

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

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 beneficiary or principal for whom your client acts or represents unless:
 - you are providing the legal services on behalf of your employer;
 - you are acting as agent for another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified the client; or
 - you are acting for a client who has been referred to you by another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified the client [Section 22, By-Law 7.1]

See also FAQ: 1, 2, 3, 9, 29, 33

- In order to identify the client and/or third party, you must obtain and keep a record of certain information about that client and/or third party.

See also FAQ: 4, 6, 8

- If the client and/or third party is an individual, obtain and keep a record of that person's:
 - full name
 - business address and phone number, if any

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

- home address and home telephone number
- occupation or occupations [Subsection 23(1), By-Law 7.1].

See also FAQ: 4, 5

- If the client and/or third party is an organization² (e.g. corporation, partnership, or trust) 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
 - 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 company that is not a private company³,
 - the name, position and contact information of all individuals authorized to provide instructions on behalf of the organization [Subsection 23(1), By-Law 7.1]

See also FAQ: 6, 7

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

- In addition to identifying the client, if you act for or give instructions on behalf of the client regarding the receiving, paying or transferring of funds⁴ you must verify the identity of that client and any third party beneficiary or principal for whom the client acts or represents unless one of the following exceptions applies [Subsection 22 (1), By-Law 7.1]
 - you engage in these activities on behalf of your employer [Subsection 22 (2), By-Law 7.1]

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

³ The terms “financial institution”, “public body” and “private company” 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 and some other similar 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 “private company” is a company with constating documents that restrict the right to transfer shares, limit the number of its shareholders to 50 and prohibit any invitation to the public to subscribe for its shares or securities.

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].

- you are acting as agent for another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified and verified the identity of the person [Subsection 22 (2), By-Law 7.1]
- you are acting for a client referred to you by another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified and verified the identity of the person [Subsection 22 (2), By-Law 7.1]
- the funds being received are:
 - from a financial institution
 - from a public body
 - from a company that is not a private company
 - from a subsidiary of a public body or company that is not a private company where the financial statements of the subsidiary are consolidated with the financial statements of the public body or company
 - from the trust account of another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada
 - received pursuant to a court order
 - received as a settlement in a legal or administrative proceeding
 - 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
 - to a public body
 - to a company that is not a private company
 - to a subsidiary of a public body or company that is not a private company where the financial statements of the subsidiary are consolidated with the financial statements of the public body or company
 - to another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada in trust on the direction of a client
 - pursuant to a court order or to pay a fine or penalty
 - as a settlement in any legal or administrative proceedings , or]
 - for professional fees, disbursements, expenses or bail [Subsection 22(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

See also FAQ: 9, 10, 11, 12, 13, 14, 26, 27

- If you are required to verify the identity of a client or third party, you must do so by looking at an original identifying document that you reasonably believe to be reliable [Subsection 23(4), By-Law 7.1].

See also FAQ: 30, 32, 33

- In this regard, if the client and/or third party is an individual, 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 that person that is valid and has not expired such as a:
 - Driver's Licence
 - Birth Certificate
 - Provincial or Territorial Health Card, where permitted⁵
 - Passport, or
 - Other similar record [Subsection 23(5) and 23(7) of By-Law 7.1]

See also FAQ: 15, 26, 29, 32

- If the client and/or third party is a corporation or society or other organization created pursuant to legislative authority no later than 60 days after first engaging in these activities, 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 or officers such as:
 - a certificate of corporate status issued by a public body (e.g. government)

⁵ 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".

- a copy of a record obtained from a public body that the organization is required to file annually under applicable legislation (e.g. annual government filings), or
- a copy of a similar record obtained from a public body that confirms the organization's existence [Subsection 23(6) and 23(7) of By-Law 7.1]

See also FAQ: 16, 29, 30, 31, 32

- If the client and/or third party is a trust, partnership or other organization which is not registered in any government registry, no later than 60 days after first engaging in these activities, obtain and review 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 [Subsection 23(7), By-Law 7.1].

See also FAQ: 17, 18, 29, 30, 31, 32

- In addition, where the client is an organization and you are required to verify the identity of the client, 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]

See also FAQ: 19, 20, 21

- If the client is an organization and if you are required to verify the identity of the client, you must also verify the identity of the individuals authorized to provide 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(12), By-Law 7.1]

See also FAQ: 28

- If you are not meeting with the client and/or third party face to face, you must have another person verify the identity of the client and/or third party by one of the following methods:
 - If the client and/or third party is an individual **present in Canada**, you may obtain an attestation from a person entitled to administer oaths and

affirmations in Canada or from another designated person⁶ who has verified that client's and/or third party's identity by looking at the appropriate identifying document. The attestation consists of a legible photocopy of the independent source identifying document signed by that person and on which that person has indicated:

- his or her name, occupation and address;
- the type and number of the document looked at by that person to verify identification [Subsections 23(8) – (10), By-Law 7.1]

Appendix 4 contains a sample form attestation.

See also FAQ: 22, 23, 24

- Alternatively if the client and/or third party 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 that client and/or third party 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 [Subsections 23(8)-(11), By-Law 7.1].

See also FAQ: 25

Appendix 5 contains a sample form verification of identity agreement.

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

See also FAQ: 34, 35, 36

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

STEP 3 – RETAIN RECORDS

- Retain a record of the information that you obtain and copies of the documents you receive to identify and verify the identity of an individual or organization including attestations and agreements with agents for the longer of:
 - six years following completion of the work for which you were retained

⁶ 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 or a veterinarian.

- the duration of the lawyer and client relationship and for as long as it is necessary for the purpose of providing service to the client [Subsection 23(14) of By-Law 7.1]

See also FAQ: 37

STEP 4 – WITHDRAW IF APPROPRIATE

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

See also FAQ: 33