



16 February 2009

John Marshall QC
President
New Zealand Law Society
WELLINGTON

Dear John

Representative Advisory Committee - Report

During 2008 our committee was charged with the preparation of an Establishment Plan with the objective of determining -

- the representative services to be delivered to NZLS members;
- the most appropriate organisational structure for the delivery of such services, taking into account the primary structures already set under the Lawyers and Conveyancers Act and the NZLS Constitution.

We are now in a position to make our recommendations and we do so by confirming and enlarging on the preliminary indications contained in our interim report to you of 24.10.08.

We are supported in the recommendations by the management consultants Arrus Knoble, whose report is **attached**.

Representative services selection strategies

With Arrus Knoble's assistance and from our own research and knowledge, we have been able to discern overseas and local trends in the selection of representatives services. These include -

- the importance of maintaining public confidence in the provision of legal services to clients through effective and efficient regulation;
- the increasingly important role of law societies and bar associations in the provision of continuing education for the demonstration of competency;
- the increased use of web services in providing information to members and online interaction for administrative and knowledge-sharing purposes;
- the increased specialisation and segmentation along practice rather than geographical lines;
- new approaches to assisting members in the assessment and management of personal matters so that individual problems are not translated into an adverse impact on the profession as a whole;
- decreased emphasis on the provision of business services to members such as accounting, stationery and purchasing schemes.

Economic factors

Recessionary fears are deeply influencing lawyers' views on what representative services they would be prepared to pay for, either by way of subscription or cost recovery. Two general strategic principles have emerged -

- services should be provided only when a provider offers a point of difference;
- resources should be concentrated in the delivery (with distinction) of a small portfolio of services which add true value for lawyers.

The committee embraces Arrus Knoble's conclusion that in the current economic climate only **core** representative services (ie those regarded as essential to the identity and being of lawyers) be offered until the transition to a unitary and voluntary membership model is further advanced. Only then should the NZLS consider whether to offer **discretionary** services (ie those having some utility but which are not axiomatically tied to our identity or being).

Recommended core representative services

The following have been selected having regard to the trends referred to above and to consistent messages in discussions with individual lawyers throughout the country and with lawyer groups and law society personnel:

1. National/local leadership

Lawyers have left us in no doubt at all that the primary demand is for a strong and united profession, appropriately armed to uphold our fundamental obligations and status and to maintain public confidence in the provision of legal services. The requirement is for dedicated, high quality, non-parochial national and local leadership, whether elected, appointed or employed.

2. Effective and efficient framing and control of regulation

Lawyers have been quick to understand the importance of this in terms of our image, status, and the confidence our clients have in us. While there might be some irony about it, most lawyers readily accept that the strongest representative service for lawyers is to ensure that we discharge our regulatory responsibilities in a thorough, professional and consistent way.

It is interesting to read Arrus Knoble's report of lawyers saying that the regulatory functions are so important that care should be taken not to dilute any NZLS focus on them by trying to offer too many representative services.

3. National/local collegiality

The concept of collegiality is imprecise, to say the least, but lawyers value it. It is repeatedly and consistently mentioned as an important motivating factor in participation in law society affairs, functions and events, whether national or local. It is mentioned in the context of involvement in law society committees, membership of sections, and CLE attendance. Lawyers are keen to see the continuation of social, sporting and cultural events which, they say, are effective in informally connecting lawyers with each other for collegial support.

4. Nationally organised CLE delivered locally

Consultation has revealed a strong demand for CLE. Current NZLS programmes are held in high regard. Arrus Knoble says it is well understood that it will take significant effort and investment to maintain the NZLS flagship position. It will be dependent on a strong NZLS brand and constant adjustment to marketing and delivery. Particular care will be required in the current economic situation to ensure that the explicit needs of members and presenters are understood and met.

5. Branch support/maintenance

Under the NZLS Constitution, each Branch will -

- have a boundary initially corresponding to the boundary of the former District Law Society;
- have a Branch Council consisting of a Branch Chair or President and such officers and members as the rules provide, and such Branch subcommittees as the rules provide;
- represent and serve the interests of lawyers in the Branch area;
- uphold the fundamental obligations imposed on lawyers;
- appoint a Branch representative to the NZLS Council;
- oversee, as required by the NZLS Council or Board, the local performance of regulatory functions;
- attend to representative functions, including the promotion of collegiality within the Branch;
- assist in and promote law reform.

