



CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS **QUESTIONS AND ANSWERS**

The following Q&A have been prepared to assist lawyers to interpret and better understand the new requirements:

IDENTIFYING THE CLIENT

1. What does “identifying my client” mean?

Identifying your 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.

2. In what circumstances am I required to identify my client?

You must identify your client whenever you are retained to provide legal services, except:

- i. when you provide legal services to your employer, for example as in-house counsel;
- ii. when you are acting as an agent for another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada, who has already identified the client;
- iii. when you are acting for a client who has been referred to you by another lawyer (an individual authorized to practise law anywhere 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
- iv. when you are providing legal services as a duty counsel under the *Legal Aid Services Act, 1998*, as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or as the provider of legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*.

3. I was acting for a client in a matter before December 31, 2008 and the matter is continuing. Do I have to identify this client in accordance with By-Law 7.1?

If the matter is the same, you are not required to identify the client. However, if you take on a new matter for this client you must comply with the identification and verification requirements.

4. Do I have to identify anyone other than my client?

Yes, in some circumstances. You must identify any third party who is directing or instructing your client or who has the authority to direct or instruct your client. When your client or the third party is an organization, such as a company or a public body, you must also identify the person or persons giving instructions on behalf of the organization.

5. I have been retained by another lawyer to do work for her client. Do I have to identify the client?

If the other lawyer is a member of the bar in one of the provinces or territories of Canada and has identified the client in accordance with the By-Law, you do not have to do so.

6. Another lawyer has referred one of her clients to me. Do I have to identify the client?

No, you do not have to identify the client provided the other lawyer is licensed to practice law in a Canadian jurisdiction and has already identified the client in accordance with the By-Law.

7. What are my obligations in determining whether a lawyer for whom I am acting as agent or a lawyer who has referred a client to me has taken the necessary steps to identify that client?

You are expected to exercise due diligence to satisfy yourself that the other lawyer has already identified the client. This would involve asking the other lawyer to confirm that he or she has complied with the requirements of the By-Law.

8. I have been retained by a client and another lawyer in my firm has already identified that client. Am I permitted to rely on this identification?

Yes, you may rely on the identification information obtained by another lawyer in your firm provided that the information continues to be current.

9. I am providing summary legal advice to a client over the phone. Am I required to identify the client?

Yes, you are required to identify the client unless an exemption applies. For example, if you are providing legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*, then an exemption would apply.

10. What if I am not billing the client for the summary advice, am I still required to identify my client?

Yes, unless an exemption applies.

11. I have been contacted by a prospective client and after speaking briefly to the client about her matter and without providing any legal advice, I

determine that I will not accept the retainer. Am I required to identify that prospective client?

No, as you have not been retained to provide legal services.

12. I am retained to notarize or commission a document for someone that I am not otherwise retained to represent. Am I required to verify this person's identity?

Simply notarizing or commissioning a document will not in and of itself, trigger the client identification obligations under the By-Law. If, however, you are providing legal advice or representation, you must comply with the By-Law.

13. At the request of the court, I assist an unrepresented person in court. Am I required to identify that person?

If a lawyer at the request of the court assists an unrepresented party in court, the lawyer is not required to identify the client. However, if the representation continues beyond the court's direction, the lawyer would be required to comply with the By-Law.

14. I am providing summary legal advice through a duty counsel program operated by a not-for-profit organization. Am I required to identify the client?

No, there is an exemption when you act as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization.

15. What information must I obtain to identify an individual?

You must obtain and record:

- the individual's full name
- home address and telephone number,
- occupation, and
- business address and telephone number, if applicable.

16. What information must I obtain to identify a client or third party that isn't an individual, such as a company or a public body?

When your client is an organization (a corporation, partnership, fund, trust, co-operative or an unincorporated association) you must get and record its:

- full name
- business address and its business telephone number.

In addition, except for when your client is a financial institution (e.g. bank), public body (e.g. government) or reporting issuer (e.g. public company), you must also obtain and record:

- the organization's incorporation or business identification number and where it was issued if applicable, and
- the general nature of its business.

