

14 March 2019

The Chair (interim)
Rules Committee
Auckland

By email: c/- Sebastian.Hartley@justice.govt.nz

Dear Justice Dobson

Re: Unbundled legal services – potential Rules changes

The New Zealand Law Society has received a request from the Otago Legal Issues Centre (OLIC) that the Law Society support potential rules changes so that lawyers would be more confident about providing unbundled representation. The OLIC perceives that such changes could increase access to representation, which would be advantageous to litigants, the profession and the courts. The OLIC's suggestion is that the High Court Rules could be amended to explicitly encompass the situation where a lawyer is acting on a limited retainer and to provide some flexibility around being lawyer on the record.

We understand the OLIC approached the Rules Committee in 2016 about proposed rules changes to promote unbundled services, and the Committee responded, saying that:

While there may be considerable merit in the proposal, which seeks to improve access to justice, the Committee considers that the proposed amendments have potentially significant consequences and would need to be approached cautiously. The Committee would be interested to know whether the New Zealand Law Society supports the proposed reform. The Committee would be reluctant to initiate such significant changes unless this is supported by the New Zealand Law Society.

The provision of unbundled legal services is an issue of considerable interest to the Law Society, as well as to the profession and the judiciary, because of the potential for improving access to justice. Unbundling may also have the effect of improving the quality of the material that is submitted by self-represented litigants to the courts. The Law Society has issued a practice briefing on the topic, *Guidance to lawyers considering acting under a limited retainer, December 2018* (although we note the practice briefing does not currently refer to the High Court Rules).

The Law Society has had an initial discussion with its Rules Committee representatives and it was agreed there is merit in investigating the OLIC's proposal. We envisage this would need to involve wide consultation with the profession (including bar representatives, Community Law Centres, the Auckland Litigant in Person Pro Bono Service, Law Society committees and so on).

Before beginning any consultation, it would be helpful to have a preliminary discussion with the Committee to understand its views on unbundled legal services and what issues the Committee sees as a priority for exploration. We are aware that the question of unbundled legal services may form

part of a much broader discussion and debate about litigation costs. The Law Society would also be grateful for any suggestions the Committee might have about what questions could usefully be put to the profession about unbundling.

We would appreciate this matter being put on the Committee's agenda, for discussion with the Law Society's representatives at a future meeting. The relevant documents are **attached** for the Committee's information, and we are happy to provide further materials or information if needed.

We look forward to hearing from you. Contact can be made in the first instance through the Law Society's Law Reform Adviser, Emily Sutton (emily.sutton@lawsociety.org.nz / 04 463 2978).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kathryn Beck', with a large, sweeping flourish at the end.

Kathryn Beck
President

Encls:

1. Otago Legal Issues Centre paper, *Unbundling Litigation Services in New Zealand: Where to next?* January 2019
2. Rules Committee letter to OLIC, 3 May 2017
3. NZLS Practice Briefing, *Guidance to lawyers considering acting under a limited retainer*, December 2018