



CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS FOR PARALEGALS

INTRODUCTION

The new client identification and verification requirements came into effect on December 31, 2008. Part III of By-Law 7.1 contains four main requirements:

- identifying the client and certain third parties
- verifying the identity of the client and certain third parties
- maintaining records, and
- withdrawing from representation in appropriate circumstances.

Identifying the client means obtaining certain basic information about your client and any third party directing, instructing or who has the authority to direct or instruct your client such as a name and address. You must obtain this information whenever you are retained to provide legal services to a client unless an exemption applies. Some of this information is likely information that you were obtaining prior to the implementation of the By-Law as part of your file opening process.

Verifying the identity of a client means actually looking at an original identifying document from an independent source to ensure that your clients and any third parties are who they say they are. You are only required to verify the identity of your client and such third parties if you are involved in a funds transfer activity, that is, ***you engage in or instruct with respect to the payment, receipt or transfer of funds***. You are not required to identify and/or verify the identity of your client and such third parties in all situations. The By-Law contains certain exemptions which are outlined in the Qs & As below. To determine whether you are required to verify identity or whether an exemption applies, you must look at each funds transaction separately. For example, if you are acting for a client and receive funds from a third party and you later pay out these funds to your client, you must consider the receipt and payment of funds separately. Both transactions would need to be exempt in order for you not to be required to verify the identity of your client.

To determine whether you are required to comply with the client identification and verification requirements consider.

1. Are you being retained to provide legal services to a client?

If yes, you must identify your client and any third party instructing or directing your client or who has the authority to instruct or direct your client unless an exemption to the client identification requirement applies.

2. Are you engaging in or instructing with respect to the receipt, payment or transfer of funds?

If, yes, you must verify the identity of your client and any third party directing or instructing your client or who has the authority to direct or instruct your client unless an exemption applies.

3. If you are required to verify the identity of an organization, you must also verify the identity of the individual giving you instructions on behalf of the organization and you must use reasonable efforts to obtain certain identifying information about the directors of the organization and certain shareholders.

4. If you are required to verify the identity of an individual who you are not meeting face to face, you must obtain an attestation from a commissioner of oaths or guarantor or you must have an agent verify identity on your behalf.

Appendix 1 outlines the steps for identifying individuals and organizations.

Appendix 2 outlines the steps for verifying the identity of an individual.

Appendix 3 outlines the steps for verifying the identity of an organization.

Appendix 4 contains a sample attestation for situations where you are required to verify the identity of an individual **who is present in Canada** and who you are not meeting face to face.

Appendix 5 contains a sample agreement for situations where you are required to verify the identity of an individual and you retain an agent to do this on your behalf.

Appendix 6 contains sample file forms

Appendix 7 contains steps to assist paralegals in complying with the new client identification and verification requirements

Appendix 8 Q&A on the following topics

1. Identifying the Client
2. Verifying the Identity of the Client
3. Verifying the identity of a Client – Non Face to Face Meetings
4. Practice Specific Issues
5. Recordkeeping
6. Withdrawal from Representation



IDENTIFYING INDIVIDUALS AND ORGANIZATIONS¹

(For use by paralegals to assist them to determine whether they are required to identify their client and if so, the steps that they are required to take)

- 1. First, determine whether you are being retained to provide legal services to a client?**
- 2. If yes, determine if an exemption to the client identification requirement applies?**

The exemptions are:

- you are employed and are providing legal services to your employer;
 - 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; or
 - 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.
- 3. If an exemption applies, you are not required to identify your client. If no exemption applies, you are required to identify your client and any third party instructing or who has the authority to instruct your client.**

¹ This document has been prepared to assist paralegals to comply with the client identification and verification requirements of By-Law 7.1. Paralegals 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 paralegal's obligations is specifically defined in the By-Law.