Finally, if you are required to identify an organization, you must record the name, position and contact information of the person or persons giving you instructions in the matter on behalf of the organization.

17. What information do I have to get from a client or third party that is a “financial institution” within the meaning of the By-Law to identify it?

You must obtain the financial institution’s full name, address and telephone number. In addition you must record the name, position and contact information of the individual(s) giving you instructions on behalf of the financial institution.

18. The definition of “reporting issuer” in the By-Law refers to 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. Where may I obtain information on these corporations?

Section 262 of the *Income Tax Act* provides that the Minister of Finance may designate a stock exchange or part of a stock exchange for the purposes of the *Act*. The Department of Finance Canada publishes a list of the Designated Stock Exchanges:

<http://www.fin.gc.ca/act/fim-imf/dse-bvd-eng.asp>

A list of the Financial Action Task Force on Money Laundering (FATF) members that are countries is contained at:

http://www.fatf-gafi.org/document/52/0,3343,en_32250379_32237295_34027188_1_1_1_1,00.html

19. I am required to obtain and record my client’s occupation. What do I do if the individual doesn’t have an occupation or doesn’t want to tell me what it is?

You are required to obtain this information. If your client doesn’t want to answer the question, you should explain that all lawyers are required to ask all clients for this information and that you need it to properly represent him or her. If the client refuses to provide this information, you must advise the client that you will be in breach of the requirements unless you obtain it and your professional obligations do not permit you to act in such circumstances. If your client is unemployed or not actively engaged in an occupation, you may simply record this and continue to act for the client.

Note that 'occupation' does not need to be 'employment'. If your client is retired, a homemaker, a volunteer caregiver or otherwise occupied, you should record that information.

20. In order to identify my client, I am required to obtain the organization’s business or incorporation number. What are some examples of business or incorporation numbers that could be used to satisfy this requirement?

- Ontario Business Corporation Numbers

- Canadian Business Corporation Numbers
- Government of Canada Goods and Services Tax (GST) Numbers

If you wish to confirm the GST number of a business, the following website may be used.

<http://www.cra-arc.gc.ca/gsthstregistry/index.html>

- **European Common Union Value Added Tax (VAT)**

The following website may be used to confirm the VAT number of a business.

http://ec.europa.eu/taxation_customs/vies/vieshome.do?selectedLanguage=en

21. If my client or third party is unable to provide some of the identification information required, for example an address or a phone number, am I obliged to withdraw?

Where a client or third party is unable to provide the information, for example where they have no address because they are homeless, or do not have a telephone number, the lawyer is not obliged to withdraw. This situation is to be distinguished from one in which the client refuses to provide the information. Where the information does not exist, the lawyer should make a record of that fact.

22. I have been retained by a law firm to provide a legal opinion on an issue arising in a matter for which they are acting for a client. Do I have to identify the law firm's client?

At the commencement of the retainer, you should determine who your clients are in the matter. If you are acting for both the law firm and its client, you must identify both. In circumstances where you act for the law firm alone, but the law firm's client is instructing the law firm with respect to the particular matter for which you are retained, you must identify the law firm as a client and the law firm's client as a third party instructing the law firm.

23. The corporation I have been retained by has authorized several people to instruct counsel. Do I have to identify all of them?

No. The By-Law requires you to identify the individual(s) actually giving you instructions. If the individual giving you instructions changes, you must identify that individual at that time.

24. Do I have an obligation to look behind the assertion that an individual is authorized to instruct me on behalf of an organizational client?

The By-Law does not require that you investigate such an assertion. You should always exercise prudence, however, and if you have concerns about the assertion it would be advisable to make further inquiries to satisfy yourself that the individual is indeed authorized to instruct you.

VERIFYING THE IDENTITY OF THE CLIENT

25. What does “verifying the identity of my client” mean?

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.

