Legal Services Society

Providing legal aid in British Columbia since 1979

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Office of the Executive Director

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VIA FAX & MAIL

BC Justice Review Task Force
Ministry of Attorney General
P.O. Box 9222 Stn Prov Gov't
Victoria, BC V8W 9J1
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Attention: Robert Goldschmid

Dear Sir:

Re: Proposed New Rules of Civil Procedure for the Supreme Court Concept

The Legal Services Society welcomes the opportunity to provide comments on the proposed new rules of civil procedure contained in the Concept Draft. It is hoped that these comments and recommendations will be helpful in drafting Rules that are useful and practical for all those who require access to the justice system.

The Legal Services Society of BC is a non-profit organization that offers legal aid services, which range from legal information to advice and representation. Our mandate is to help people resolve their legal problems and facilitate access to justice, with priority given to low-income British Columbians.

Clients may receive one or more services to help them resolve their legal problems. Examples include:

- legal information (provided in person by legal information outreach workers, via printed materials, and through the Web);
- information, referrals, and advice from the LawLINE telephone service in criminal, immigration, family and civil law;
- duty counsel and advice counsel services limited to criminal, immigration and family law ;
- circuit court duty counsel services limited to criminal and family law;
- the Brydges Line, a 24-hour telephone advice services for detainees;
- legal representation referrals to private bar lawyers (eligibility for which is assessed through an intake process that takes place in person or through our call centre) for criminal, immigration and family cases; and
- legal representation referrals to staff lawyers for criminal, immigration and family cases.

Although the Legal Services Society no longer provides legal representation in civil law matters, we are acutely aware of the growing number of self-represented litigants in BC. Many of these people use our LawLINE services, approach LSS intake offices, receive information from our staff and use our webpages and publications. In these submission we

wish to provide feedback from the litigant's perspective – primarily the self-represented litigant and low income individuals involved in civil disputes.

General Comments:

The Legal Services Society strongly supports the object of the proposed new Rules to achieve speedy, just, and proportionate court proceedings as a step towards enhancing access to justice. There is no question that simplified court Rules can streamline the process for both lawyers, and self represented litigants thus reducing the time and cost of litigation.

As general principles LSS supports new rules that:

- are simple, straight forward and in plain language
- use court forms that are easily accessible and easy to complete, available on-line in a user friendly format
- encourage early resolution and consensual dispute resolution
- provide sufficient time for unrepresented litigants to obtain legal advice
- reduce barriers to access such as high fees that are not affordable to low income individuals
- provide an accessible judicial review process for reviews of decisions of administrative tribunals.

While the proposed Rules attempt to reduce the complexity of civil procedure and provide tools to help judges and court administration staff manage cases more efficiently, from our perspective further changes are required if we are to succeed in making the litigation process easier for litigants. For example, the revised Rules increase the volume of paperwork and add more steps in the litigation process, making the system more complex for self-represented litigants and requiring more court appearances for all litigants, including those who have retained lawyers. And, although some procedures are abbreviated, such as discovery, disputes will inevitably arise over the allowable exceptions, adding another step in the litigation process. Because litigation in the BC Supreme Court will still be challenging for self-represented litigants, it is hoped that the courts remain flexible in the standards it expects of both litigants and the documents they prepare for court.

When the new Rules are implemented, we anticipate that there will be a greater demand for civil legal advice services from the Legal Services Society and other legal service providers.

Specific Recommendations:

Reducing Barriers to Initiating and Responding to Disputes and Pre-Trial Applications

Recommendation 1: Dispute Summary

That the Dispute Summary Form 1 be simplified and the Court permit unrepresented litigants greater flexibility in amending this form if it is found to be incomplete or inaccurate

The Legal Services Society supports the creation of a simple initiating document however we believe that the Dispute Summary Form 1 as drafted is too complex for unrepresented litigants. We are concerned that unrepresented litigants may not be able to grasp what facts are required to support their claim, to articulate the relief sought or to articulate the cause of action. Specifying the legal bases for the relief sought will be particularly challenging for lay litigants.