4. To identify an individual you must obtain and keep a record of:

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

7. To identify an organization (a corporation, partnership, fund, trust, association etc.) you must obtain and keep a record of :

- the organization's full name
- business address and telephone number
- for organizations other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and place of issuance of the number if the organization has a number and the general nature of the organization's business
- the name, position and contact information of the individual giving you instructions on behalf of the organization

8. You must retain a record of the information that you obtain for the longer of:

- six years following completion of the work for which you were retained
- the duration of the paralegal and client relationship and for as long as it is necessary for the purpose of providing service to the client



For use when verifying the identity of an individual

VERIFYING THE IDENTITY OF AN INDIVIDUAL²

(This document has been prepared to assist paralegals to determine whether they are required to verify the identify of an individual and if so, the steps that they are required to take)

- 1. Determine whether you are retained to provide legal services to a client?**
- 2. If yes, determine whether you will engage in or instruct with respect to the receipt, payment or transfer of funds?**
- 3. If yes, determine with respect to each funds transaction if an exemption to the requirement to verify identity applies?**

The exemptions are:

- you are employed and are providing legal services to your employer
- 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 verified the identity of 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 verified the identity of the client

² This document has been prepared to assist paralegals to comply with the client identification and verification requirements of By-Law 7.1. Paralegals 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 paralegal's obligations is specifically defined in the By-Law.

- funds are being paid to or received from a financial institution, public body (government) or reporting issuer (public company)
 - funds are being received from the trust account of 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
 - funds are being received from a peace officer, law enforcement agency or other public official acting in an official capacity
 - funds are being received or paid pursuant to a court order
 - funds are being paid to pay a fine or penalty
 - funds are being paid or received as a settlement in a proceeding before an adjudicative body
 - funds are being paid for professional fees, disbursements, expenses or bail
 - 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 you or an employee of your firm or a lawyer or paralegal in your firm licensed by the Law Society of Upper Canada 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 have verified the identity of that organization including the individuals authorized to give instructions on behalf of the organization with respect to the matter.
- 4. If an exemption applies, you are not required to verify the identity of your client. If no exemption applies, you must verify the identity of your client including any third party instructing or having the authority to instruct your client.**
- 5. To verify the identity of an individual, either before or when you act or give instructions regarding the receiving, paying or transferring of funds obtain and review an original government issued identification of that individual that is valid and has not expired such as a:**
- Driver's Licence
 - Birth Certificate

- Passport, or
- Other similar record

6. If the individual is present in Canada and you are not meeting face to face with him or her, you must verify that individual's identity by one of the following methods:

- Obtain an attestation from a commissioner of oaths or other approved person³ who has verified the individual's identity by looking at an appropriate identity document, or
- Retain an agent to verify the identity of that individual on your behalf and prior to the agent acting on your behalf 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

Sample Form Attestation – Appendix 4

Sample Agreement – Appendix 5

7. If the individual is not present in Canada and you are not meeting face to face with him or her, you must verify that person's identity by:

- Retaining an agent to verify the identity of that individual on your behalf and prior to the agent acting on your behalf entering 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

Sample Agreement – Appendix 5

8. Retain a record of the information that you obtain and copies of the documents you receive to verify identity for the longer of:

- six years following completion of the work for which you were retained
- the duration of the paralegal and client relationship and for as long as it is necessary for the purpose of providing service to the client

Sample File Form – Appendix 6

³ 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 a school principal.



For Use When Verifying the Identity of an Organization

VERIFYING THE IDENTITY OF AN ORGANIZATION⁴

(This document has been prepared to assist paralegals to determine whether they are required to verify the identity of an organization and if so, the steps that they are required to take. An “organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association”.)

- 1. Determine whether you are retained by an organization to provide legal services to a client?**
- 2. If yes, determine whether you will engage in or instruct with respect to the receipt, payment or transfer of funds?**
- 3. If yes, determine with respect to each funds transaction if an exemption to the requirement to verify identity applies? The exemptions are:**
 - you are employed and are providing legal services to your employer
 - 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 verified the identity of 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 verified the identity of the client

⁴ This document has been prepared to assist paralegals to comply with the client identification and verification requirements of By-Law 7.1. Paralegals 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 paralegal’s obligations is specifically defined in the By-Law.

