

Are You Liable When Making Referrals To Another Professional Who May Not Be Qualified, Experienced And Independent?

By Andrea Pontoni



A recent decision by the **Supreme Court of Canada** (SCC) made me think about my own practice when referring matters outside my expertise, to other professionals.

The relevant court case involved a lawyer referring his clients to a financial advisor who appeared to have been incompetent and was involved in fraudulent activities. The lawyer himself had a relationship with the financial advisor, which could be construed as a conflict of interest.

The court ruled in favour of the plaintiff (in this case the lawyer's client). The lawyer making the referral to the financial advisor was held responsible for damages and losses incurred by the plaintiff.

The SCC endorsed the following standard of conduct for lawyers who refer clients to other professionals or advisors — ***“Lawyers who refer clients to other professionals or advisors have an obligation of means, not one of result. Although lawyers do not guarantee the services rendered by professionals or advisors to whom they refer their clients, they must nevertheless act competently, prudently and diligently in making such referrals, which must be based on reasonable knowledge of the professionals or advisors in question. Referring lawyers must be convinced that the professionals or advisors to whom they refer clients are sufficiently competent to fulfill the contemplated mandates.”***

For reference, the case is *Salomon v. Matte-Thompson*, 2019 SCC.

My background is not that of a lawyer, however, the above standard as laid out by the Supreme Court of Canada, made me think about certain questions and my own practice when referring clients to other professionals.

How do I ensure that the professional I'm referring to is competent and experienced? In order to ensure competence, how do I ensure that I'm independent from the professional I'm referring to? How do I ensure the professional I'm referring to is independent with respect to the matter being considered? For a particular service area, do accreditations and designations now matter even more? What is the standard of care in making referrals on important matters?

As a matter of sound professional practice, I have always endorsed the fact that accreditations and designations are in place to ensure that a professional meets the minimum standard of competencies and experience required to perform services in a particular field of expertise. In fact, I have written a number of articles on this topic, which you may have read.

Without these accreditations and designations by reputable and widely accepted Institutions, there is no real way to evaluate the professional's competence and experience, without being directly involved in a review of their work.

I do not believe it is enough to say, “Well this professional has been doing the work for an extensive period of time.”

I have seen many situations over the course of my career where the professional has been doing the work incorrectly for an extensive period and just has not been exposed. Having slightly more knowledge than your client on a subject matter does not make you competent on that subject matter.

The accreditations and designations behind a professional's name provide some comfort in authenticating that the individual you are referring to has the appropriate technical competency and experience.

If the individual cannot be bothered to make the effort and spend the time required for the accreditation process, are they worthy of your referral? Why should you expose yourself to a liability in making a referral to another professional who is not appropriately accredited in a particular field of expertise?

At the very least, if issues do result with a professional whom you have referred clients to, your defence might include the fact that the individual was appropriately accredited by a widely accepted professional body in that field of expertise.

Further, being a member of a professional Institute allows the referrer the opportunity to ensure the professional is compliant with the Institute's rules and professional standards. These rules include requirements for continued professional development.

The point here is, even though you may not have the required expertise to assess

the professional you are referring clients to, certain professional organizations are in place to ensure that the professional who is worthy of your referrals is indeed qualified in a technically proficient and experienced manner. Many of these professional Institutes have standards around professional independence.

I believe that this recent ruling by the Supreme Court of Canada shows leadership by the court and reflects the advancements made by all professions in protecting the public's interest by ensuring minimum professional standards are in place and enforced.

Let us keep the “Wild West” behind us and move forward in ensuring a quality product. After all, in the Supreme Court of Canada's opinion, you are worth protecting.

“You cannot escape the responsibility of tomorrow by evading it today.” — Abraham Lincoln ✘

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