



## **STEPS TO ASSIST LAWYERS IN COMPLYING WITH THE NEW CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS - BY-LAW 7.1<sup>1</sup>**

By-Law 7.1 talks about identification and verification of the identity of a client. This involves identifying and verifying the identity of both the client and also certain third parties associated with the client. Identification refers to the basic information that you need to get about your client and third party to know who they are whenever you are retained, such as their name and address. Verification of identity is required only when you are acting for a client or giving instructions on behalf of a client regarding the receiving, payment or transferring of funds.

The following steps have been prepared to assist lawyers to understand their obligations under the new requirements.

### **STEP 1 – IDENTIFY THE CLIENT AND CERTAIN THIRD PARTIES**

- When you are retained to provide legal services, you must identify your client and any third party for whom your client acts or represents unless:
  - you are providing the legal services on behalf of your employer;
  - you are acting as agent for another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified the client; or
  - you are acting for a client who has been referred to you by another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified the client, or
  - you are acting as duty counsel under the *Legal Aid Services Act, 1998* or as duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or you are providing legal services through the provision of summary advice under the *Legal Aid Services Act, 1998* [Section 22, By-Law 7.1]

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<sup>1</sup> This document has been prepared to assist lawyers to comply with the client identification and verification requirements of By-Law 7.1. Lawyers should refer to the by-law for a more detailed outline of their obligations. Please note that some of the terminology used to delineate the lawyer's obligations is specifically defined in the By-Law.

- ❑ In order to identify the client and/or third party, you must obtain and keep a record of certain information about that client and/or third party.
- ❑ If the client and/or third party is an individual, you must obtain and keep a record of that person's:
  - full name
  - business address and phone number, if any
  - home address and home telephone number
  - occupation or occupations [Subsection 23(1), By-Law 7.1].
- ❑ If the client and/or third party is an organization<sup>2</sup> (e.g. corporation, partnership, or trust) you must obtain and keep a record of:
  - the organization's full name
  - the organization's business address and phone number, if any
  - the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if any, unless the organization is a financial institution, public body or reporting issuer (public company)<sup>3</sup>
  - the general nature of the type of business or businesses or activity or activities engaged in by the organization unless the organization is a financial institution, government body or reporting issuer,
  - the name, position and contact information of each individual who provides you with instructions with respect to the matter on behalf of the organization [Subsection 23(1), By-Law 7.1]

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<sup>2</sup> The term "organization" is defined as a body corporate, partnership, fund, trust, cooperative or an unincorporated association [Section 20, By-Law 7.1].

<sup>3</sup> The terms "financial institution", "public body" and "reporting issuer" are defined in section 20 of By-Law 7.1. A "financial institution" includes certain banks, credit unions, loan and trust companies, government entities providing certain financial services to the public, some other similar entities and certain subsidiaries of these entities. A "public body" includes a ministry, department or agent of the government of Canada or of a province or territory of Canada, a municipality and some other similar bodies. A "reporting issuer" includes a reporting issuer within the meaning of an Act of a province or territory of Canada in respect of the securities law of the province or territory, a corporation whose shares are traded on a stock exchange designated under section 262 of the *Income Tax Act* (Canada) and that operates in a country that is a member of the Financial Action Task Force on Money Laundering and certain subsidiaries of these entities.

## STEP 2 – VERIFY THE IDENTITY OF THE CLIENT AND CERTAIN THIRD PARTIES

- Furthermore if you act for or give instructions on behalf of the client regarding the receiving, paying or transferring of funds<sup>4</sup> you must also take reasonable steps to verify the identity of that client and any third party for whom your client acts or represents unless an exception applies.