- funds are being paid to or received from a financial institution, public body (government) or reporting issuer (public company)
 - funds are 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
 - funds are being received from a peace officer, law enforcement agency or other public official acting in an official capacity
 - funds are being received or paid pursuant to a court order
 - funds are being paid to pay a fine or penalty
 - funds are being paid or received as a settlement in a proceeding before an adjudicative body
 - funds are being paid for professional fees, disbursements, expenses or bail
 - 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 you or an employee of your firm or a lawyer or paralegal of your firm 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 individuals authorized to give instructions on behalf of the organization with respect to the matter.
- 4. If an exemption applies, you are not required to verify the identity of your client. If no exemption applies, you must verify the identity of your client (other than financial institutions, public bodies or reporting issuers) including any third party instructing your client or who has the authority to instruct your client.**
- 5. To verify the identity of an organization either before or when you act or give instructions on behalf of the client regarding the receiving, paying or transferring of funds, obtain and review an original government issued identification of the individual giving instructions on behalf of the organization that is valid and has not expired such as a:**
- Driver's Licence

- Birth Certificate
- Passport, or
- Other similar record

6. In addition if the organization is a corporation or other organization created or registered pursuant to legislative authority, no later than 60 days after you first act or give instructions regarding the receiving, paying or transferring of funds obtain and review a written confirmation from a government registry as to the existence, name and address of the organization including the names of the 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

7. If the organization is a trust, partnership or other organization which is not registered in any government registry, no later than 60 days after you first act or give instructions regarding the receiving, paying or transferring of funds, review a copy of the organization's constating documents or similar record that confirms its existence as an organization such as:

- a trust agreement
- a partnership agreement
- articles of association, or
- other similar record that confirms the organization's existence as an organization

8. 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

- 9. Retain a record of the information that you obtain and copies of the documents you receive to verify identity for the longer of:**
- six years following completion of the work for which you were retained
 - the duration of the paralegal and client relationship and for as long as it is necessary for the purpose of providing service to the client

Sample File Form – Appendix 6

SAMPLE FORM

ATTESTATION FOR VERIFICATION OF IDENTITY WHEN THE CLIENT OR THIRD PARTY IS PRESENT IN CANADA AND IS NOT INSTRUCTING THE PARALEGAL FACE TO FACE

The following sample form document has been prepared to assist paralegals to comply with their professional obligations when obtaining attestations from a commissioner of oaths or other guarantor where the individual whose identity is being verified is present in Canada, but is not meeting with the paralegal face to face. This sample form should be modified to suit the circumstances of the particular matter or transaction.

Instructions

The Attestor should photocopy the identity document being used to verify identity and ensure that it is legible, unexpired and shows the name of the person whose identity is being verified, the number of the document, the name of the issuing authority, the date of issue and a photograph of the person.

The Attestor will print the following attestation on this photocopy and date and sign the attestation.

I, the Attestor named below, hereby certify to [*name of paralegal receiving the attestation*] that I met with [*insert name of person*] on [*insert date*] and verified this person's identity by examining the original of this person's identity document, of which a photocopy is contained on this page. The photograph in the identity document is a true likeness of the said person and to the best of my knowledge and belief, the identity document that I examined is valid and unexpired.

Attested to by me at _____, on _____, 2008

Signature of Attestor: _____

Printed Name of Attestor: _____

Title or Profession of Attestor: _____

Address of Attestor for Service: _____

Telephone Number of Attestor: _____

SAMPLE FORM

VERIFICATION OF IDENTITY AGREEMENT WHERE THE CLIENT OR THIRD PARTY IS NOT PRESENT IN CANADA AND IS NOT INSTRUCTING THE PARALEGAL FACE TO FACE⁷

This sample form agreement in letter format may be used by paralegals retaining agents to verify the identity of clients or third parties where the client or third party is not in Canada and is not instructing the paralegal face to face. In this sample form agreement, the identity of an individual is being verified by the examination of the person's driver's licence or passport. Although the by-law does not require the agent to examine more than one piece of identification, depending on the circumstances of the file, a paralegal may want an agent to examine more than one piece of identification. This sample form agreement should be modified to suit the circumstances of the matter or transaction. Furthermore, if the person is also signing other documents in the presence of the agent, the paralegal may wish to modify this agreement to set out the additional obligations of the agent.

