



CIVIL JUSTICE REFORM IN BRITISH COLUMBIA SUPREME COURT

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I. Introduction

In a democratic society, an effective civil justice system is essential. It supports a functioning economy and the overall well-being of society. When we are faced with an unfortunate event, such as a motor vehicle accident, divorce, a dispute over a will, or an unpaid debt, we have to be able to rely on the civil justice system to solve the problem.

While Canada's civil justice system is better than many, its high cost makes the system increasingly inaccessible to most people. As Supreme Court of Canada Justice Beverley McLachlin has said, "The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve."¹

British Columbia is working to reform its civil justice system in order to provide people with ways to resolve legal problems more simply, quickly and affordably. This document summarizes the background to the reform efforts, how the reforms will help people to avoid the courts, the problems associated with going to court, and the solutions proposed to make the court process more accessible.

II. Background

In March 2002, the Justice Review Task Force was established as a joint project that brought together British Columbia's most senior lawyers, judges, government officials and other experts.² As part of that initiative, the Task Force formed the Civil Justice Reform Working Group (the "Working Group"), which made recommendations for fundamental change to the civil justice system from the time a legal problem develops through the entire Supreme Court litigation process.³ The Working Group issued its report, *Effective and Affordable Civil Justice*, in November 2006 (the "Report").⁴

III. What can be achieved without going to court?

The Working Group found that most citizens are seeking early and fair dispute resolution, not a costly and prolonged trial. The Working Group, therefore, proposed that citizens should be provided, as far as possible, with the information and services they need to resolve their legal problems on their own before entering the court system.

¹ Speech to the Empire Club of Canada, Toronto, March 8, 2007. Justice McLachlin made similar statements at a Law Society Public Forum, held in Vancouver on January 28, 2009.

² See www.bcjusticereview.org.

³ Working groups were also established to review issues concerning family law and street crime

⁴ See www.bcjusticereview.org/working_groups/civil_justice/Working_Group_report_11_06.pdf.

This would be accomplished by the creation of a “hub,” a single place where people can go to get the information and services they require to solve legal problems on their own. A hub would:

- coordinate and promote existing legal-related services;
- provide legal information;
- establish a service to diagnose the legal problem and provide referrals to appropriate services; and
- provide access to legal advice and representation if needed.⁵

This recommendation has been implemented and “hubs”, now called Justice Access Centres, are open in Nanaimo and Vancouver.

IV. Reducing the Cost of Going to Court

A. Background: why are litigation costs high?

When people are unable to solve their legal problems out of court, and if the matter is too large to be handled in Small Claims Court, they are faced with the very high cost of pursuing their claim in Supreme Court. The Working Group found that the main causes of the high cost are:

- the adversarial system of civil justice;
- the lack of focus on the true issues of the case;
- the misuse of “discovery”; and
- the misuse of experts.

B. The adversarial system of civil justice

Our system of civil justice is known as the “adversarial” system. Under the adversarial system each side (usually through a lawyer or “advocate”) presents their evidence and arguments to the best of their ability and a neutral judge attempts to determine the true facts and the applicable law. While there are great benefits to this system, it can be inefficient and labour intensive.

A lawyer’s duty is to advocate to the best of his or her ability on behalf of the client — to leave no stone unturned in pursuit of victory. Judges under our system take a relatively unintrusive role so that lawyers generally control the pace of the litigation. Therefore, if a lawyer is required to leave no stone unturned in the pursuit of victory, and judges do not interfere, the lawyer’s service is more likely going to be very expensive.

⁵ A hub for family law matters is currently being piloted on Vancouver Island. The Nanaimo Justice Access Centre pilot project, established through the co-ordinated efforts of the Ministry of Attorney General and the Legal Services Society, offers information, assessment, advice, mediation, and referrals for members of the public dealing with family and civil justice problems. See www.justiceaccesscentre.bc.ca.

C. Discovery

One of the most expensive phases of litigation in our system is known as “discovery.” This process allows each party to discover information about the other party’s case. There are several ways to do this.