You are not required to verify identity if one of the following exceptions applies:  
[Subsection 22 (1), By-Law 7.1]

- you engage in these activities on behalf of your employer [Subsection 22 (2), By-Law 7.1]
- you are acting as agent for another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified and verified the identity of the person [Subsection 22 (2), By-Law 7.1]
- you are acting for a client referred to you by another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified and verified the identity of the person [Subsection 22 (2), By-Law 7.1]
- the funds being received are:
  - from a financial institution
  - from a public body
  - from a reporting issuer (public company)
  - from the trust account of another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada
  - received pursuant to a court order
  - received as a settlement in a proceeding before an adjudicative body<sup>5</sup>
  - from a peace officer, law enforcement agency or other public official acting in their official capacity, or
  - for professional fees, disbursements, expenses or bail [Subsection 22(3), By-Law 7.1]
- the funds being paid are being paid :
  - to a financial institution

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<sup>4</sup> The term “funds” includes cash, currency, securities, negotiable instruments (e.g. cheques, bank drafts, money orders and promissory notes) and any other financial instruments that indicate a person’s title or interest in such funds [Section 20 of By-Law 7.1].

<sup>5</sup> An “adjudicative body” is defined in Section 1 of the *Law Society Act* as any body that, after the presentation of evidence or legal argument by one or more persons, makes a decision that affects a person’s legal interests, rights or responsibilities and, without limiting the generality of the foregoing, includes a federal or provincial court, a tribunal established under an Act of Parliament or under an Act of the Legislature of Ontario to conduct an inquiry or inquest and an arbitrator.

- to a public body
  - to a reporting issuer (public company)
  - pursuant to a court order or to pay a fine or penalty
  - as a settlement in a proceeding before an adjudicative body , or
  - for professional fees, disbursements, expenses or bail [Subsection 22(3), By-Law 7.1]
- you pay, receive or transfer funds by electronic funds transfer<sup>6</sup> [Subsection 23(3)]
  - you have previously verified the identity of an individual and you recognize the individual [Subsection 23(12), By-Law 7.1], or
  - the client and/or third party is an organization and you have previously identified the organization by obtaining the name and occupations of each director of the organization and the name, address and occupations of each person who owns 25% or more of the organization or of the shares of the organization and you have verified the identity of that organization including the individuals authorized to give instructions on behalf of the organization with respect to the matter. [Subsection 23(12), By-Law 7.1].

In addition when you act for a financial institution, public body or reporting issuer (public company) you are not required to verify the identity of that client [Subsection 22(4)].

- If you are required to verify the identity of a client or third party, you must do so by looking at an original identifying document, from an independent source, that you reasonably believe to be reliable. The type of document that you will examine will differ depending on whether the person is an individual or an organization and also depending on the type of organization involved. [Subsection 23(4), By-Law 7.1].
- If the client and/or third party is an individual you must verify that individual's identity either before or when you act or give instructions on behalf of the client regarding the receiving, paying or transferring of funds. You may do this by obtaining and reviewing an original government issued identification of that person that is valid and has not expired such as a:
  - Driver's Licence
  - Birth Certificate
  - Provincial or Territorial Health Card, where permitted<sup>7</sup>
  - Passport, or
  - Other similar record [Subsection 23(5) and 23(7) of By-Law 7.1]

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<sup>6</sup> The term "electronic funds transfer" is defined in section 20 of the By-Law.

<sup>7</sup> A provincial or territorial health card may only be used to verify identity if the use of the card is not prohibited by the applicable provincial or territorial law. In Ontario, subsection 34 (4) of the *Personal Health Information Protection Act, 2004* provides: "No person shall require the production of another person's health card, but a person who provides a provincially funded health resource to a person who has a health card may require the production of the health card." The term "health card" is defined in subsection 34(1) of the *Act* as "a card provided to an insured person within the meaning of the *Health Insurance Act* by the General Manager of the Ontario Health Insurance Plan".