[Firm Letterhead]

[Delivery Method]

[Name and Address of the Agent]

Dear *[Agent]*:

Re: *[Insert the name of the client "our client"]*
[Insert the nature of the matter or transaction]

We are acting in the above-noted matter and would like to retain you to verify the identity of our client. In this regard, we will require that you meet with our client and take the following steps to verify our client's identity:

⁷

Please note that in situations where the client is an individual present in Canada and is not instructing the lawyer face to face, the lawyer has the option of obtaining either an Attestation (Appendix 4) or a Verification of Identity Agreement (Appendix 5).

1. Examine the original, valid and unexpired passport or driver's licence (identity document) of our client
2. Make a legible photocopy of this identity document and ensure that it contains our client's name, the number of the document, the name of the issuing authority, the date of issue and our client's photograph.
3. Print and certify on this photocopy as follows:

I, the Attestor named below, hereby certify to [*name of paralegal receiving the attestation*] that I met with [*insert name of person*] on [*insert date*] and verified this person's identity by examining the original of the person's identity document, of which a photocopy is reproduced on this page, and which copy legibly shows the name of the person, the number of the identity document, the name of the issuing authority, the date of issue, and a photograph that is a true likeness of the said person. To the best of my knowledge and belief, the identity document that I examined is valid and unexpired.

Attested to by me at *[Insert Place of Signature]* , on
, 2008

Signature of Attestor: _____

Printed Name of Attestor: _____

Title or Profession of Attestor: _____

Address of Attestor for Service: _____

Telephone Number of Attestor: _____

4. Date and sign the photocopy containing the above certification in the spaces set out for the date and signature and return it to us no later than [*insert date*].

Any amendments to these instructions must be approved in writing by our firm.

If you are agreeable to verifying the identity of our client on the terms and conditions set out in this letter, please confirm your agreement by signing two copies of this letter on the signature line below and return one copy to the undersigned.

Yours truly,

Signature of Paralegal

[Insert the name of the Paralegal]

I hereby agree to verify the identity of the person referred to above on the terms and conditions set out in the above letter.

Dated at *[Insert location]* on *[Insert date]*.

Signature of the Agent

[Insert the Name of the Agent]

[FIRM NAME]

VERIFICATION OF IDENTITY

(For use where the client or the third party is an individual)

Name: _____

Address: _____

Phone No: _____

Business Address: _____

Business Phone No: _____

Occupation(s) _____

Original Document Reviewed – Copy Attached

- Driver's Licence
- Birth Certificate
- Passport
- Other(specify type) _____

Meeting Date Identity Verified: _____

Identity Verified By: _____

Date File Reviewed by Paralegal: _____

Name of Paralegal: _____

[FIRM NAME]

VERIFICATION OF IDENTITY

(For use where the client or the third party is an organization)

Name: _____

Business Address: _____

Business Phone No: _____

Incorporation or Business Identification No: _____

Place of Issue of No: _____

Type of Business or Activity: _____

Person Authorized to Instruct

Name: _____

Position: _____

Phone No: _____

Original Document Reviewed Copy Attached

- Driver's Licence
- Birth Certificate
- Passport
- Other(specify type) _____

Names and Occupation(s) of Directors (maximum of 500 characters)

Names, Addresses and Occupation(s) of Owners or Shareholders owning a 25% interest or more of the organization or shares in the organization (maximum of 500 characters)

Original Document Reviewed – Copy Attached

- Certificate of Corporate Status
- Annual Filings of the Organization (specify type) _____
- Partnership Agreement
- Trust Agreement
- Articles of Association
- Other (specify type) _____

Meeting Date Identity Verified: _____

Identity Verified By: _____

Date File Reviewed by Paralegal: _____

Name of Paralegal: _____



STEPS TO ASSIST PARALEGALS IN COMPLYING WITH THE NEW CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS - BY-LAW 7.1¹

New 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 paralegals 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.