26. In what circumstances do I have to verify my client’s identity?

You are only required to verify the identity of your client and any third party instructing or directing your client or who has the authority to instruct or direct your client when you are retained to provide legal services to a client and you are involved in a funds transfer activity, that is, ***when you engage in or give instructions in respect of the receipt, payment or transfer of funds.***

27. Does every financial transaction trigger the verification requirement?

No. There are a number of situations where you are not required to verify the identity of the client and third party even though you are engaged in a funds transfer activity.

These situations include the following:

- you are providing legal services to your employer, for example as in-house counsel;
- you are acting as an agent for another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada, who has already identified the client;
- you are acting for a client who has been referred to you by another lawyer (an individual authorized to practise law anywhere 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 providing legal services as a duty counsel under the *Legal Aid Services Act, 1998*, as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or as the provider of legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*.
- the funds are being paid to or are being received from a financial institution, public body (government) or reporting issuer (public company)
- the funds are being received from the trust account of another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada
- the funds are being received from a peace officer, law enforcement agency or other public official acting in an official capacity

- the funds are being paid or received pursuant to a court order
- the funds are being paid to pay a fine or penalty
- the funds are being paid or received as a settlement in a proceeding before an adjudicative body
- the funds are being paid for professional fees, disbursements, expenses or bail
- the funds are being paid, received or transferred by electronic funds transfer
- you have previously verified the identity of an individual and you recognize the individual
- the client and/or third party is an organization and either you or an employee of your firm or another lawyer or paralegal of your firm licensed by the Law Society of Upper Canada has 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 has verified the identity of that organization including the individual(s) giving you instructions on behalf of the organization with respect to the matter.

When your client is a financial institution, public body or reporting issuer, you are not required to verify the identity of that client and any third party instructing, directing or who has the authority to instruct or direct your client. The terms “financial institution”, “public body” and “reporting issuer” are defined terms in the By-Law.

28. If I determine that an exemption applies when I receive funds, may I rely on this same exemption when I pay out the money?

No, you are required to look at each transfer of funds transaction separately. For example if you are acting for a lender and receive mortgage funds from that lender and you later pay out the mortgage funds to a borrower, you must consider the receipt and payment of monies separately. Both transactions would need to be exempt in order for you not to be required to verify the identity of your client.

29. What does the term “funds” mean?

“Funds” means cash, currency, securities, negotiable instruments and other financial instruments that indicate a person’s title or interest in them.

30. What is caught by the exemption for funds “paid by a financial institution”?

This exemption is meant to cover a financial institution’s own funds, for example those advanced pursuant to a mortgage or loan agreement. ***Cheques, whether regular or certified, bank drafts or other forms of payment from your clients or third parties are not included in the exemption unless they are the financial institution’s own funds.*** The term “financial institution” is defined in

section 20 of the By-Law. It includes certain banks, credit unions, trust companies, certain subsidiaries of these entities and other entities.

31. The lawyer who referred the client to me identified the client, but I have now learned that the matter will involve a financial transaction. Do I have to verify the client's identity?

Unless the referring lawyer has also verified the client's identity, you must do so.

32. I have acted for an individual client in the past and have already verified the client's identity. Do I have to do it again?

As long as you recognize the individual and have previously verified the individual's identity in accordance with the By-Law, you do not have to verify the identity of an individual more than once.

33. My client is a corporation or a partnership. Do I have to verify its identity again if I have already done so?

No, you don't have to verify the identity of a client that is an organization if you have already done so. This exception also applies to verifying the identity of the person(s) instructing you on behalf of your corporate client if the person is the same person and to obtaining names of directors and owners. It is, however, recommended that you exercise due diligence in ascertaining whether there has been any change in the identity or ownership of the corporation and in determining that the instructing individual is still authorized to act in that capacity.

34. Are funds received from the trust account of a lawyer licensed to practise law in another part of Canada exempt?

Yes. There is an exemption for funds received from the trust account of a lawyer licensed in any jurisdiction in Canada. It does not, however, apply to funds from the trust account of a lawyer licensed in a foreign jurisdiction.

