



## **QUESTIONS AND ANSWERS ON THE CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS**

The following Q & As have been prepared to assist paralegals 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 are employed and provide legal services to your employer;
- 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; and
- 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.

**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(government), you must also identify the person or persons giving instructions on behalf of the organization.

**5. I have been retained by a 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 paralegal 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 paralegal is licensed by the Law Society of Upper Canada to provide legal services and has already identified the client in accordance with the By-Law.

**7. What are my obligations in determining whether a lawyer or paralegal for whom I am acting as agent or a lawyer or paralegal 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 paralegal or the lawyer has already identified the client. This would involve asking the other paralegal or the 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 paralegal in my firm who is licensed by the Law Society of Upper Canada has already identified that client. Am I permitted to rely on this identification?**

Yes, you may rely on the identification information obtained by the other paralegal 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.

**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 and verification 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 paralegal at the request of the court assists an unrepresented party in court, the paralegal is not required to identify the client. However, if the representation continues beyond the court's direction, the paralegal would be required to identify the client in accordance with the By-Law.

**14. 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.

**15. 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.

**16. What information must I obtain to identify a client or third party that is a "financial institution" within the meaning of the By-Law?**

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.

**17. 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](#).

[Financial Action Task Force on Money Laundering \(FATF\) members](#) that are countries.

**18. 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.

**19. 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, see the [Canada Revenue Agency](#) website.

- [European Common Union Value Added Tax \(VAT\)](#)

**20. 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.

**21. I have been retained by a law firm to provide legal services 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.

**22. 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

**23. 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**

**24. 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.

**25. 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.***

**26. 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 a 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 a 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
- 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 a 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.

**27. 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 client and receive funds from the client and you later pay out the funds to another party, 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.

**28. 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.

**29. 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, funds provided to you by a client who is a financial institution in order that you can settle a claim on its behalf. ***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.

**30. A paralegal licensed by the Law Society of Upper Canada who referred the client to me has 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 paralegal has also verified the client’s identity, you must do so.

**31. 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.

**32. 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 care 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.

**33. 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.

**34. 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.

**35. My client has come to me for legal advice in connection with some monies owing to a third party. 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.

**36. 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.

**37. 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 paralegals to rely on what they reasonably consider to be reliable, independent source documents, data and information and sets out a number of examples. Paralegals are expected to make a reasonable effort to obtain such documents and information.

**38. 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.

**39. 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.

**40. 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

**41. 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.

**42. 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.

**43. 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.

**44. I have acted for a client in the past prior to the implementation of the By-Law and am now acting for that company on a new 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.

**45. My client is a 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.

**46. I represent 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.

**47. 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**

**48. I am a paralegal 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.

**49. 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.

**50. 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 lawyers, paralegals licensed by the Law Society of Upper Canada, 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.

**51. 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.

**52. Must the agent be a lawyer or a notary?**

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

**53. 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.

**54. 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.

**55. I am acting for an organization located outside of Canada. Do I have to use an agent to verify the identify 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 of the organization through documents.

**56. 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**

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

The By-Law obliges you to identify and verify the identity of 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.

**58. 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.

**59. I am acting for a client in a matter. My client has directed me to pay a portion of the settlement proceeds 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 that party directs, instructs or has the authority to direct or instruct your client with respect to the matter. In such a case, that party would be a third party pursuant to the By-Law whose identity must be verified

## **EMPLOYMENT**

**60. 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.

## **RECORD KEEPING REQUIREMENTS**

**61. 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.

**62. 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.

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

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

**64. 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.

**65. 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.

**66. 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**

**67. 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.

**68. 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