



## **COMPLYING WITH THE NEW CLIENT IDENTIFICATION AND VERIFICATION OF IDENTITY REQUIREMENTS OF BY-LAW 7.1**

### **BACKGROUND INFORMATION ON THE NEW REQUIREMENT**

Lawyers by virtue of their trust accounts are targets for those wishing to launder money. Amendments to By-Law 7.1 on client identification and verification were approved by Convocation on April 24, 2008 and come into effect on December 31, 2008. These amendments are contained in Sections 20 – 27 of the By-Law. The new requirements are based on a Model Rule developed by the Federation of Law Societies of Canada as a part of its initiative to fight fraud. Law Societies across Canada are in the process of implementing the Model Rule within their regulatory regimes to create a national, uniform standard for client identification and verification requirements.

### **MONEY LAUNDERING AND TERRORIST FINANCING**

By way of background, as a result of growing global concern in 2000, the Government of Canada passed legislation known as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”). Under the Act, regulated persons and entities are required to report suspicious transactions and certain other financial transactions. Reporting persons are prohibited from “tipping off” their client about having made the report. Despite concerns expressed by the Federation of Law Societies, in November 2001 the federal government promulgated Regulations making the Act applicable to lawyers and requiring legal counsel to secretly report suspicious transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), a federal agency. The Federation and the Law Society of British Columbia, supported by the Canadian Bar Association, initiated proceedings in the Supreme Court of British Columbia challenging the constitutionality of the legislation and seeking interlocutory relief from the application of the Regulations to legal counsel. The Federation contended that the legislation required lawyers to act as secret agents of the state, collecting information about clients against their interests and reporting to a government agency. The Supreme Court of British Columbia agreed with these concerns and granted an interim injunction such that legal counsel were not required to report “suspicious transactions” pending a full hearing on the merits of the case. The BC Court of Appeal and the Supreme Court of Canada denied the government’s application for a stay of the Order. Similar Orders were granted in other provinces and territories across Canada.

As a result of these interlocutory Orders, in May 2002 the Attorney General of Canada agreed to suspend the application of the legislation to all Canadian lawyers (including Quebec notaries), pending a final decision on the merits of the constitutional challenge to the legislation. The hearing of the challenge has now been adjourned generally, and

all lawyers in Canada remain exempt from the legislation by virtue of the injunction. The federal government indicated that following consultations with the legal profession, the government intended to put in place a new regulatory regime for lawyers that more appropriately reflected their duties.

In the interim the Federation independently of the litigation, has launched its own initiatives to fight fraud.

## **NO- CASH RULE**

In 2004, the Federation adopted a “No-Cash” Model Rule. All Law Societies across Canada have implemented rules restricting lawyers from receiving cash in amounts of \$7,500.00 or more. The adoption of the No-Cash Rule rendered unnecessary the obligation under the *Act* that the federal government sought to impose on lawyers, to report transactions involving \$10,000.00 or more in cash.

## **BILL C-25**

In October 2006, the federal government introduced Bill C-25 that made a series of amendments to the *Act*. Bill C-25 includes provisions (sections 6 and 6.1) enhancing the client identification, recordkeeping and reporting requirements in the *Act*. In June 2007, new client identification and verification regulations under these provisions were published by the Department of Finance. The regulations purport to regulate how lawyers and others should identify and verify the identity of clients. The regulations were published in final form in December 2007 and with respect to the legal profession, come into force in December 2008. Appendix 6 contains a summary of the Regulations as applicable to lawyers. However, the injunction discussed earlier states that any new regulations do not apply to the legal profession unless the Federation of Law Societies consents.

The Federation’s Model Rule on Client Identification and Verification in many respects codifies the steps that a prudent lawyer would take in the normal course to verify a client’s identity. The Model Rule respects the threshold between constitutional and unconstitutional requirements imposed on lawyers when it comes to gathering information from clients: a lawyer must obtain and keep all information needed to serve the client, but must not obtain any information which serves only to provide potential evidence against the client in a future investigation or prosecution by state authorities. Like the adoption of the No-Cash Rule, national implementation of the Model Rule on Client Identification and Verification will demonstrate that responsible self-governance by the law societies makes federal regulation of the legal profession on this subject matter unnecessary.

