

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

2ND SESSION, 41ST LEGISLATURE, ONTARIO
66 ELIZABETH II, 2017

Bill 103

An Act to amend the Law Society Act and the Solicitors Act with respect to matters related to personal injury claims and client agreements

Mr. M. Colle

Private Member's Bill

1st Reading March 8, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill amends the *Law Society Act* to prohibit licensees from soliciting, accepting or paying a referral fee in respect of a personal injury claim. The amendments also prohibit licensees from referring a client with a personal injury claim without their express written consent and without maintaining confidentiality. Advertisements offering legal representation with respect to personal injury claims must be submitted to The Law Society of Upper Canada for approval. Contravention of these new provisions may result in a fine of up to \$100,000.

The Bill also amends the *Solicitors Act*. If a solicitor enters into a fee agreement with a client, the agreement must disclose how the fee is calculated in a clear, comprehensible and prominent manner. In any new contingency fee agreement, the total amount to be paid to the solicitor as compensation for representing the client in the proceeding is limited to no more than 15 per cent of the award. Any amount paid to the solicitor in excess of that percentage must be reimbursed.

**An Act to amend the Law Society Act and the Solicitors Act
with respect to matters related to personal injury claims and client agreements**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

LAW SOCIETY ACT

1 Subsection 1 (1) of the *Law Society Act* is amended by adding the following definition:

“personal injury claim” means a proceeding for loss or damage from bodily injury or death; (“demande d’indemnisation pour lésions corporelles”)

2 Section 26.1 of the Act is amended by adding the following subsections:

No personal injury referral fee

(7.1) No licensee shall, directly or indirectly,

- (a) solicit or accept a referral fee from another licensee in exchange for directly or indirectly encouraging or otherwise arranging for a client to retain the other licensee to receive legal services with respect to a personal injury claim; or
- (b) pay a referral fee to another licensee in exchange for having the other licensee directly or indirectly encourage or otherwise arrange for a client to retain the licensee paying the fee for the purpose of receiving legal services with respect to a personal injury claim.

No personal injury referral without written consent

(7.2) No licensee shall, directly or indirectly, encourage or otherwise arrange for a client to retain another licensee to receive legal services with respect to a personal injury claim unless,

- (a) the client has given his or her express written consent for the referral; and
- (b) the licensee keeps any information concerning the business and affairs of the client acquired in the course of the professional relationship in strict confidence, except as may be permitted by the written consent.

No personal injury advertising without approval

(7.3) No licensee shall advertise his or her practice in a way that contravenes section 26.4.

3 (1) Subsection 26.2 (1) of the Act is amended by adding “Subject to subsection (1.1)” at the beginning.

(2) Section 26.2 of the Act is amended by adding the following subsection:

Contravening certain provisions

(1.1) Every person who contravenes subsection 26.1 (7.1), (7.2) or (7.3) is guilty of an offence and on conviction is liable to a fine of not more than \$100,000.

(3) Subsection 26.2 (4) of the Act is amended by striking out “subsection (1)” and substituting “subsection (1) or (1.1)”.

4 The Act is amended by adding the following section:

ADVERTISING

Limitations on personal injury advertising

26.4 (1) No licensee shall, directly or indirectly, advertise in a manner that offers legal representation with respect to personal injury claims unless the advertisement is approved by the Society under subsection (2).

Approval of advertisement

(2) The Society shall review any advertisements submitted for its approval in accordance with the by-laws and approve them if,

- (a) the advertisement complies with the code of professional conduct; and
- (b) the advertisement does not contain any false or misleading awards, testimonials or statements.

5 Subsection 62 (0.1) of the Act is amended by adding the following paragraph:

25.1 governing the review and approval of advertisements under subsection 26.4 (2);

SOLICITORS ACT

6 Section 16 of the *Solicitors Act* is amended by adding the following subsection:

Fee disclosure

(1.1) The agreement shall disclose, in a clear, comprehensible and prominent manner, the means by which the remuneration for legal services to be paid to the solicitor is calculated.

7 (1) Subsection 28.1 (4) of the Act is repealed and the following substituted:

Written agreement

(4) A contingency fee agreement shall be in writing and shall disclose, in a clear, comprehensible and prominent manner, the means by which the part of the remuneration for legal services to be paid to the solicitor that is contingent as described in subsection (2) is calculated, including the percentage used if the agreement involves a percentage of the amount or of the value of the property recovered in an action or proceeding.

Cancellation by client

(4.1) A client who has entered into a contingency fee agreement may, without any reason, cancel the agreement within 10 days of entering into it.

(2) Section 28.1 of the Act is amended by adding the following subsections:

Maximum total compensation, personal injury award

(5.1) If a contingency fee agreement involves a percentage of the amount of damages recovered in a proceeding for loss or damage from bodily injury or death, the total amount paid to the solicitor as compensation for representing the client in the proceeding, including any other fees charged by the solicitor, shall not be more than 15 per cent of the amount or of the value of the property recovered in the action or proceeding, however the amount or property is recovered.

Reimbursement to client

(5.2) If a solicitor representing a client in a proceeding described in subsection (5.1) receives total compensation in respect of the proceeding that exceeds 15 per cent of the amount or of the value of the property recovered, the solicitor shall reimburse the difference to the client.

Application

(5.3) Subsections (5.1) and (5.2) apply to contingency fee agreements entered into on or after the day the *Personal Injury and Accident Victims Protection Act, 2017* receives Royal Assent.

Commencement

8 This Act comes into force on the day it receives Royal Assent.

Short title

9 The short title of this Act is the *Personal Injury and Accident Victims Protection Act, 2017*.