

PRACTICE BRIEFING

Offering Legal Services on the Internet

INTRODUCTION

A growing number of websites offer legal services to New Zealand consumers, ranging from conveyancing to applications for limited drivers' licences. It is not clear that all of them comply with legal requirements imposed on lawyers practising in New Zealand.

This Practice Briefing has been prepared by the Law Society to provide information on the requirements under the Lawyers and Conveyancers Act 2006 and associated regulations which are of particular relevance to providers of online legal services.

PRACTISING CERTIFICATES AND PRACTISING ON OWN ACCOUNT

Anyone in New Zealand can offer legal information, but only lawyers can provide services in the reserved areas of law as described in the Lawyers and Conveyancers Act 2006, which includes the provision of advice in relation to the direction or management of legal proceedings. There are also restrictions on who can carry out conveyancing transactions.

The first requirement for anyone running a website on which they hold themselves out to be a lawyer and offer legal advice in New Zealand, is to hold a practising certificate issued by the New Zealand Law Society and to be entitled to practise on their own account. To practise on own account a lawyer must have three year's legal experience from their last five years in New Zealand, complete the NZLS CLE Ltd Stepping Up course and satisfy the Law Society that they are a suitable candidate.

A lawyer practising on own account providing services through a website entity is able to employ other lawyers subject to usual supervision requirements under the Lawyers and Conveyancers Act 2006.

When applying for a practising certificate, applicants must give a written undertaking to comply with the fundamental obligations of lawyers (set out in section 4 of the Lawyers and Conveyancers Act). The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 ("RCCC") expand upon these obligations.

ELECTRONIC PROVISION OF INFORMATION

A client seeking legal advice through a website is entitled to certain information about the lawyer carrying out the work for them. In advance of acting for them, a lawyer must provide a client with written information about their fees, their professional indemnity arrangements, the Lawyers' Fidelity Fund and the lawyer's internal complaint process (Rule 3.4 RCCC). Unless

a client otherwise instructs, this information may be provided electronically, so long as it is readily accessible to the client concerned and is available for subsequent reference (Rule 1.7 RCCC).

The client must also be informed of the name and status of the person who will have overall responsibility for the work and also be given some further information set out in Rule 3.5 RCCC.

PAYMENT IN ADVANCE

If a website requires payment in advance of providing services, as most of them do, this money must be paid into a lawyer's trust account (s110 Lawyers and Conveyancers Act). This means the lawyer running the website must be trust account qualified and comply with the legislation regarding trust accounting.

Every lawyer supervising a trust account must complete a course of training, and pass an examination in trust accounting (Lawyers and Conveyancers Act (Trust Account) Regulations 2008, Rule 19(1)). Lawyers running a trust account pay levies to the Financial Assurance Scheme and must make their accounts available for review by the Inspectorate.

PHYSICAL ADDRESS

There is no specific requirement for New Zealand lawyers to maintain a physical address, although they do need to be contactable by their clients and by the New Zealand Law Society for purposes of renewal of practising certificates. They also need to have their records available to enable the New Zealand Law Society to organise inspections if a trust account is being operated and in the case of investigating a complaints.

INTERVENTION RULE

Barristers sole are generally not entitled to accept instructions from the public with some exceptions (Rules 14.4-14.12 RCCC). In offering online legal services, in most circumstances a barrister sole would still require the intervention of a lawyer practising as a barrister and solicitor unless the lawyer has approval to accept direct instructions (see link to Intervention Rule Changes page <http://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/intervention-rule-changes>).

CLIENT VERIFICATION

A lawyer running a legal advice website may be required to verify a client's identity in certain circumstances. The Financial Transactions Reporting Act 1996 requires verification of a client's identity when lawyers receive funds from clients for the purposes of a deposit or investment or for the purposes of settling a real estate transaction.

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 will also impose verification and reporting obligations on lawyers. Lawyers will be required to have a programme in place to help deter and detect suspicious activity.

Rules 2.5 and 2.6 of the RCCC may also require verification of identity, imposing a general responsibility to be satisfied as to the identity, capacity and bona fides of a client on whose

behalf they make representations or issue certificates. In the case of electronic transactions under the Land Transfer Act 1952, a lawyer has a responsibility to take reasonable steps to establish the identity of clients concerned. Where the client is selling or mortgaging a property and the client is not personally known to the certifying lawyer, the lawyer must obtain additional evidence linking the client to the property.

Lawyers are generally well advised to be satisfied concerning the identity and bona fides of new clients.

DIRECT SOLICITATION AND THE REPUTATION OF THE LEGAL PROFESSION

Lawyers should be mindful of the reputation of the profession in the provision and advertising of online legal services. Lawyers have an obligation to uphold the reputation of the legal profession and avoid any conduct that might bring it into disrepute. Lawyers are also prohibited from directly contacting prospective clients in a way that is “intrusive, offensive, or inappropriate” (Rule 11.2(a) RCCC).

NON-LAWYER LEGAL SERVICES WEBSITES

The number of websites operated by ‘non-lawyers’ is increasing. These legal service models are permissible under the LCA provided the services are outside the ‘reserved areas’ for lawyers (as defined in s 6) and there is no scope for the public to be misled about the status of those providing the services. It should be clear to the public that the services offered are not provided by lawyers to avoid any concerns arising under ss 21-24 of the LCA.

Any person holding a practising certificate and working through or for a ‘non-lawyer’ website will be an ‘in-house’ lawyer for the purposes of the LCA. As such their practice will be restricted under s 9-10 of the LCA to assisting their employer to provide legal services. Care should be taken to avoid any impression that the lawyer is available to provide services directly to clients or customers of the website. Concerns of this nature can arise if the lawyer is featured on a website or has direct communication with legal consumers accessing the site.

NEW ZEALAND LAW SOCIETY

Law Society Building
26 Waring Taylor Street
WELLINGTON 6011

PO Box 5041
Lambton Quay
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

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