We recommend that the form be simplified to use plain language. Terms like "relief sought" and "cause of action" should be explained. The court may wish to consider producing a plain language document to accompany this form.

Further we recommend that the Court be flexible with unrepresented litigants and ensure that the Rules include a procedure to permit unrepresented litigants to amend the Dispute Summary Form 1 if it is found to be incomplete or inaccurate.

Recommendation 2: Time and Fees for Filing a Response

That proposed new Rule 2-3 is altered to allow a respondent 21 days, not 14 days as proposed, to file and deliver a Response, and Counterclaim if applicable. Further, that no court fee be charged for filing a Response.

Under the current British Columbia Supreme Court ("BCSC") Rule 14, a defendant served with court proceedings has the opportunity to advise the Court of an intention to defend the proceedings by filing an Appearance within 7 days. BCSC Rule 21 then provides a defendant an additional 14 days to file a Statement of Defence and, if applicable, a Counterclaim. Currently, a defendant has in effect 21 days to prepare and file a written defence to a plaintiff's claim.

The Appearance is a simple, one-page document that a lay person can easily prepare and file without having to pay a filing fee. The Appearance process enables almost any lay litigant to respond to a lawsuit, without barriers created by lack of money or legal advice. It is important that a simplification of the Rules and response process not lose these important advantages.

Under the proposed new BCSC Rule 2-3, after being served with a Dispute Summary, a Respondent living in BC would have only 14 days to file and deliver a Response and Counterclaim. This is 7 days less than permitted under the current BCSC Rules. The proposed Rules do not set out what, if any, filing fee would attach to filing a Response. Further, under the proposed rules, a Response cannot simply deny the Claimant's claim. Rather, the Response must admit or deny each fact as set out in the Dispute Summary and if the Respondent denies the Claimant's right to relief, the Response must set out a concise summary of the legal and factual basis for the denials.

Under the proposed new rules we anticipate that it will be difficult for a self represented litigant to prepare a response. In many cases a self-represented litigant will require legal advice to prepare a proper Response. The proposed rules may also (although this unclear) require them to pay a filing fee for a Response. There is therefore the potential that the proposed Rule will cause barriers for self-represented litigants to participate in litigation, due either to a lack of finances, lack of time, and/or lack of legal advice.

Self-represented litigants require time to access sources of legal advice, such as pro-bono clinics, the LawLINE or the Lawyer Referral Service. Not only may it take some time for self-represented litigants to become aware of these possible sources of assistance, it takes time to set up the necessary appointments, and then time to receive and subsequently act on the advice received.

The proposed shortened time of 14 days to prepare and file a Response and Counterclaim will in all likelihood pose a significant hardship for self-represented litigants. This hardship would be particularly felt by self-represented respondents who are working poor and unable to take time off work, and those who live in remote communities where legal advice may be unavailable. Those without access to computers, the internet, a telephone and/or fax machine may have great difficulty even obtaining the relevant court forms. All self-represented litigants would have difficulty obtaining meaningful legal advice within 2 weeks of being served, and therefore risk being unable to respond within the proposed 14 day time limit. If there is a court fee for filing a Response, that fee would be an additional barrier to low-income self-represented litigants who wish to defend an action. In summary, 14 days is a too short a period of time for a self-represented person to learn about sources of legal advice, access those resources, act on their advice and, if necessary, file an application for indigency status.

The consequence of failing to file a Response is not insignificant; if a Respondent is unable to file a Response and Counterclaim because of inability to obtain legal advice or pay a filing fee, a Claimant may take default, making the legal process more complex and leaving the Respondent feeling more overwhelmed and further penalized.

The Legal Services Society therefore recommends that, in order to make dispute resolution more accessible to all residents of BC, the time for filing a Response be altered to 21 days, and that there be no filing fee charged for a Response.