However you do not have to identify them if:

- you are employed and are providing the legal services to your employer;
- you are acting as an agent for a lawyer authorized to practise law in a province or territory of Canada or another 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 a lawyer authorized to practise law in a province or territory of Canada or another paralegal licensed by the Law Society of Upper Canada who has already identified the client [Section 22, By-Law 7.1].

¹ This document has been prepared to assist paralegals to comply with the client identification and verification requirements of By-Law 7.1. Paralegals 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 paralegal'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 them. The information that you obtain differs depending on whether the client or third party is an individual or an organization.
- ❑ If the client and/or the third party is an individual, you must obtain and keep a record of the 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 organization² (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 a reporting issuer (public company)³
 - 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 a reporting issuer (public company)
 - the name, position and contact information of each individual providing you with instructions with respect to the matter on behalf of the organization [Subsection 23(1), By-Law 7.1]

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

³The 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 a client regarding the receiving, paying or transferring of funds⁴ you must also take reasonable steps to verify the identity of that client and any third party for whom the client acts or represents.

However you are not required to verify identity if one of the following situations applies:]

- you are acting or giving instructions on behalf of your employer [Subsection 22 (2), By-Law 7.1]
- you are acting as agent for a lawyer authorized to practise law in a province or territory of Canada or another 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 a lawyer authorized to practise law in a province or territory of Canada or another 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 a lawyer authorized to practise law in a province or territory of Canada or another paralegal licensed by the Law Society of Upper Canada
 - received pursuant to a court order
 - received as a settlement in any proceeding before an adjudicative body⁵
 - 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

⁴ 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].

⁵ 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 any 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 transfer⁶ [Subsection 23(3), By-Law 7.1]
 - 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 take reasonable steps to verify the identity of that person by looking at an original identifying document, from an independent source, that you reasonably believe to be reliable. The type of documentation that you will examine differs 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 with respect to funds. You may verify identity 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 permitted⁷

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

⁷ 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".

- Passport, or
 - Other similar record [Subsection 23(5) and 23(7) of By-Law 7.1]
- If the client and/or third party is a corporation or society or other organization created or registered pursuant to government authority, you must take reasonable steps to verify the organization's identity no later than 60 days after first acting or giving instructions with respect to funds. You may do this 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 directors, if any, 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 (e.g. government) 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 (e.g. government) 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 take reasonable steps to verify that organization's identity no later than 60 days after first acting or giving instructions with respect to funds. You may do this 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 if the client or third party is an organization and if you are required to verify its identity, you must take two additional steps:
- First, you must verify the identity of each 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]
- If you are required to verify the identity of an individual, but the individual is not providing you with instructions in person, you must have another person verify the identity of that

individual by using one of two methods depending on whether the person whose identity is being verified is present in Canada.

- In this regard, if the individual is **present in Canada**, you may obtain an attestation (a certificate) from a person entitled to administer oaths and affirmations in Canada (a commissioner of oaths) or from another designated person⁸. This person is called an attester. The attester will verify the individual's identity by looking at the appropriate identity document and providing an attestation. The attestation is a certificate containing:
 - a legible photocopy of the identity document signed by the attester
 - the name, occupation and address of the attester
 - the type and number of the document looked at by the attester to verify identity [Subsections 23(8) – (10), By-Law 7.1]

Appendix 4 contains a sample form attestation.

- Alternatively if the individual is **not present in Canada** or if you choose not to use a commissioner of oaths or a designated person, you may retain an agent to verify the identity of the individual on your behalf, but prior to the agent acting on your behalf you must enter into a written agreement with the 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 agreement for verification of identity agreement.

- Finally you must 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 6 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

- You must 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 paralegal 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]

⁸ 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 a school principal.

STEP 4 – WITHDRAW IF APPROPRIATE

- If you know or ought to know that you are or would be assisting your client in fraud or illegal conduct in the course of identifying or verifying identity, 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 3.02(3) and (4), and 3.08 of the Paralegal Rules of Conduct].



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 identiy 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