

September 6, 2002

Mr James McCourt
Law Society of Ireland
DX 79 Dublin
Republic of Ireland

Dear Mr McCourt

Solicitors Advertising Regulations 2002

Thank you for responding to our letter of July 25, and for providing APIL with a copy of the draft Solicitors (Advertising) Regulations. We have now considered the draft regulations in detail and our specific points are outlined below.

In summary, our primary concern is that the regulations as currently drafted may adversely affect an injured victim's ability to gain access to justice because the proposed restrictions will seriously curtail the amount of information available to injured people, preventing them from making informed decisions about who to contact when they have been injured through no fault of their own.

- **Regulation 2(a) (i – iv)**

We believe the current definition of advertising, as set out in the Solicitors (Amendment) Act, is far more draconian than the official definition of the Advertising Standards Authority. The ASA's code of conduct includes the following definition:

“an advertisement is defined as a paid-for commercial communication addressed to the public or a section of it, the purpose being to influence the behaviour of those to whom it is addressed. It is characteristic of an advertisement that an advertiser pays or rewards a third party for communicating a message”.

The definition in the Solicitors (Amendment) Act imposes far greater restrictions on solicitors than any other individual or organisation, as it includes every aspect of unpaid communication, from leaflets to lectures. This far-reaching definition is an affront to the need to run a solicitor's business on an equal footing with any other profession in the Republic of Ireland.

- **Regulation 4(a)(iv)**

It is vital that victims are able to identify specially qualified solicitors because personal injury cases are often highly complex and require a good understanding of complicated issues such as medical evidence and financial information. Personal injury lawyers must be able to advertise the fact that they are specialised, so that victims can identify them. This can be done without expressly or impliedly asserting that a solicitor "has specialist knowledge in any area of law or practice superior to other solicitors." In light of this, we consider that the regulation should be clarified so that specialists in personal injury law can say so without unfairly being deemed superior.

- **Regulation 8(a)**

It is unclear from this paragraph, and the explanatory note in the margin, whether "contentious business" applies only to personal injuries, or also to other areas of legal practice (such as commercial, or family business, for example). This requires clarification.

- **Regulations 9(a) & 9(g)**

The experience of APIL members is quite clearly that victims are often apprehensive about seeking legal advice because they are unsure about the financial arrangements of doing so. As a result, access to justice may be impeded. For this reason, regulations 9(a) and 9(g) should be removed, so that a solicitor can state that he offers his services on a "no-win no-fee" basis and that legal costs insurance is available to the client.

- **Regulation 9(e)**

APIL believes this regulation effectively discriminates against disabled people. It is very important for disabled people to know what special facilities are available to them. Disabled people experience difficulties accessing buildings and it is important for them to know in advance whether premises which they are considering visiting have suitable facilities. For this reason, regulation 9(e) should be removed and solicitors should be able to include important access information in an advertisement.

- **Regulation 9(f).**

The willingness of a solicitor to make home or hospital visits is an important element of client care, which is valued by victims. This service is most appropriate to clients who are confined to their home or to bed because of their injuries. The experience of our members suggests that such victims find it comforting that a solicitor is willing to visit their home or hospital. This is especially important because some of our members' clients seem to worry excessively about any delay in consulting solicitors. This is a concern that can be justified because in many cases, vital evidence may need to be assimilated urgently. We believe therefore, that solicitors should be able to advertise this service.

We fully understand that the Law Society is seeking to encourage appropriate advertising for solicitors, but we are concerned that this should not be achieved at the expense of injured victims.

It cannot be stressed strongly enough that it is important for an injured victim to be able to identify a specialist personal injury lawyer, so he can make an informed choice about which solicitor he instructs, and to ensure that he receives the compensation to which he is entitled. This is no different from the need for someone to consult a specialist when making a will, or for a business issue, or for any other professional service.

It should also be stressed that, while the majority of our members are solicitors, the stated objectives of the Association of Personal Injury Lawyers are to promote proper redress for injured people, to campaign for full and just compensation for injured people, and to promote safety. The association is not a referrals agency, and nor does it seek to generate business for its members. Our comments are made with the needs of personal injury victims in mind.

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If you would like any further information in relation to our position, or any other aspect of our response, please do not hesitate to contact me at the address and telephone number above.

Yours sincerely

Denise Kitchener
Chief Executive