35. I settled a matter for my client after sending a demand letter, but before commencing a proceeding. Are the settlement monies exempt?

No. For this exemption to apply, a legal action must have been commenced before a court, statutory tribunal or arbitrator.

36. My client has come to me for tax advice in connection with some investments. Is this a situation in which I have to verify my client's identity?

The verification obligations apply when you are engaged in or give instructions in respect of a funds transfer transaction. Simply providing legal advice about a money matter does not trigger the verification obligations unless you are also giving instructions for the movement of the money.

37. How do I verify the identity of my client?

You are required to take reasonable steps to verify the identify of your client and any third party directing or instructing your client by looking at what you reasonably consider to be reliable, independent source documents, data or information. Generally speaking you will look at an identity document from an independent source to verify identity. The type of document you will look at will differ depending on whether the person is an individual or an organization and also based on the type of organization.

38. Section 23(4) of By-Law 7.1 talks about taking “reasonable steps” to verify a client’s identity. What will be considered to be “reasonable steps”?

The answer depends a lot on the context. The By-Law directs lawyers to rely on what they reasonably consider to be reliable, independent source documents, data and information and sets out a number of examples. Lawyers are expected to make a reasonable effort to obtain such documents and information.

39. How do I verify the identity of an individual?

To verify the identity of an individual, you may look at a government issued driver’s licence, passport or birth certificate that is valid and has not expired. You must also retain a copy of the document for your records.\

40. Am I required to look at photo identification in order to verify the identity of an individual?

In order to comply with the By-Law you are not required to obtain photo identification. However, if you suspect fraud, dishonesty or other illegal conduct, you are required to make reasonable inquiries to satisfy yourself that you are not assisting the client in such conduct. Such inquiries might include looking at photo identification.

41. How do I verify the identity of an organization such as a corporation or other company?

You are only required to verify the identity of a corporation if it is not a reporting issuer (public company), financial institution or public body.

If the organization is a corporation or an organization created or registered under federal or provincial law, you may obtain written confirmation of its existence from a government registry. This confirmation should also include the name and address of the organization and, where applicable, the names of its directors. In this regard, you could obtain a certificate of corporate status, a corporate profile report and/or an annual filing of the corporation.

If the organization is a trust, partnership or an association you will need to obtain some sort of formal record that confirms its existence as an organization. This could include a copy of the trust or partnership agreement or articles of association. It might also include the GST registration information or information relating to the organization’s business licence.

If you are required to verify the identity of an organization, you must also take the following additional steps:

- i. verify the identity of the individuals who provide you with instructions with respect to the matter on behalf of the organization
- ii. 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.

42. If I am required to verify the identity of an individual, when must I do this?

If the person is an individual, you must verify his or her identity **before or when you engage or give instructions** in respect of the receipt, payment or transfer of funds. The same is true for verifying the identity of the individual providing you with instructions on behalf of a corporation or other organization.

43. Do I have to verify the identity of my corporate client before I can act for them where the payment, receipt or transfer of funds is involved?

You have 60 days from the time you engage in or give instructions or act on behalf of your client to receive, pay or transfer funds to verify its identity. However, you must verify the identity of the individual providing you with instructions on behalf of the corporation **before or when** you engage in the funds transfer activity.

44. What happens if I have verified the identity of the individual instructing me on behalf of the organization but after the funds have moved I am unable to verify the identity of the organization in the 60-day window?

You have an obligation to take all reasonable steps to verify your client's identity. Although you have 60 days within which to comply with the verification requirements in this situation, you should satisfy yourself as to the identity of the organization as early as possible in the retainer. If, despite having taken all reasonable steps, you are unable to do so, you will not be in breach of this requirement.

45. I did the legal work to incorporate a company prior to the implementation of the By-Law and am now acting for that company on another matter. May I rely on documents already in my possession to identify the client and verify its identity or must I rely on documents from a government registry?