Recommendation 3: Time for Filing a Reply in Pre-trial Applications

That proposed new Rule 7-1 be altered to provide that a respondent to an application have 14 days, not 7 days as proposed, to file and deliver a meaningful Application Response and supporting affidavits.

Under current BCSC Rule 44, the time limited for filing a Response and supporting affidavits in a chambers application is 8 days. There is one exception to this time limit; Respondents who wish to reply to a Rule 18A summary trial application have 11 days after the delivery of a Notice of Motion to prepare and deliver a Response and supporting affidavits. The current 8 day period for responding to a chambers application pursuant to BCSC Rule 44 is already insufficient for many self-represented litigants.

Proposed new rule 7-1 provides that, within 7 days of receiving a Notice of Pre-Trial Application and any supporting affidavits, an application respondent have 7 days to file an Application Response and any supporting affidavits, unless the application is for a summary trial, in which case the application respondent has 14 days to file these documents. In short, the new rule proposes a slightly longer reply period for responding to summary trial applications, but shortens the reply period by 1 day in regular chambers applications.

Proposed new rule 7-1(6) also provides that, where a respondent wishes to oppose an order sought, the Application Response must contain a summary of the factual and legal bases on which the orders sought should not be granted. In this way, the respondent would be required to provide more legal substance about their case at a much earlier stage than is required under the current rules. To meet this expectation, under the proposed Rules a self-represented litigant will need more time than at present to access legal advice services and properly prepare their materials so that they can participate meaningfully in the dispute resolution process.

The proposal to shorten the reply period in chambers applications, while at the same time increasing the degree of legal substance that a respondent must provide in that period, would only exacerbate the difficulties that the average lay litigant already faces in attempting to prepare a meaningful and coherent response to a chambers application, and would make the dispute resolution process less accessible and efficient for self-represented litigants.

The Legal Services Society therefore recommends that, in order to make dispute resolution more accessible to all residents of BC, the time for filing an Application Response and supporting affidavits, be altered to 14 days.

Recommendation 4: Add a Local Venue Rule

That proposed new Rule 1-4 be altered to add a local venue rule. The rule would require that a Claimant or Petitioner file their dispute summary/petition in the registry closest to where the respondent lives or carries on business, or to where the claim arose.

The current and proposed Rules allow a plaintiff or petitioner to sue a defendant in any Supreme Court Registry in British Columbia. This is subject to either party's ability to make an interim application to transfer the venue of the proceeding for any or all purposes under current Rule 64(13), or under proposed Rule 21-1(13).

For self-represented defendants, particularly those who are low-income, the absence of a local venue rule in the current, and proposed new rules, imposes significant barriers to access to the courts and to a just procedure in their case. To give a few examples, we are aware of cases in which:

- The BC provincial government sued a low-income person living east of Nelson, B.C. in New Westminster Supreme Court Registry, although the claim arose in Nelson. The plaintiff had counsel; the defendant did not. New Westminster is not a fax filing Registry.
- The federal government sued a low-income student living in the Lower Mainland in the Kelowna Supreme Court Registry, although the claim did not arise there. The plaintiff had counsel; the defendant did not.
- A private bank sued a low-income person living in Cranbrook, B.C. in the Vancouver Supreme Court Registry, although the claim did not arise in Vancouver. The plaintiff had counsel; the defendant did not. Vancouver is not a fax filing Registry.

A low-income person sued in a registry far from home by a plaintiff with counsel faces not only a real power imbalance, but significant barriers to accessing the dispute resolution process at all.

Many low-income respondents who are sued in a Registry far away from their home simply cannot afford to travel to the Registry. A person who cannot afford either to hire counsel or to travel to the Registry where the proceeding was filed cannot, in practice, make an application to transfer the file to another Registry that is more accessible to them. In those cases, a self-represented defendant's only choice is to try and defend themselves at a distance. This greatly complicates their situation. For example, because an application for indigent status must be made in person or through counsel, the lack of a local venue rule may result in some respondents simply being unable to defend themselves as they cannot afford the fee to file a Statement of Defence but cannot, in practice, make an application for indigency status because of distance. The lack of a local venue rule creates serious barriers to accessing the courts.