The functions, therefore, have both regulatory and representative aspects and the Branches will (in consultation with the NZLS) present budgets specifying funding requirements.

One of our recommendations will be that the changes required to the organisational structure and budgets should be managed by the normal NZLS planning and budgeting process. This applies to the NZLS in its Wellington office and to the Branches. We understand from the NZLS Executive Director that the arrangements are well in hand for Branch staff, reporting lines and related matters.

The committee understands the importance to lawyers of strong collegial bonds and the role Branches will play in liaison with groups such as the judiciary, Court managers and staff, and community and government bodies. The committee believes that lawyers need to continue to project their presence into the community and that Branches will continue to have an essential role in that regard. Through this work, the promotion of the lawyer brand will be well served. It is expected that lawyers will continue to contribute their time voluntarily to Branch activities. This will be essential if Branches are to survive and prosper.

Arrus Knoble reports that lawyers are satisfied with the current representative functions of Districts. They especially value the role played in the organisation of collegial functions and want these to continue on a cost recovery basis.

As advised to you in our letter of 24.10.08, we are also making the important recommendation that the cash assets of District Law Societies vested in the NZLS by operation of s 373(2) of the Lawyers and Conveyancers Act be pooled and earmarked by the NZLS in an "NZLS Branch Fund", with the NZLS receiving and considering applications/requests from any NZLS Branch, having regard, in particular, to the interests of the Branch and the Branch members and, in general, to the good of the profession.

6. National sectional interest groups, with an emphasis on competency services

The existing Sections (Corporate, Family, Property) are taking an increasing role in representing the interests of members, including in the development of education programmes, and practice guidance. They also facilitate collegiality and are increasingly seen as national providers of practice leadership. Arrus Knoble reports that communication between the Sections and their members is regarded positively and that the Sections are seen as highly relevant.

7. Harmonious relationships with other groups

Of particular importance here are NZLS Council constituents other than Branches and Sections, ie the NZ Bar Association and the Large Firm Corporation. The participation of these entities in NZLS affairs seems universally applauded as essential in the primary demand for a strong and united legal

profession. The NZLS needs to make every effort to foster these relationships and, indeed, the involvement of the NZ Institute of Legal Executives.

While this report is not dwelling on the particular circumstances surrounding ADLS Inc, it is to be hoped and expected that differences can be attenuated in a co-operative spirit. You may care to note Arrus Knoble's observation that a consequence of focusing on core representative services is that there will not, at least in the short to medium term, be significant new direct competition with services which ADLS Inc is understood to be likely to deliver.

NZLS representative services will be enhanced by interaction with many lawyer groups, eg Te Hunga Roia Maori O Aotearoa, the Criminal Bar Association, community law centres, etc.

8. *Legal affairs and advocacy*

Included in the NZLS regulatory functions set out in s 65 of the Act is -

"to assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law."

The wording may be a little clumsy, but there is no mistaking the sentiment. It is a legislative signal of the value of the work in the whole process of law reform undertaken by lawyers through law societies over generations. It is a message of understanding of a unique approach, ie with no axe to grind but a determination to achieve more workable, more even-handed legislation for the benefit of the whole community.

It follows that much of the effort of the NZLS Legal Affairs Department, the Sections and various committees, both national and local, is regulatory rather than representative. Nevertheless, there are aspects which can be designed to promote the particular interests of the profession. Instances could be the promotion of lawyer conveyancers over non-lawyer conveyancers, or guidance on costing to enhance lawyers' incomes.

It is interesting that Arrus Knoble reports that most lawyers did not, unless prompted, identify an explicit need for legal affairs and advocacy as a core representative function. Arrus Knoble urges a greater effort to explain the role. We support that, though we also acknowledge the fragility inherent in Government agency relationships. For example, public trumpeting of successful dealings and negotiations will usually destroy the close trust and confidence on which effective lobbying relies in the long term. There are many reasons why advocacy and lobbying should always be fully co-ordinated under high-level NZLS leadership.