As long as the documents are current, relying on documents in your possession that you obtained from an independent source is fine. The documents referred to in the By-Law are examples of independent, reliable documents, but the list is not exhaustive. Appropriate documents from non-governmental sources may also be sufficiently reliable.

46. My client is a law firm partnership that is reluctant to provide me with a copy of the partnership agreement. What should I do?

Looking at the partnership agreement is only one way to verify the client's identity. You may be able to obtain proof of the firm's identity through a government registry such as by conducting a partnership registration search or confirming the GST number of the partnership.

47. I am acting for a trust. How do I verify its identity?

The documentation you will need to consult to verify the identity of a trust will vary depending on the nature of the trust. Examples of appropriate documentation might include the trust agreement or other documents establishing the trust, documents amending the trust, and documents identifying the trustees who are the instructing parties for the trust.

48. I have acted for a corporate client on a number of matters and have complied with the identification requirements. Someone new is now giving me instructions on behalf of the client. Do I have to verify that person's identity?

Yes. In every case involving the receipt, payment or transfer of funds, you must verify the identity of the person instructing you unless you have previously verified the identity of that individual.

VERIFICATION OF IDENTITY – NON FACE-TO-FACE MEETINGS

49. I am a lawyer in Ottawa and my client who is an individual is in Calgary. I will not be meeting face to face with my client. Are there any special rules for verifying her identity?

Yes, when you are required to verify the identity of an individual who is present in Canada, but you cannot meet with him or her, you may verify the individual's identity by having a commissioner of oaths or a guarantor certify that they have verified the client's identity by looking at an independent source identity document such as a drivers licence or passport that is valid and has not expired. Subsection 23(9) of By-Law 7.1 contains a list of persons (guarantors) who may provide the attestations.

50. What does providing an attestation involve?

The person looking at the document (commissioner of oaths or guarantor) will have to provide you with a legible photocopy of the document that they have signed and on which they have included their name, profession and address and have identified the type and number of the identification document provided by the client. This is called an attestation in the By-Law.

Appendix 4 contains a sample form attestation.

51. Who can provide an attestation?

An attestation may be provided by a commissioner of oaths or a guarantor authorized to provide the attestation. The list of guarantors includes such professionals as lawyers, Quebec notaries, doctors, dentists, pharmacists, professional engineers and veterinarians. It also includes nurses and school principals. You must exercise due diligence in ascertaining that the person providing the attestation is a member of one of these professions.

52. What is the other method of verifying the identity of a client who is an individual and whom I cannot meet in person?

If the individual, whose identity is being verified, **is outside of Canada** or if you choose not to use a commissioner of oaths or guarantor where the individual is in Canada, you will have to engage an agent to conduct the verification for you. If you use an agent, prior to the agent taking steps on your behalf you must have an agreement in writing with the agent outlining the steps that he or she will take on your behalf to verify identity and the agent must provide you with the information he or she obtains. The agent may provide the information in the form of an attestation.

Appendix 5 contains a sample form agreement that you may use when retaining an agent.

53. Must the agent be a lawyer or a notary?

Not necessarily. Any reliable person may act as an agent.

54. May I rely on a faxed copy of an attestation?

Yes, but it would be prudent to obtain a copy of the original for your records.

55. My client is a Canadian lawyer and the matter that I am acting for her on involves a financial transaction. I am not meeting with her in person. Do I have to verify her identity?

Yes. In such cases you will have to either use a guarantor or a commissioner of oaths to obtain an attestation to verify your client's identity or you may engage an agent to obtain the attestation unless an exemption to the verification of identity requirement in the By-Law applies.

56. I am acting for an organization located outside of Canada. Do I have to use an agent to verify the identify of the organization?

No. You will have to use an agent to verify the identity of the instructing individual(s) if he or she is not located in Canada, but you may verify the identify the organization through documents.

57. My client is acting for a third party. I will not be meeting that party in person. How do I verify the identity of the third party?

