

# Personal injury advertising geared for change

**MICHAEL MCKIERNAN**

For Law Times

**D**arcy Merkur wants to inject a new word into the public lexicon when it comes to personal injury law boutiques: “classy.”

His firm, Thomson Rogers, teamed up with fellow industry heavyweights Oatley Vigmond Personal Injury Lawyers LLP and McLeish Orlando LLP to form the Personal Injury Alliance four years ago, introducing themselves with a series of slick TV ads completely unlike the stereotypical hawking you might expect after a night in watching Buffalo, N.Y. network affiliates.

“Thomson Rogers has avoided direct mass marketing, but where we have done so, in collaboration with the Personal Injury Alliance, it has been in as classy a way as humanly possible,” says Merkur, a partner with the firm. “We’ve made great efforts to ensure it’s all tasteful, classy, and well received. We’ve done our very best to compete in the marketplace, while at the same time not bringing down the reputation of personal injury lawyers in any way.”

However, the Thomson Rogers partner acknowledges he has an uphill task, despite working for a firm with an 80-year history and stellar reputation inside the profession, since the general

public has already formed pretty strong views on personal injury lawyers based on a proliferation of decidedly undignified ads on buses, highway billboards, phone books and even, infamously, above the urinals at the Air Canada Centre.

“It’s totally out of control. We’re doing a disservice to the public by allowing distasteful ads to become prominent in the marketplace, and it’s having a very negative impact on the public perception of the legal profession,” he says. “It’s way too easy to get called tomorrow, open up shop, and then spend a fortune on ads telling everyone how great you are.”

Gary Will, an Oakville, Ont.-based personal injury lawyer with boutique firm Will Davidson LLP, says his firm is also very careful with its advertising efforts, confessing he would like to do less of it.

“Whenever you go on the Internet or turn on the TV, you see lots of ads. With a few notable exceptions, the ones who advertise the most are generally the least capable of handling serious matters,” says Will, the firm’s managing partner. “It’s like a race to the bottom; you have to up your ante to do more, but there aren’t going to be any more clients in the pool.”

The Law Society of Upper



Darcy Merkur says his firm has tried to create tasteful marketing about personal injury law.

Canada has recently revisited the subject of advertising, forming a working group to collect responses from members that is due to report back later this month.

“I don’t want anyone to think we’re not aware of the issues,” Treasurer Janet Minor told an audience of personal injury lawyers at the recent Oatley McLeish Guide to Motor Vehicle Litigation conference, held at the LSUC’s headquarters in Toronto.

The law society’s call for input, issued late last year, noted practitioners had raised concerns about:

- The use of endorsements and

awards in ads without disclosing the selection criteria or potential payments from the lawyer;

- Exaggerated comparisons to other lawyers in advertising;
- A lack of clarity about fee arrangements, including the failure to note the client’s responsibility to pay for disbursements;
- Referral services that suggest they offer legal representation.

Current law society rules allow lawyers to market their services as long as the material is accurate, not misleading, in the best interests of the public, and “consistent with a high standard of professionalism.”

“Sometimes, that’s subjective,” said Anne-Marie Kearney, the manager of the LSUC’s disclosure and risk strategy units at the April 1 Oatley McLeish program.

“That’s where sometimes there’s a challenge as to what’s considered professional; is it the form, is it the context, is it the location? That’s a challenge.”

Merkur says it’s those kinds of nuances that make him pine for the old days, when lawyer advertising was banned outright.

“We would support a ban at this point to prohibit the kind of mass advertising that is having a negative impact on our industry,” he says.

Will says he would also favour a ban, “but I don’t think it’s

realistic,” he says.

“We’re looking to the law society to set some clearer guidelines on what can and cannot be done,” Will adds.

Participants at the Oatley McLeish conference swapped horror stories about some of the worst practices they have seen, including TV ads in which actors are passed off as lawyers, and firms who pay agents to hang around hospital trauma units espousing the merits of its lawyers to family members of seriously injured people.

Naomi Bussin, a senior counsel in the law society’s professional regulation branch, told the audience that no lawyers have been disciplined for breaching the advertising rules in the last five years, explaining that most complaints are resolved by removing or changing the offending portions of ads.

“Ads have historically been a very small area of complaint” from members of the public, Bussin said, encouraging lawyers to come forward where they see instances of bad practice.

“The law society can initiate a complaint if we receive information, so if you or anybody has a concern, they should send it. Even if you send a complaint but indicate that you’re not interested in being the complainant, we would look at it,” Bussin said. **LT**