The proposed Rules can be expected to add more personal court appearances to the current dispute resolution process. The requirement that a self-represented litigant attend a case planning conference adds one such appearance to the current process, and the proposed Rules push for increased intervention by judges in case management can be expected to add more. This expected increase in court appearances under the proposed Rules makes it crucial, in our view, that a local venue rule be added.

Workable examples of local venue rules exist in B.C. For example, section 21 of the *Law and Equity Act* provides for a local venue rule in foreclosure proceedings, the intent of which is to ensure that a foreclosure proceeding is commenced in the registry closest to where the property (and presumably the defendant) is located. Similarly, Rule 1(2) of the *Small Claims Rules* provides:

> *(2) A claimant must file a notice of claim and pay the required fee at the Small Claims Registry nearest to where*
>
> *(a) the defendant lives or carries on business, or*
>
> *(b) the transaction or event that resulted in the claim took place.*

It is our experience that the local venue rule found in the Small Claims Rule has been a workable model that has decreased barriers to the courts for defendants, and it is submitted that it be adopted into the proposed new Rules.

The Legal Services Society therefore recommends a local venue rule be added to the proposed new rules.

Recommendation 5: Requirement for Evidence Summary

That further thought be given to proposed Rule 6-3 and its consequences before enactment.

Proposed Rule 6-3 would require that each party deliver a list of witnesses prior to trial and a summary of the evidence the witness will give.

This rule may present a disadvantage to self-represented litigants in that it introduces a requirement for new and additional forms. Any time further forms are required, the self represented litigant may be put to a disadvantage as they may have difficulty completing the form correctly, and by the required deadline. Proposed Rule 6-3 also lacks clarity in that fails to address what consequences may result if a party delivers incomplete witness statements, or delivers statements that either require further explication or provide insufficient detail.

Reducing Financial Barriers to Participating in Court Procedures

Recommendation 6: Indigent Status

That proposed Part 18 be altered to include a specific rule, and court forms, governing applications for indigent status. Further, that recipients of welfare benefits be exempted from paying court registry fees, without the need to apply for indigent status.

Neither the current nor proposed Supreme Court rules contain specific rules or forms regarding applications for indigent status. This is an anomaly in that the Court of Appeal has both specific rules (Rules 38 and 56) and a specific form (Form 19) for such applications.

For the Supreme Court to be accessible to all residents of B.C. there must be a clear and easily understandable process for low-income individuals to apply for indigent status. At present, a layperson looking at either the current or proposed Supreme Court Rules would have no idea that such a thing exists, as neither set of rules makes reference to indigent status. As applying for indigent status is an additional step that requires relatively extensive paperwork, it is a requirement that may act as a barrier to court access for some low income people. As recipients of welfare benefits from the Ministry of Employment and Income Assistance can logically be presumed to meet the financial requirements for indigency status, we recommend that they be exempted from the requirement to apply for indigency status. In such cases, court registry staff could simply waive court registry fees upon written proof that a litigant (or proposed litigant) is in receipt of welfare benefits.

We recommend that Part 18 (Special Rules for Certain Parties) be altered to include the following:

Rule 18-3 – People who cannot afford to pay court registry fees

(1) A person in receipt of welfare benefits from the Ministry of Employment and Income Assistance is exempted from paying court registry fees;

(2) If having to pay court registry fees is a hardship to any person not referred to in subparagraph (1) above, that person may, either before or after a proceeding is started, apply to be exempted from paying those fees.

(3) An application under this rule shall be made in Form N, and supported by an affidavit in Form N+1.

(4) If a judge [master or registrar] finds that the person is unable to pay registry fees, the person must be exempted from paying fees, unless the judge finds that the case the person is arguing is without merit or an abuse of the process of the court.