The most basic method of obtaining information is to request the other party to supply you with all of the documents that are related to the case. Under current law, this is defined very broadly to include documents that are only indirectly related to a case. In today’s information-based world, this means that huge numbers of documents are assembled, reviewed and copied, all at substantial expense.

The next stage of information gathering is to conduct what is called an “oral examination for discovery.” This allows one party (usually through their lawyer) to verbally ask an unlimited number of questions of the other party, who has taken an oath to tell the truth. This procedure can go on for days.

Another way of obtaining information is through the use of interrogatories, which are written questions that can be sent to the other party to answer. The interrogatories are usually answered by lawyers trying to avoid disclosure of anything that will hurt their client’s case, and therefore are typically of little value.

V. The Solution: New BC Supreme Court Civil Rules

In order to address these problems, new rules for the B.C. Supreme Court were developed. The following is a brief summary of some key features.

A. Reducing court costs: the objective of the rules

The new rules will provide judges with more authority to control the adversarial process so as to reduce complexity, cost and delay. The courts will use the rules to ensure that the amount of time, expense and process involved in resolving a dispute are proportionate to the:

- dollar amount involved in the dispute,
- importance of the issues in dispute, and
- complexity of the proceeding.

B. Case Planning

The new rules make it possible for one party to trigger the involvement of a judge or master in a Case Planning Conference (CPC). The idea behind the CPC is to assist parties who feel that the cases are not moving forward quickly or in a way that is consistent with proportionality principles. At the CPC, the judge or master will set the parameters of the litigation, guided by proportionality principles. The results of the CPC will be set out in a Case Plan Order. The Case Plan Order will address such issues as dispute resolution options, dates for the exchange of documents, electronic document

protocols, the parameters of oral examinations for discovery, and basic information about the planned use of experts.

C. Discovery

The new rules limit the scope of document production primarily to documents that could be used by any party to prove or disprove a fact that will affect the outcome of the case. The court has the power to require more limited or more extensive document production. The new rules also limit the amount of time that a party may be questioned in an oral examination for discovery. Under the new rules, unless the parties otherwise agree in the case plan, examinations for discovery of a person must not exceed seven hours. Interrogatories are only allowed with the permission of the court.

The new rules also require each party, before the Trial Management Conference or within 28 days of the scheduled trial date, to deliver a list of the witnesses the party intends to call at trial.

VI. Consultation

The consultations on the civil rules were unprecedented in their scope and extent. Chief Justice Donald Brenner and Deputy Attorney General Allan Seckel, QC toured the province over a period of one year, speaking to Bar Associations, judges, law students, experts, service clubs, and others. They presented the recommendations of the Civil Justice Reform Working Group (CJRWG) at more than 50 venues and answered questions. They also conducted focus groups with lawyers in five communities. Additionally, the on-line forum was set up to receive comments on the concept draft. The site has been viewed more than 6,500 times.

Finally, the proposed rules were reviewed in detail by the Rules Revision Committee, which proposed final revisions. The comments received resulted in numerous and substantial changes to the original recommendations expressed by the working group.

VII. Supreme Court Filing Fees

Court users pay fees at various steps in the court process. For example, a fee is charged for starting a claim, for each day of trial, and for many steps in between. The fee schedule has been revised to match the new rules and processes. The new fee schedule reduces the number of fee categories and ensures that similar procedures trigger the same fee. In sum, the new fees are much simpler and easier to understand.

In order to increase access to trials, the new fee schedule eliminates hearing day fees for the first three days of trial. Further, the fees for filing or responding to a claim will be eliminated for parties that mediate prior to commencing a civil action. Last, the new fee structure provides for automatic adjustments for inflation.

VIII. Implementation

The new rules will come into force on July 1, 2010. This date allows time for forms development, complex business process changes involving Court Services and the judiciary, staff training and legal education.

IX. Conclusion

An accessible justice system provides the necessary foundation for social order and democracy. We are very fortunate in Canada to have one of the very best justice systems in the world; however, the justice system must become more accessible, relevant and responsive to the needs of society if we are to strengthen the public trust and confidence that underpins a healthy, stable and prosperous society. The new Supreme Court Rules are an important step in making our civil justice system more accessible to British Columbians.