's identity and attest to his or her signature.

While we can digitalize this process to a certain extent on a local level, on an international level trust obviously has its borders. Hence the need for these formalities and—even more important—the need for cultural respect and understanding. ▲

**BC Notaries Filip de Sagher and Hilde Deprez practise in the Point Grey area of Vancouver.**

Voice: 604 221-4343  
fdesagher@notaries.bc.ca