We suggest two sources for samples of forms that could be further simplified and used for indigent status applications in Supreme Court:

- the affidavit (in form 19) prescribed by the Court of Appeal rules for use in indigency applications; and
- precedents posted in a publication of the Community Legal Assistance Society ("CLAS") entitled "Judicial Review: Residential Tenancy Act: Interim Stay with Notice Indigent Status Vancouver Registry." These are available on the internet at: http://www2.povnet.org/interim_stay. See the sample Requisition for Indigency Status, and affidavit for Indigency Status found at Tabs 3 and 4 of that publication.

Reducing Barriers to Participating in the Judicial Review Process

General Comments

Judicial oversight of administrative authorities is the most important function of the Supreme Court for many low-income people, in that the Supreme Court has exclusive jurisdiction to hear reviews of and appeals from administrative bodies such as the Residential Tenancy Branch, the Employment and Assistance Appeal Tribunal, and the Superintendent of Motor Vehicles.

In terms of chambers practice, the proposed Rules represent a slight, but not marked, improvement over the current Rules. Under both the current and proposed Rules, the key provisions relating to judicial review practice are scattered over four rules:

- Proposed Rule 7-5 (Affidavits) is essentially the same as the current Rule 51 (Affidavits);
- Proposed Rule 7-6 (Application Procedures) is almost identical to the old Rule 52 (Chambers);
- Under the Concept Draft, the current Rule 10 (Originating Applications) is split between Rule 1-4 (Choosing the Correct Form of Proceeding) and the first part of Rule 14-1 (Petition Proceedings); and

- The balance of Rule 14-1 consists of a significantly simplified version of the old Rule 51A.

The proposed Rules' simplification of the unnecessarily complex procedures currently set out in Rule 51A marks an improvement over the current Rules, and should serve to somewhat decrease current barriers faced by self-represented litigants in accessing the Supreme Court. However, further improvements can and should be made.

Recommendation 7: Complete Code for Petitions

That the proposed Rules regarding proceedings by way of petition be altered such that Rule 14-1 read as a complete code regarding judicial review.

As the Concept Draft stands, proposed Rule 14-1 (Petition Proceedings) is not a complete code regarding judicial review. Currently, the proposed Rules that relate to affidavits in judicial review proceedings (Rule 7-5 (affidavits)) and to the application procedure followed on an application for judicial review (Rule 7-6 (application procedure)) fall under Part 7 "Pre-trial Applications." As the hearing of a petition is not a pre-trial hearing, this current arrangement is likely to confuse a self-represented litigant. Further, as the Concept Draft now stands, a self-represented litigant endeavouring to file a judicial review application cannot readily access all of the Supreme Court Rules that apply to the application, but must rather unnecessarily cross-reference various sections of the proposed Rules. This is not an accessible model for the Rules.

To remedy this deficiency, we recommend that Rule 14-1 expressly refer the reader to Rules 7-5 and 7-6 by adding subrules providing that Rules 7-5 and 7-6 apply to Petition proceedings. This should not only prevent the confusion caused by the heading of Part 7, but would make Rule 14-1 a self-contained procedural code for judicial review.

Finally, we recommend that proposed Rule 14-1 be further altered to incorporate a reference to the provisions regarding indigency applications, which we earlier recommended be included in a new Rule 18-3.

Recommendation 8: Response to Petition

That the proposed form 69 (Response to Petition) be altered for greater clarity.

Proposed Rule 14-1(5) provides that a response to a petition must be in Form 69. While largely the same as the current Form 124 Response, proposed Form 69 introduces one problematic change, namely a paragraph that states:

> *The factual and legal bases on which the relief sought in the petition should not be granted is as follows*:

This proposed wording is overly complex, indirect, and grammatically awkward. We propose the following alternate wording as being simpler and less confusing:

The facts and legal reasons why the court should deny the relief that the Petitioner is asking for are as follows:

Recommendation 9: Timing of Petitions

That proposed new Rule 14-1(4)(c) be altered to allow a B.C. Petition respondent 21 days, not 14 days as proposed, to file and deliver a Response, and supporting affidavits.

