

## News

## Moves

- Four new partners have joined *Aird & Berlis LLP's* tax and estates group, **Neil Bass**, **Rachel Blumenfeld**, **Ed Esposito** and **Angelo Gentile**. Bass is a highly acclaimed practitioner in tax litigation and commodity taxation, including GST/HST, provincial sales tax and international customs duties. Blumenfeld specializes in trusts and estates, personal tax planning and charities and not-for-profit law. Esposito has practised exclusively in the area of wealth management for over 20 years. Gentile is experienced in the area of tax litigation and commodity tax, including GST/HST and provincial taxes. The group now has 19 lawyers and four clerks.
- *Blaney McMurtry LLP* has added four new partners, **Varoujan Arman**, **Jessica Grant**, **Jasmine Samra** and **Tobin Horton**. Arman joins the firm's commercial litigation group and handles matters ranging from shareholder disputes and oppression claims to debt collection and enforcement of foreign judgments in construction law. Grant, whose practice focuses on personal injury, professional negligence and defence of public authorities, will work with the insurance litigation group. Samra is a member of the corporate and commercial group. She focuses on corporate and commercial law and mergers and acquisitions. Horton joins the insurance litigation group. His personal injury practice focuses on defending claims involving motor vehicle accident, tavern liability, occupiers' liability, product liability and professional negligence.
- **Nadia Campion** is a new partner at *Polley Faith LLP*. Campion, formerly with Lenczner Slaght, brings more than a decade of experience in complex commercial litigation.

## Lawyers applaud new referral fees, ad rules

KIM ARNOTT

Ontario's personal injury lawyers are hopeful that new rules around referral fees and advertising will improve their image in the eyes of the public. But enforcement will be crucial, some warn.

"I think the changes were necessary to address the diminishing public confidence in the profession, which has apparently had an impact on the way juries have decided some cases," said Joseph Campisi of Campisi LLP Personal Injury Lawyers.

"Although there is no empirical data on the subject, judges have provided anecdotal evidence concerning juries punishing plaintiffs in response to over-the-top advertising."

The changes, approved by the Law Society of Upper Canada (LSUC) in February, aim to address concerns that misleading advertising is fuelling referral fees that aren't transparent or beneficial to clients and have risen to as high as 30 per cent of net legal fees.

Benchers approved the principle of capping fees that can be paid when clients are referred from one lawyer or paralegal to another, on the recommendation of the advertising and fee arrangements issues working group.

Later this spring the working group will propose a specific cap for benchers to consider, but has indicated it is leaning toward a limit in the range of 5 to 10 per cent of fees.

It will also bring forward additional recommendations to make the referral process more transparent to clients.

Those rules may include a standard referral agreement, advertising regulations requiring firms to admit that they don't intend to undertake legal work themselves and multiple referral options provided to clients.

Malcolm Mercer, chair of the working group that reports to the Professional Regulation Commit-



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**Joseph Campisi**  
Campisi LLP Personal Injury Lawyers

tee, also told benchers the group would examine whether referral fees paid and received should be recorded and reported as a transparency measure.

On the recommendation of the working group, benchers also approved immediate changes to rules governing advertising practices by lawyers and paralegals.

"The new advertising requirements reinforce the core principles that advertising must be demon-



McLeish

strably true, accurate and verifiable," said Mercer.

The amended rules offer guidance on the use of honours and awards in advertising; require licensees to identify whether they are a lawyer or paralegal; prohibit advertising of second-opinion services; and inform licensees that they may not advertise for work that they aren't licensed to do, competent to do or do not intend to do.

"The law society report recognized that some firms out there are advertising for clients with the specific intention of referring them out," said John McLeish, of McLeish Orlando LLP. "That is perverting whatever good there was in referral fees."

Wendy Moore Mandel, a partner and personal injury lawyer with Thomson Rogers, also believes a hard cap on referral fees is necessary.

"While not all advertising need be condemned, the current climate in Ontario is frankly toxic and is, in large part, fuelled by the payment of referral fees," she said.

The new rules have the support of the Ontario Trial Lawyers Association (OTLA) which called for such changes in 2015, but they will need active enforcement, said association president Adam Wagman.

"The changes were certainly needed," he said. "There were too many examples of misleading, inaccurate and even deceptive

ads in the public sphere."

"But without enforcement and real consequences, the rules will have little effect."

The law society could even take on an active role in screening all proposed advertising, suggested Campisi.

McLeish also believes enforcement will be required to make the new rules effective in protecting the profession and the public.

"Up until now, in my humble opinion, the law society has been weak and ineffectual in dealing with tasteless and tacky advertising by personal injury lawyers," he said.

"Those ads you see on the back of the buses and television and radio are just for the man on the street who doesn't know how to do his due diligence and says, 'Well, this person is claiming they're the best and I see them everywhere so they must be good: They are duped.'"

But McLeish admitted that economic factors led his firm to both refer out claims with lower damage values and to advertise to other lawyers for referrals.

"We do pay what we consider to be generous referral fees and we do it to be competitive in the market," he said.

The firm's website even promotes the referrals it receives, describing the firm as "the lawyers other lawyers turn to."

Jeremy Diamond, whose face appears on billboards in advertisements for Diamond & Diamond Personal Injury Lawyers, said he's hopeful that changes will improve the industry's standing in the eye of the public and provide greater access to justice for vulnerable members of society.

But they also need to be sensitive to the financial end of the profession, he said.

"We hope that any referral fee changes proposed will not negatively impact current economic relationships, stay comparable to other jurisdictions and serve the clients' best interests."

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www.lawyersweekly.ca

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## Print Subscription Rates

1 year (48 issues): \$325, plus tax  
2 years (96 issues): \$550, plus tax  
1 year U.S./international: \$450  
1 year student: \$70, plus tax  
Individual copies: \$12, plus tax

## Digital Subscription rates

1 year (48 issues): \$295, plus tax  
2 years (96 issues): \$500, plus tax  
1 year U.S./international: \$395  
1 year student: \$60, plus tax

**Postal Information:** Please forward all postal returns to: Circulation Controller, The Lawyers Weekly, 111 Gordon Baker Road, Suite 900, Toronto, ON M2H 3R1. Return postage guaranteed. ISSN 0830-0151. Publications Mail Sales Agreement Number: 40065517.

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