If the third party is an organization, you may rely on documents to verify its identify. To identify an individual you will have to use either the attestation method if the individual is present in Canada or arrange for an agent to take the necessary steps to verify the identity by entering into an agreement with that agent. Which method you may use, depends on where the third party is located. If the person is in Canada, you may use either the attestation method or an agent. If located outside of Canada, you will have to rely on an agent.

PRACTICE SPECIFIC ISSUES

THIRD PARTIES

58. My client is representing someone else. What are my obligations?

The By-Law obliges you to identify third parties when they are directing or instructing your client or when they have the authority to direct or instruct your client, for example as a principal instructs an agent. When your client is acting for a third party in this way, you must obtain the same information for that third party as you would if they were your client.

59. My client is acting on behalf of a minor. Do I have to identify the minor?

No. A minor does not have legal capacity and so cannot be formally directing or instructing the client.

60. I am acting for the vendor in a real estate transaction. My client has directed me to pay a portion of the proceeds of the sale to another party who is not my client. Do I have to verify the identity of that other party?

You are not required to verify the identity of a third party to which funds are paid unless the party also directs, instructs or has the authority to direct or instruct your client with respect to the transaction. In such a case, that party would be a third party pursuant to the By-Law whose identity must be verified.

61. I am acting for a living trust that makes ongoing disbursements to the beneficiaries of the trust. Am I required to identify and verify the identity of the beneficiaries of the trust?

You are only required to verify the identity of your clients and any third party instructing or having the authority to instruct your client. If the beneficiaries of the trust are also your clients in the matter or if the beneficiaries are third parties directing your client or who have the authority to direct your client with respect to the matter, then you must also identify and verify their identity.

BUSINESS

62. I have been retained by a group of individuals engaged in a joint venture. I have determined that there is a financial transaction that is not exempted under the By-Law. Do I have to verify the identity of all of the parties to the joint venture?

Yes. By definition a joint venture is not an independent legal entity, but rather a collection of organizations or individuals that have joined together for some common purpose. In such a case, each of the parties to the joint venture would be a client.

63. I am acting for a client with respect to the completion of a commercial transaction. I have prepared the necessary documentation to complete the transaction, but the closing funds will not be flowing through my trust account as my client will be paying these directly to the other side in accordance with the agreement and closing documentation. Is this a situation in which I have to verify my client's identity?

Yes, unless an exemption applies. The verification obligations apply whenever you engage in or give instructions in respect of the transfer of funds. Although funds are not passing through your trust account in this transaction, you are instructing with respect to the transfer of funds when you instruct on how the funds will flow to complete the transaction, which may include the preparation of documents containing such instructions.

64. My client, a private corporation, has retained me with respect to a transaction which will involve the issuance or transfer of shares. Am I required to verify the identity of my client?

It may be common to think of the payment of funds for a transaction in terms of cash or cheque. However, the client identification and verification requirements will also be triggered when the activity involves issuing or transferring shares. "Funds" is a defined term in the By-Law and includes securities and negotiable instruments. When a lawyer prepares share certificates or share transfers

regardless of whether monies are being paid for the shares or share transfer, the lawyer is engaged in the receiving, paying or transferring of funds. In such circumstances unless an exemption applies, the lawyer is required to verify the identity of the client and any third party directing or authorized to direct the client.

CLASS ACTIONS

65. I have been retained to act in a class action. Is it sufficient if I identify the representative plaintiff or am I required to identify all of the members of the class?

For the purposes of the By-Law, it is sufficient to identify the representative plaintiff.

EMPLOYMENT

66. I am acting for a union on a grievance. Do I have to identify the grievor?

No. Except in rare cases, it is the union that has carriage of a grievance. The grievor, while clearly an interested party, is not instructing the union and as such is not a third party within the meaning of the By-Law. This would be true even in the case of a group or policy grievance where a large number of union members have a stake in the outcome of the matter. Where a grievor does have carriage of the grievance and is instructing the union as to how to proceed, the obligation to identify that person and, in appropriate cases, to verify their identity, would apply.