Under the current Rules, a respondent served with a Petition must file an Appearance within 7 days of service and a Response within 8 days from the date of filing the Appearance. The Concept Draft would create a single deadline of 14 days from the date of service for the Response.

Simplifying two deadlines into one and making the time limit a multiple of weeks are improvements. However, the length of the proposed deadline for Response is too short. A respondent to a Petition must not only prepare a response, but also organize and secure all their evidence, usually in affidavit form. This may be from several sources, some of whom may not be readily available. These extra duties would pose a particular hardship to low-income people, who would also be faced with attempting to access such legal advice and representation services as may be available to them within this short time frame.

The Legal Services Society therefore recommends the deadline be lengthened to 21 days from service for residents of B.C.

Reducing Barriers to Participating in Judicial Review of Decisions of the Residential Tenancy Branch

General Comments

Judicial review of Residential Tenancy Branch ("RTB") decisions, and in particular of decisions regarding Orders of Possession (i.e. evictions), raise issues of particular concern to the Legal Services Society. Not only are the interests at stake in eviction cases urgent and of fundamental importance to low-income people, but the practical time frame in which a judicial review must be pursued is very short. Further, decisions of the RTB often, in our experience, raise legitimate legal grounds for review such that access to judicial review in such cases is of the utmost importance to the affected tenants, who are often low-income.

The Administrative Tribunals Act sets a time limit of sixty (60) days in which to apply for judicial review of decisions of the RTB. However, in practice the time limit in eviction cases is much shorter. This is because section 84(1)(b) of the *Residential Tenancy Act* ("RTA") provides that a decision of the RTB may be filed in Supreme Court and enforced as a judgment of that court after the time period to apply for an internal review of the RTB decision has expired. In eviction cases, section 80 of the RTA provides a limit of 2 clear days in which an application for internal review may be filed. Filing an internal review does not guarantee a stay of the decision in question, and the grounds for review are extremely narrow. In practice, this means that a tenant whose landlord has served them with an Order of Possession (i.e. eviction order) issued by the RTB has an effective limitation period of 2 clear days in which to file an application for Judicial Review with the Supreme Court,

together with an application for an interim stay of a Writ of Possession issued by the Supreme Court, as well as an application for short leave on the interim stay motion. If the application for judicial review is not filed within those two days, the tenant risks the landlord obtaining and executing a Writ of Possession against their home. Further, within those 2 days, a low income tenant will also need to file an application for indigency status.

These extremely short deadlines support the adoption of specific forms and procedures in judicial reviews of RTB decisions, such that access to the courts is rendered meaningful to affected tenants.

Recommendation 10: Specific Forms for Residential Tenancy Matters

That proposed Rule 14-1 be altered to specify that petitioners and respondents in residential tenancy matters must file a petition, supporting affidavit, and response that are specifically developed for judicial review of RTB decisions. Those forms should be developed in consultation with stakeholders. Further, that proposed Rule 14-1 be altered to require and reference specialized forms for short leave applications for interim stays of RTB decisions.

Reviews of decisions of the RTB tend to concern a limited range of legal issues and facts that lend themselves well to standardized forms. It is our understanding that specific court forms for judicial review of decisions of the Rentalsman (as the RTB was then known) did exist in the 1970s. We are suggesting a specific template form for judicial review of RTB decisions, much in the way that specialized forms exist for pleadings in family law matters (e.g. Forms 127, 127A, 128, 128A etc). We propose specific forms in the nature of partially completed templates which prompt the petitioner to, as it were, fill in the blanks. Further, a specific form of petition should be developed so that it has contained within it a notice of motion and an application for short leave for interim orders. The current requirement that separate documents be completed for short leave applications and notices of motions is very cumbersome and time consuming for the average citizen facing eviction.

