

LSUC zeroes in on personal injury advertising

BY ALEX ROBINSON

Law Times

Some participants in a new Law Society of Upper Canada report say public confidence in the legal profession is being hurt by advertising for personal injury law — a finding those in the field say is abundantly obvious.

The Advertising and Fee Arrangements Issues Working Group Report unveiled at June Convocation says: “in personal injury law, some firms are understood to heavily advertise both to attract work that they can take on themselves and to attract clients who could be referred to other personal injury lawyers in exchange for referral fees.

“Most participants accepted that advertising is here to stay, although some would seek to ban it outright on the claim it has led to the commoditization of personal injury and other practice areas, eroded the public perception of lawyers, and threatens the administration of justice,” the report continues.

The report says in many cases when clients are referred to a personal injury lawyer by a firm that is advertising, they are not “sufficiently aware” of the circumstances of the referral.

While the Law Society of Upper Canada’s Rules of Professional conduct require disclosure and client consent, a working group

found that clients do not always know about the existence of referral fees or that they are even being referred to another lawyer.

“It should be clear when licensees are advertising that they are soliciting work that they propose to do,” Malcolm Mercer, the chairman of the working group, told Convocation in its June meeting.

“That may sound like a silly, straightforward proposition, but it has become clear there is much solicitation for work that is not intended to be done but intended to be referred to others in the fee.”

The interim report was issued by the advertising and referral fee arrangement issues working group, which has been tasked with looking at how the law society should further regulate advertising and referral fees.

The report was based on concerns and issues that came out of meetings the working group held with various stakeholders, since a call to input was made last year.

The report outlines a number of options to deal with the problem.

One option would be to require firms to disclose the fact that they intend to refer the services they are advertising. Another would be to simply ban advertising for work that they intend to be referred.

Mercer said that all of these ideas are just options and that the working group will hammer out



Deanna Gilbert supports a ban on advertising personal injury legal services.

Photo: Robin Kuniski

potential regulatory solutions in the future.

“In respect to all of this, we don’t have answers,” he said. “What we have are concerns and that’s why the next stage is to reach out more broadly.”

The working group was established after the law society heard concerns about the increase in advertising of personal injury law in particular, as well as real estate law. A lack of transparency has been central to many complaints about advertising and the way firms have used referral fees.

Some firms support an outright ban on advertising, such as Thomson Rogers. The firm’s law-

yers have argued that heavy advertising has led consumers towards personal injury firms with a large advertising presence rather than the firm with the services that are right for their needs.

“The concern we have is that credentials and other conditions of competency are being lost amongst this noise that’s created by this flood of advertising,” says Deanna Gilbert, a partner with Thomson Rogers.

“So we support a ban and I think that will force members of the public to take a closer investigative look at the lawyers that they’re choosing.”

The report noted that advertising can serve as a tool to spread awareness of spreading legal services, but Gilbert says it is not necessarily positive because of the services that are being advertised.

“Just knowing I can get a lawyer doesn’t help me in the long run,” she says. “Helping me get a competent lawyer is going to help me in the long run. The mass marketing does not help in that sense.”

The report also addressed the issue that over the years, referral fees have also risen to a point where they are sometimes more than 20 per cent. The report said that stakeholders generally agreed referral fees were an important way of making sure a client finds the legal service they need, but that there should be a cap.

The Ontario Trial Lawyers Association has called for a 10-per-cent cap on all referral fees. The report also touches on second-opinion advertising — when a firm advertises in a way that targets clients who already have lawyers. Adam Wagman, the president of the OTLA, called for the law society to act quickly to bring an end to second-opinion advertisements.

“There’s an ad on the radio right now — you can hear it at every Blue Jays game — that specifically says, ‘Are you unhappy with your lawyer? If so make a trade,’” Wagman says. “How can that be interpreted in any way other than that it is intended to influence a person who already has a lawyer to change their lawyer?”

Beyond personal injury law, real estate law was an area identified where a lack of transparency in advertising is causing concern.

The report identified that “all-in fees” advertised by real estate lawyers do not always disclose all costs to the client.

In a market where small price differences can determine which firm a client chooses, it is particularly important they are not misled, the report said.

“There is a lot to be desired in full and transparent disclosure of real estate fees and disbursements that are quoted on the Internet,” says Bob Aaron, a real estate lawyer with Aaron & Aaron Barristers and Solicitors. **LT**