ESTATES AND TRUSTS

67. I have been retained by an individual to prepare her will. I have received a retainer, but am not handling any other funds. Am I required to identify and verify the identity of my client?

In these circumstances, you are obliged to identify your client, but you are not required to verify her identity. There is an exemption in the By-Law for funds received for professional fees and disbursements.

68. I have been retained by an estate trustee to administer an estate. Am I required to verify the identity of the beneficiaries of the estate when I pay out funds to the beneficiaries?

When you act for an estate trustee and you handle funds, unless an exemption applies, you are required to verify the identity of your client, the estate trustee. Generally you are not obliged to verify the identity of the beneficiaries of the estate in these circumstances as the beneficiaries are not your clients, nor are they in a position to direct your client. However, there may be situations in which the beneficiary is instructing the client, as in a case involving litigation over the settlement of an estate for example. In that case the beneficiary would have to be identified and his or her identity verified as a third party unless an exception applies. Similarly if you act for a beneficiary of an estate, then you are obliged to identify and verify the identity of the beneficiary in accordance with the By-Law.

REAL ESTATE

69. I am acting for a developer of a new condominium project and am holding in trust the monies paid as deposits by the purchasers of the condominium units. I am not acting for the purchasers. Do I have to verify the identify of the purchasers?

No, provided that the purchasers are not your clients nor are they directing or in a position to direct your client. If the purchasers are your clients or if they are directing or in a position to direct your client, then you would need to verify their identity unless an exemption applies.

70. I am acting for a lender and collecting mortgage payments from the borrower on her behalf. Do I have to identify or verify the identity of the borrower?

No. You are only obliged to verify the identity of your client and any third party who is directing or in a position to direct your client.

71. I act for a purchaser and a lender bank in a real estate transaction. I receive funds to close the transaction as follows:

- a portion of the funds by certified cheque or bank draft from the purchaser; and
- a portion of the funds (the mortgage proceeds) from the lender by bank draft.

Whose identity must I verify?

Both the Bank and the purchaser are your clients in the transaction and therefore you must verify the identity of both unless an exemption applies.

If the Bank is a “financial institution” as defined in the By-Law, you are not required to verify its identity as an exemption applies. The term “financial institution” is defined in Section 20 of the By-Law and includes a bank to which the Bank Act (Canada) applies and certain other entities.

There is no exemption relating specifically to cheques or bank drafts received from a purchaser. Therefore unless one of the other exemptions in the By-Law applies, you are required to verify the identity of the purchaser either before or when you receive the purchaser’s funds.

72. If I am acting for a purchaser in a real estate transaction, am I required to verify the identity of the purchaser when I pay out funds to close the transaction?

If you have previously verified the identity of the purchaser, for example when you received closing funds, then you are not required to verify the identify of the purchaser again. If you have not previously verified the identity of the purchaser, for example an exemption applied when you received the closing funds, then you would have to verify the identity of the purchaser when you pay out the closing funds unless an exemption applies.

73. If I am acting for a vendor in a real estate transaction, am I required to verify the identity of the vendor when I receive closing funds?

Yes, unless an exemption applies. For example, if funds are received by certified cheque from the purchaser's lawyer's trust account or by "electronic funds transfer" as defined in the By-Law, an exemption applies and you are not required to verify the identity of your vendor client with respect to this transaction.

74. If I am acting for a vendor in a real estate transaction am I required to verify the identity of the vendor when I pay out closing funds?

If you have not previously verified the identity of your vendor client, for example if an exemption applied when you received funds, you would be required to verify the vendor client's identity when you pay out funds unless an exemption applies.

75. I am acting in a real estate transaction where documents are being signed by power of attorney. Whose identity do I need to verify when I deal with funds – the donor and/or the donee?

If you are retained by the donee of a power of attorney, you are required to verify the identity of the donee. The donee acts pursuant to the power of attorney document and generally speaking in these circumstances the donor of the power of attorney would not be considered a third party instructing or having the authority to instruct your client.