In developing Rule 14-1 and the specific forms, we recommend that the Civil Justice Reform Working Group consult directly with various stakeholders including judges, the staff of the Supreme Court Self Help Information Centre, and lawyers working in this area, such as staff at CLAS and in LSS's Civil Law Practice Group. As a point of departure, we again recommend the resources disseminated by CLAS (referred to above), which can be found at http://www2.povnet.org/interim_stay. Such a consultation should also include the question of whether specific forms should be developed for judicial review of decisions of some other administrative tribunals, such as the Employment and Assistance Appeal Tribunal, whose decisions specifically affect low-income people.

As an alternative to placing these special provisions regarding judicial reviews of RTB decisions under Rule 14-1, they could be put into a new rule under Part 19 (Special Rules for Certain Proceedings). In our view, however, it is preferable to locate these rules within Rule 14-1 itself, so that it remains a complete code regarding the judicial review process.

Reducing Linguistic Barriers to participating in Court Procedures

Recommendation 11: Terminology regarding pleadings

That proposed Rules 2-1 and 2-3 be altered to retain the use of the terms "statement of claim" and "statement of defence" in lieu of the proposed "dispute summary" and "response."

Proposed new Rule 2-1 replaces the current "statement of claim" with a "dispute summary," and proposed Rule 2-3 replaces the current statement of defence" with a "response." In our view there is no clear advantage to this proposed change in terminology, and it may in fact be confusing. The term "dispute summary," for example, does not in itself alert a defendant that a legal proceeding has been commenced against them, and does not seem readily understandable to many people whose first language is not English. Further, "dispute summary" is unclear in that it could refer either to the commencement of a claim, or to a decision about the merits of a claim.

The terms "statement of claim" and "statement of defence" and "plaintiff" and "defendant" are common terms with which many lay people are already familiar. They also have the advantage of being clear terms which are readily understandable to many people whose first language is not English. These terms are also used frequently in many statutes, and in other jurisdictions. The proposal to eliminate these terms and substitute "dispute summary" and "response," etc will require changes not only to the Rules of Court, but also to all other statutes and regulations which refer to these forms. As in our experience there is no clearly demonstrated need for a change to these terms, we question whether the change is warranted.

Recommendation 12: Terminology regarding Indigent Status

That a plain language term be substituted for references to applications for "indigent status."

"Indigent status" is not a plain language term and is not commonly understood by self-represented litigants, particularly those whose first language may not be English.

It is recommended that a term that is more understandable to all self represented litigants be adopted. For example, the Legal Services Society would recommend the use of the term "application to dispense with payment of court fees".

Reducing Barriers in Defending Foreclosure Proceedings

Recommendation 13: Foreclosure Proceedings

That a simplified procedure be adopted for foreclosure applications that includes standard easy to complete forms designed specifically for foreclosure matters.

Responding to foreclosure applications raise particular concern to the Legal Services Society. We have seen that at times when the BC economy takes a downturn residential

foreclosures and the need for legal advice and assistance increase considerably. Low income persons often don't have the resources to retain legal counsel to defend themselves in foreclosure proceedings and as a result must self litigate. In these important matters it is essential that the process be as simple and clear as possible.

The Legal Services Society recommends that a simplified procedure be developed for foreclosure matters and specific Forms be created that would improve accessibility to the courts for persons defending foreclosure applications

Reducing Barriers through Public Legal Education

Recommendation 14: Produce Public Legal Education Materials to Support the new Rules

In order to ensure that the Courts are accessible to unrepresented litigants it is imperative for the Courts to produce public legal education materials and self help materials to explain the new rules. The Legal Services Society recommends that a comprehensive public legal education plan be adopted that includes step-by step guides to the litigation process with sample forms and precedents. The Court may wish to use web based annotated forms as well as printed materials. The Legal Services Society and other public legal education organizations can play a large role in developing these materials but will need financial support to update current PLE publications and produce new materials and resources.

Conclusion

We believe that by adopting the above recommendations, the proposed new rules will achieve the objectives of the Civil Justice Reform Working Group and will improve access to justice for all members of society.

Yours truly,

Mark Benton
Executive Director