- If the client and/or third party is a corporation or society or other organization created or registered pursuant to legislative authority you must verify its identity no later than 60 days after first engaging in the funds transfer activity. You may verify the identity of this organization by obtaining and reviewing a written confirmation from a government registry as to the existence, name and address of the organization including the names of the organization's directors such as:
  - a certificate of corporate status issued by a public body (e.g. government)
  - a copy of a record obtained from a public body that the organization is required to file annually under applicable legislation (e.g. annual government filings), or
  - a copy of a similar record obtained from a public body that confirms the organization's existence [Subsection 23(6) and 23(7) of By-Law 7.1]
  
- If the client and/or third party is a trust, partnership or other organization which is not registered in any government registry, you must verify its identity no later than 60 days after first engaging in the funds transfer activity. You may verify the identity of this organization by obtaining and reviewing a copy of the organization's constating documents such as:
  - a trust agreement
  - a partnership agreement
  - articles of association, or
  - other similar record that confirms the organization's existence as an organization [Subsections 23(6) and 23(7), By-Law 7.1].
  
- In addition, where the client or third party is an organization and you are required to verify its identity, you must take two additional steps.
  - First, you must verify the identity of the individual providing you with instructions with respect to the matter on behalf of the organization, either before or when you act or give instructions on behalf of the client regarding the receiving, paying or transferring of funds, unless you have previously identified and verified the identity of that individual [Subsection 23(5), By-Law 7.1]
  
  - Second, you must make reasonable efforts to obtain:
    - the name and occupation or occupations of each director of the organization unless the organization is a securities dealer
    - the name, address and occupation or occupations of each person who owns 25% or more of the organization or of the shares of the organization [Subsection 23(2), By-Law 7.1]
  
- In addition, if you are required to verify the identity of an individual and you are not meeting with that individual face to face, you must have another person verify the identity of that individual by using one of two methods depending on whether the individual whose identity is being verified is present in Canada:

- In this regard, if the individual is **present in Canada**, you may obtain an attestation from a person entitled to administer oaths and affirmations in Canada (a commissioner of oaths) or from another designated person<sup>8</sup>. This person (the attestor) will verify the identity of the individual by looking at an appropriate identity document and provide you with an attestation. The attestation consists of a legible photocopy of the independent source identity document signed by the attestor and on which the attestor has indicated:
  - his or her name, occupation and address;
  - the type and number of the document looked at by that person to verify identification [Subsections 23(8) – (10), By-Law 7.1]

**Appendix 4 contains a sample form attestation.**

- Alternatively if the individual whose identity is being verified is **not present in Canada** or if you choose not to obtain an attestation, you may retain an agent to verify the identity of the individual, but prior to the agent acting on your behalf you must enter into a written agreement with that agent specifying the steps that he or she will be taking on your behalf to comply with the verification requirements [Subsections 23(8)-(11), By-Law 7.1].

**Appendix 5 contains a sample form verification of identity agreement.**

- Obtain a copy of every document that you have used to verify the identity of an individual or organization including copies of documents used by persons acting on your behalf to verify identity [Subsection 23(13), By-Law 7.1].

**Appendix 3 contains forms that you may use to assist you in identifying and verifying the identity of a client or third party.**

### **STEP 3 – RETAIN RECORDS**

- Retain a record of the information that you obtain and copies of the documents you receive to identify and verify the identity of an individual or organization including attestations and agreements with agents for the longer of:
  - six years following completion of the work for which you were retained
  - the duration of the lawyer and client relationship and for as long as it is necessary for the purpose of providing service to the client [Subsection 23(14) of By-Law 7.1]

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<sup>8</sup> Subsection 23(9) designates the following persons as persons who may provide an attestation: a person entitled to administer oaths and affirmations in Canada, a dentist, a physician, a chiropractor, a judge, a magistrate or justice of the peace, a lawyer, a licensee (Ontario), a notary (Quebec), a notary public, an optometrist, a pharmacist, an accountant, a professional engineer, a veterinarian, a police officer, a nurse or school principal.

#### **STEP 4 – WITHDRAW IF APPROPRIATE**

- If you know or ought to know that you would be assisting a client in fraud or other illegal conduct, you must immediately cease engaging in any activities that would assist the client in such conduct and, if you are unable to do so, you must withdraw from representing the client [Section 24, By-Law 7.1, and Rules 2.02 (5) and 2.09 of the Rules of Professional Conduct].