However, if you are also retained by the donor in the transaction such as in a situation where you are obtaining instructions from both the donor and the donee, then you would be required to verify the identity of both clients.

Powers of attorney are sometimes used to effect fraud or illegal activity. In the event that you suspect fraud or dishonesty, you have an obligation to do further investigation and in certain circumstances you may have to withdraw completely. In addition, if the transaction involves a mortgage and you are acting for the lender in the transaction, you should review and follow the instructions of the lender client with regards to the use of powers of attorney in the transaction.

76. I act for a lender regarding a syndicated mortgage, whose identity do I verify?

A syndicated mortgage means a mortgage having more than one investor. These mortgages are sometimes held in trust by a lawyer or by one of the individual investors in trust for the remaining investors.

If you act for an investor trustee of a syndicated mortgage, you must identify and verify the identity of the trustee and the remaining investor participants if they are your clients or if they are directing or in a position to direct your client.

77. You are acting on behalf of a Condominium Corporation and you receive instructions from the property manager to collect arrears of common expenses and to register a Notice of Lien. You subsequently receive payment from the owner of the unit. You determine that no exemption to the requirement to verify identity applies. Whose identity do you need to verify in these circumstances?

You must verify the identity of your client, the Condominium Corporation and the property manager, who is the individual giving you instructions on behalf of the Condominium Corporation.

In order to verify the existence of the Condominium Corporation, you could conduct a sub-search of title to the unit within the Condominium Plan to ascertain that no Order of Termination has been registered against the unit within the Plan. In addition, you could obtain the G.S.T. number for the Condominium Corporation, if available, to verify its identity.

To verify the identity of the property manager, you may obtain, review and keep a copy of that person's driver's licence or an original identifying document from an independent source.

RECORD KEEPING REQUIREMENTS

78. Do I have to document the steps I take to verify my client's identity?

Yes. The By-Law requires that you obtain a copy of every document you rely on to verify a client's identity. You must also record the information you obtain to identify your client and any information and copies of documents you rely on to identify the directors and owners of 25 % or more of any client that is a company or other organization.

79. Do I have to keep identification and verification information in a separate file or can I keep it with my client files?

The information and documents obtained to identify your client may be kept in your client file or in a separate file if that is your preference. There is no requirement that it be maintained in a separate file.

80. Can I keep identification and verification information in electronic form?

Yes, as long as a paper copy can be readily produced.

81. How long do I have to retain client identification and verification information?

You have to keep the information for the longer of the duration of your professional relationship with the client and for as long as is necessary to provide service to the client, or six years following completion of the work the client retained you to do for them.

82. Do I have to verify the identity of clients I was already working for when this By-Law came into force?

The requirements do not apply to matters for which you were already retained when the By-Law came into effect, but it does apply to all new matters. That

means that you will have to take the necessary steps in accordance with the By-Law to identify and verify the identity of all clients for any matters for which you are retained after the By-Law comes into force even if you have acted for the client in the past or have a general retainer agreement with the client.

83. What, if anything, do I need to record when I am relying on an exemption to the identification or verification requirements?

The requirements do not oblige you to make any record when you are relying on an exemption. Bearing in mind that if asked by the Law Society, you must be able to demonstrate that you relied on a valid exemption, it would be prudent to note the reason identification or verification was not required.

WITHDRAWAL OF SERVICES

84. My client was very evasive when I tried to get the necessary information to identify her and to verify his identity. What do I do?

If you know or ought to know that your client is trying to get you to assist her in something illegal or dishonest, you have a duty to refuse to act for her in that matter. The duty applies whether your suspicions are aroused during the identification and verification process or at any time during your retainer.

85. I need advice about a specific situation that is not addressed in these questions. What should I do?

If you have any unanswered questions or concerns about compliance with the By-Law you should contact the Law Society Practice Management Helpline through the Resource Centre at 416 947-3315 or toll-free in Ontario, 1-800 668-7380 ext.3315.