

FAQs - Referral fee cap and related regulations

1. How does the percentage system work?

The system is based on a percentage of the legal fee – 15 per cent for the first \$50,000 of legal fees and 5 per cent of all fees afterwards, to a cap of \$25,000. With this model, we expect most referral fees will be under \$5,000.

So, if a licensee refers a matter to another licensee that results in \$25,000 of legal fees, the referring licensee would receive \$3,750 – which is 15 per cent.

If a licensee refers a matter that results in \$100,000 of legal fees, the referral fee would be 15 per cent of the first \$50k which is \$7,500 — and another 5 per cent or \$2,500 would apply to the second \$50,000, for a total of \$10,000 as a referral fee.

If a licensee refers a matter that involves a legal fee of \$500,000, the referral fee would be capped at \$25,000.

2. Do clients directly or indirectly pay for referral fees?

Referral fees do not increase the legal fee paid by the client. Under the Law Society's Rules, lawyers and paralegals are not permitted to increase their fee because they paid a referral fee to another lawyer or paralegal.

3. Why is the Law Society capping and regulating referral fees?

The Law Society has been tracking changes in fee arrangements and has serious concerns that certain practices are misleading or detrimental to client. We found that:

- The client was often not aware they were being referred, or that there was a fee involved in the referral;
- Referral fees that were once in the range of 10 – 15 per cent have risen to a range of 25 – 30 per cent;
- Some recent advertising trends have contributed to an increase in these practices.

Capping and regulating referral fees to directly addresses these concerns is in the public interest.

4. How do these changes help people?

An easy-to-understand referral fee agreement will ensure clients fully understand the referral process, their rights and the fees involved.

Clients will now know that they have the choice to accept or reject the referral and the related fee. In addition, under these new regulations, clients must be provided with more than one choice of referral (unless there are exceptional circumstances, such as difficulties referring to more than one licensee because of geographic barriers).

5. How will the Law Society enforce these policies?

Lawyers and paralegals will be required to clearly report the receipt or payment of referral fees through the annual reports they are required to file with the Law Society.

Through proactive programs, such as our spot audit program, we will ensure lawyers and paralegals are reporting fees as required.

The Law Society has increased resources to its multi-functional enforcement team to address advertising and fee issues. When the rules are not followed, we will vigorously investigate and take appropriate regulatory action. Approximately 90 cases involving advertising and referral fees are currently under active investigation.

6. Why not ban referral fees completely?

A ban could have adverse effects on access to legal services, particularly in areas where the choice of legal representatives is limited.

When they need legal advice, people often contact a lawyer or paralegal they know and trust.

These regulations ensure people will continue to benefit from the advice of their trusted legal service provider and, if a referral is required, the lawyer or paralegal will work closely with the client to understand the service they need and ensure the client is provided with a choice of legal professionals best suited to assist them.

7. What are the other provinces doing about referrals?

The Law Society of Upper Canada is the first in Canada to take steps to protect consumers by setting a cap and establishing transparency measures for referral fees. The issues addressed are unique to Ontario and we have acted accordingly.