



November 11, 2022

Law Society of Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Attention: Megan Shortreed, Chair (Professional Regulation Committee)

*Via Email (megan.shortreed@paliareroland.com; lawsociety@lso.ca)*

Dear Ms. Shortreed:

**Re: Removal of Virtual Validation of Client Identification (Bylaw 7.1)**

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As representatives of Ontario lawyers in private practice, we are writing to inform you of concerns that have arisen regarding the staff guidance position to end virtual verification of client identification in connection with Bylaw 7.1. This has been recently communicated to the profession that it will take effect on January 1, 2023, leaving less than 2 full months for lawyers to shift their practices and fully comply with the requirements of the bylaw.

We have heard from lawyers across Ontario who are concerned about the impact the removal of virtual verification will have and that more time is likely needed to enable a proper transition to full compliance.

This staff guidance comes at a time when many of law association members (tens of thousands of practicing lawyers in Ontario) are still acclimatizing their practices to the challenges of COVID-19 and a post-pandemic world, where virtual legal services have been a difficult yet welcome adjustment. Moreover, the bylaw and staff guidance disproportionately affect solicitors and transaction lawyers.

It is not uncommon for lawyers in these areas of practice to act on real estate transactions or lending transactions on a few days' notice from clients. Some of these transactions start and end in a matter of days, making compliance difficult within the parameters set out by the Law Society. While the policy behind the client ID and verification rules are in the best interest of the public and licensees alike, the fact of the matter is, lawyers are not often the ones shaping client transactions and behaviour; it is the opposite, and licensees cannot readily alter client transactions to meet regulatory requirements. Such change takes time, and much more than 60 days.

In addition, we note that these implications disproportionately affect licensees in sole practice or in small firms. Most larger firms have resources to implement ID verification

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and validation and the very large firms already require professionals to comply with these rules given the number and size of the clients they manage. The Law Society may not have had resistance from members in larger firms on this basis, but the concerns of sole practitioners and those in small firms or in remote areas are very different. Many of these lawyers are left questioning how they can now pivot to compliance. There is a cost to this compliance: cost to implement verification methods; cost to managing and maintaining client expectations; and cost to altering practices. This cannot readily be done in less than 60 days.

We acknowledge that client identification and verification has been a long-standing rule and obligation imposed by the Law Society of Ontario; however, with the Law Society adopting the recommendations of the Cullen Commission and the model rules endorsed by the Federation of Law Societies of Canada in an effort to combat money laundering and terrorist financing concerns, the sweeping changes took effect on January 1, 2022 — just as the ravages of the pandemic were affecting members' practices. The virtual validation allowance was extended during the pandemic with the introduction of these 'Know Your Client' rule amendments. It is not clear to many lawyers that this in-person validation obligation is required in the format mandated by the staff guidance and bylaw. For many, the virtual validation was always allowed.

There is still a general lack of education of the profession as to the context of the 'Know Your Client' rule changes, how it works, the exceptions, and the implications of non-compliance. The Law Society 'FAQs' on the website are lengthy and occasionally inconsistent in their interpretation of Bylaw 7.1, the use of words and phrases, and are obscure in scope and context of allowing use of electronic records to validate ID. Some examples of these concerns include:

1. Some clients only have electronic mortgage statements or utility bills to enable the dual method of validation. These should be usable to help validate ID.
2. The definition of 'credit report' and 'credit file' is unclear, and it is unclear which of these would render compliance with the bylaw in validating ID through the credit file method.
3. It is unclear what the appropriate method for licensees to inspect and validate government-issued ID is. We are not trained in doing so and it would be of benefit to understand what to look for when being required to authenticate government-issued ID.
4. What is the implication to a client transaction if ID cannot be verified either because of a discrepancy with their credit file or name on the government-issued ID? Are licensees required to withdraw from representation in all occasions where ID cannot be verified after good faith attempts to address it objectively have failed?
5. Is there a means to grandfather verification of ID when licensees have personally known the client for a specified number of years (such as 10 plus years) and the licensee can attest to same? It would appear that compliance with the bylaw can be met in many cases if this were allowed.

To that end, we are requesting:

1. Deferral of the removal of virtual validation of client ID for a period of twelve (12) months, to January 1, 2024, to allow for more education of the profession on the client ID and verification rules and to allow members a fair and reasonable means to adjust their practices to comply with this requirement, after having spent the last two and a half years expanding and enhancing virtual platforms to meet the needs of clients during and post-pandemic.
2. Moving to a compliance-based approach to enforcement for the next forty-eight (48) months to assist in understanding how the LSO will enforce these requirements.
3. Having LSO confirm in an easier-to-understand way what the criteria is for agents who can verify ID in compliance with Bylaw 7.1, and a list of agents or software that meets this standard.

With these implementations, lawyers can better comply with Bylaw 7.1 and provide legal services in a post-pandemic world without fearing a need to regress to past practices which no longer fit client needs and demands.

We thank you for your consideration of these concerns and look forward to hearing from you.

Yours truly,



Mark Giavedoni  
Real Estate Chair

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FOLA Real Estate Committee, *Via Email (various)*;  
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