"Getting to Know You, Getting to Know All About You…" - Client Identification

By Geoffrey R. Cobham *July 2009*

Do not be surprised if you are asked to produce identification the next time you visit your lawyer. Pursuant to the Law Society of Upper Canada's By-Law no. 7.1, all lawyers in Ontario are required to obtain information relating to the identity of their new and existing clients on all matters that commenced on or after January 1, 2009 ("Client Identification").

On most matters, lawyers will also need to verify the identity of their clients by inspecting original identification ("Verification").

As noted by the Treasurer of the Law Society of Upper Canada, the new Client Identification and Verification requirements essentially codify the due diligence that a prudent lawyer would undertake upon being retained by a new client.

The Client Identification requirement generally involves the collection of basic information such as the client's name, home and business telephone numbers and addresses, and occupation. For business clients, such as corporations and partnerships, the incorporation or business number and the place of issuance, the nature of the business, and the identifying information of the principals and beneficiaries, if any, would need to be obtained. Depending on the circumstances, additional information may need to be collected.

The Verification requirement is generally put in motion when a lawyer engages in or gives instructions with respect of the receiving, paying or transferring of funds. "Funds" are defined broadly to include cash, currency, securities, negotiable instruments and other financial instruments that indicate a person's title or interest in them.

In the case of individual clients, a valid driver's licence or passport would generally suffice to comply with the Verification requirement. For business entities, such as corporations and partnerships, a Certificate of Status or Partnership Agreement would likely need to be produced.

In limited circumstances, Verification may be dispensed with where it would ordinarily be required. For instance, Verification is not required where the funds in question are received from another lawyer's trust account, paid or received pursuant to Court Order, paid or received as a settlement in a proceeding, or paid or received for professional fees, disbursements, expenses or bail.

Concerns regarding fraudulent and criminal activities, including money laundering and the funding of terrorism, have led to these new requirements. In this respect, the Law Society of Upper Canada has also prohibited lawyers from accepting more than $7,499.99 in cash from a client.

While it is never possible to completely eliminate fraud, it is hoped that the new By-Law will further protect both clients and lawyers from unscrupulous individuals.