9. *Information services/communications/publications*

Trends to which we referred earlier and recurring references in the Arrus Knoble report emphasise the need for effective information services and lines of communication. In our view, there is no doubt about the need for various publications, including through web services. This applies in both the representative and regulatory areas. Efficiency will determine the extent to which there is rationalisation of existing services. That can be a matter for consideration in due course.

Discretionary representative services

Arrus Knoble says these could include -

- a) Commercial services, eg
 - forms
 - accounting services
 - practice management support
 - purchasing arrangements (fuel, stationery, etc)
 - insurance collectives

However, Arrus Knoble also reports that most lawyers with whom these services were discussed say they will purchase them from whoever offers the best value, quality and content. They are not concerned if the NZLS chooses to deliver them, so long as they are not subsidised from other revenue and do not create commercial risk for the NZLS.

Several lawyers pointed out that the NZLS will lose credibility if the commercial services offered are anything short of the best deal. Some District Societies have initiated a range of purchasing arrangements for fuel, office products and communication services. These, however, have been costly to introduce and it has been difficult to achieve sufficient member purchasing power.

b) Personal and professional services

The services discussed with lawyers under this heading included -

- professional practice risk management assistance
- personal counselling to deal with personal issues outside of those that could be managed through the various existing mentoring and ethics mechanisms.

While it is recognised that other professions operate help line services that address these needs, there is a general feeling that few lawyers would be willing to subscribe on a fee-paying basis.

Budget summary

The committee's estimate is that the gross cost of delivering the recommended core representative services will be in the region of \$1.4m. This is based on the budget reported to the Board and Council on 17/18.7.08 and subsequent adjustments.

We share Arrus Knoble's impression that with the state of the economy and the volatility of investment returns and cost recovery revenue, it is difficult for the NZLS to forecast its income for the year to 30.6.10. This includes uncertainty over the number of lawyers electing membership. However, Arrus Knoble does still conclude that it would be possible to adhere to the position we expressed in our 24.10.08 letter, ie the hoped-for level of around \$25.00 per annum - certainly less than \$50.00.

In the Darlow Restructure Group's report to the Council on 8.6.07, there was a prediction that cost recovery on representative services and returns on NZLS assets would allow a nominal voluntary membership subscription. We acknowledge Arrus Knoble's caution over revenue, but our recommendation is that an early and firm decision is made by the Board that there be no membership subscription for the year 1.7.09 to 30.6.10. We believe that in future years fees must be tailored to ensure as full a take-up of membership as possible.

This amounts to a one year extension of the position pertaining from 1.8.08 through to 30.6.09. The net fiscal effect is obviously difficult to determine but the practical reality is that the NZLS will meet all of the estimated gross cost of \$1.4m from other revenue (cost recovery, investment returns, other income and general and specific reserves), rather than a part of that amount under the earlier minimal subscription proposals.

We see this as a significant strategic initiative in the process of the full transition to voluntary membership and the development of core representative services in uncertain times.

Organisational structure

We recommend the structure set out in paragraph 97 of Arrus Knoble's report.


This structure is taut but adequate and efficient. As Arrus Knoble observes, the interim arrangements for Branches will see Branch staff reporting to Branch managers where managers are appointed. Those managers would in turn report to the NZLS Executive Director. Functional responsibilities such as the

servicing of Standards Committees remain unchanged. It is important to note that this is a primary structure requiring development of detail in the ordinary course.

Recommendations

- 1 The NZLS should provide only the core representative functions set out on pages 2-4 of this report.**
- 2 The NZLS should keep representative functions under general review so that opportunities to deliver appropriate new, sustainable services are not lost.**
- 3 An NZLS Branch Fund should be established along the lines specified on page 3 of this report.**
- 4 NZLS membership should be available without subscription for the period 1.7.09 to 30.6.10.**
- 5 The changes required to the organisational structure and budgets should be managed through the normal NZLS planning and budgeting processes.**

Yours sincerely



Chris Darlow
Chair
Representative Advisory Committee

Footnote:

John - this report is a joint effort on the part not only of you and Christine Grice (ex officio) but also of Richard Fowler (Wellington), Richard Johnstone (South Island), Chris Moore (Sections) and Warren Pyke (Central North Island), along with Warwick Deuchrass (Chair, Law Library Board) who has been constantly consulted on legal information matters and, of course, Arrus Knoble, the consultants.

It is my pleasure to advise that the contents are unanimously endorsed by all involved.