



FACT SHEET

Law Society limits referral fees and strengthens advertising rules in the public interest

Advertising and Fee Arrangements Issues Working Group Report to February Convocation

New referral fee policy approved in principle

On February 23, 2017, the Law Society's governing body, called Convocation, agreed in principle to cap and further regulate the fees a lawyer or paralegal may charge for referring a client to another licensee.

The policy change was recommended by the Advertising and Fee Arrangements Issues Working Group to address concerns about a lack of transparency and proportionality in referral fee arrangements.

The Working Group will return to Convocation at a later date with recommendations for the cap amount and additional requirements to increase transparency in marketing and to ensure genuine consent in referral fee arrangements.

Convocation considered two regulatory approaches at its February meeting: capping or prohibiting referral fees. It ultimately decided to set a cap on referral fees and introduce additional transparency measures to protect consumers.

Capping referral fees

The Law Society is enforcing transparency and proportionality in referral fee arrangements by setting a limit on the amount that can be charged for referrals and establishing requirements to make sure clients understand the process. This regulatory approach ensures an informed public will continue to benefit from carefully considered referrals to the lawyer or paralegal best suited to assist them.

Capping referral fees directly addresses the concerns that current referral fee systems are not transparent or beneficial to the client. In the course of its research, the Working Group found:

- The client is often not aware they are being referred, or that there is a fee involved in the referral;
- Referral fees that were once in the range of 10 – 15 per cent are now in the range of 25 – 30 per cent;
- Misleading advertising is fueling the lack of transparency in referral fees.

The referral policy was approved by Convocation in principle. The Working Group will return at a later date with recommendations for:

- The amount at which referral fees will be capped;
- Additional transparency measures such as requirements for:
 - Lawyers and paralegals to be clear in advertising if they or their firm do not intend to perform the legal services;
 - A standard referral agreement to be signed by the client, referring licensee and the licensee accepting the referral;
 - The client be provided with more than one choice of lawyer or paralegal in the referral.

The Working Group also plans to consider whether certain limited prohibitions, for example on up-front referral fees, are warranted.

New advertising requirements approved

At its February 23, 2017 meeting, the Law Society's governing body, Convocation, strengthened the rules governing the advertising of legal services, adding new public protection measures.

The rule amendments were recommended by the Advertising and Fee Arrangements Issues Working Group to address concerns about misleading advertising.

The new advertising rules strengthen existing requirements and provide proactive guidance to lawyers and paralegals on appropriate advertising practices, reinforcing the Law Society's consumer protection measures. In summary, the rules:

- **Provide detailed guidance on what awards may be used for marketing purposes.** Amendments to the rules provide specific direction to the professions on the type of awards and honours that are permitted in advertising.
- **Require licensees to identify in their advertising whether they are a lawyer or paralegal.** This will enhance the public's awareness of the different types of licences and help the public make a more informed choice of legal service provider.
- **Prohibit advertising of second opinion services.** The Working Group found that the main purpose of second-opinion advertising was to attract already-represented clients with the intention of having the client switch lawyer or paralegal -- rather than to market valuable second-opinion services. Under the new rules, second opinion services are still permitted. The Working Group found that the public is well-informed of the right to seek a second opinion and to change lawyer or paralegal. Advertising of this service is not required.
- **Make explicit that lawyers and paralegals may not advertise for work they are not licensed to do, not competent to do or do not intend to do.** The amended rules provide additional guidance to lawyers and paralegals in these areas to ensure that they are fully aware of their obligations to the public.

The Advertising and Fee Arrangements Issues Working Group

The Law Society established the Advertising and Fee Arrangements Issues Working Group in February 2016 out of concern that certain advertising practices and fee arrangements were misleading and detrimental to the public.

Over the past year the Working Group researched the issues, held a series of focus groups with practitioners and stakeholders and consulted with the public and the professions.

The Working Group will continue to consider contingency fee arrangements, and advertising and fees in real estate.