## **RESOURCES**

The following resources have been developed to assist lawyers to better understand the new requirements and make changes to their practices and procedures to ensure compliance.

- Steps to Assist in Compliance with the Client Identification and Verification Requirements [Appendix 1]

- Frequently Asked Questions and Answers [Appendix 2]
- Sample File Forms for Verification of Identity [Appendix 3]
- Sample Attestation Form for Verification of Identity for use when the client is in Canada and the lawyer is not meeting face to face with the client [Appendix 4]
- Sample Form Verification of Identity Agreement where the lawyer is not meeting face to face with the client and the lawyer retains an agent to verify identity [Appendix 5]



# Client ID and Verification Requirements Enhance Public Protection

## Overview

On April 24, 2008, the Law Society of Upper Canada's governing board (Convocation) approved amendments to By-Law 7.1 [Operational Obligations and Responsibilities] to establish rigorous Client ID and Verification regulations for Ontario's lawyers and paralegals. The amendments, effective October 31, 2008, enhance public protection by requiring the lawyer or paralegal to identify and verify the identity of a client, which will assist in preventing potential fraudulent or criminal activities.

The amendments to By-Law 7.1 are based on a Model Rule developed by the Federation of Law Societies of Canada, the umbrella organization for Canada's 14 Law Societies. The adoption of the rule follows the Law Society's consultation with the profession on the content of the Model Rule in the fall of 2007.

In many respects, the amendments codify the steps a prudent lawyer or paralegal would take in the normal course to verify a client's identity upon being retained to provide legal services.

## Details of the new requirements

The new requirements will assist lawyer and paralegal licensees in identifying any potential fraudulent client activities, for example whether a client is attempting to use the licensee to launder funds.

### *Client Identification*

The amendments require licensees to follow certain client identification procedures whenever a licensee is retained to provide professional services to a client.

### *Client Verification*

The verification requirements are triggered where the licensee receives, pays or transfers funds on behalf of a client. The licensee must take reasonable steps to verify the identity of the client by referencing reliable, independent source documents, data or information. Some funds transactions are exempt. For example, the requirements do not apply when funds are paid to the licensee by a financial institution, public body, or a public company, or received from the trust account of another licensee.

### *Information Records*

The amendments also require licensees to keep a record of the information and documents obtained to identify and verify the identity of clients.

This information would be available to the Law Society for the purpose of ensuring compliance with the requirements.

### *Withdrawal of Service*

The amendments require the licensee who reasonably suspects that his or her activities on behalf of the client would assist the client in fraudulent or criminal activity to cease those activities, or, if that cannot be done, to withdraw from representation.



*Notice to the Legal Professions*

## **New client identification and verification requirements come into effect October 31, 2008**

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In many respects, the amendments codify the steps a prudent lawyer or paralegal would take in the normal course to verify a client's identity upon being retained to provide legal services.

### **Details of the new requirements**

#### *Client Identification*

The amendments require licensees to obtain certain client identification information whenever a licensee is retained to provide professional services to a client. This includes the client's name, address, telephone number and occupation. Additional information for organizational clients includes the client's business identification number, place of incorporation, general type of business and the identity of the instructing individuals.

#### *Client Verification*

The verification requirements are triggered where the licensee receives, pays or transfers funds on behalf of a client. The licensee must take reasonable steps to verify the identity of the client by referencing reliable, independent source

documents, data or information. This would include a driver's license, birth certificate or passport for an individual client and articles of incorporation or a partnership agreement for an organizational client.

Some funds transactions are exempt from the verification requirements. For example, the requirements do not apply when funds are paid to the licensee by a financial institution, public body, or a public company, or received from the trust account of another licensee.

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