



BACKGROUND

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FOR IMMEDIATE RELEASE

B.C. SUPREME COURT CIVIL RULES OF PROCEDURE

Lawsuits in our court system proceed in accordance with rules. The rules set out the procedures to be followed, the timelines to be met and the forms that must be used to pursue or defend a case.

The current B.C. Supreme Court Rules state that their object is “to secure the just, speedy and inexpensive determination of every proceeding on its merits.” Yet, less than three per cent of all cases filed in B.C. each year ever reach the stage of a final determination on the merits. Of those that do, despite British Columbia’s very well-trained and effective lawyers, and a top-notch judiciary, the determination is, in most cases, neither speedy nor inexpensive. The current rules, therefore, are not meeting their stated objective, and as a result, many people are unable to access our civil justice system.

Six years ago, to address this problem, the Law Society of British Columbia initiated discussions with the provincial government about creating a task force to review access to justice issues. The Attorney General, judiciary and legal profession supported the initiative and the Justice Review Task Force was created with representatives of the judiciary, Canadian Bar Association, government and Law Society. In 2004, the Task Force appointed a 12-member Civil Justice Reform Working Group to research and address the problems in B.C.’s civil justice system.

This working group, largely made up of experienced senior members of the judiciary and private bar, released its report in November 2006. The working group reviewed reforms being made across Canada, the United States, the United Kingdom, Australia and elsewhere and recommended, among other things, that a new set of Supreme Court rules for civil cases be drafted, based on the principles outlined in the report, and set out below.

A proposed new set of rules was drafted, followed by extensive consultation around the province and via the Internet through 2007. Feedback was received from lawyers, judges, bar associations, law schools, experts, chambers of commerce, business, service clubs, and other organizations. The draft rules were revised based on this feedback. The Rules Revision Committee — composed of private sector lawyers, judges, masters and a government legislative drafter — also reviewed and endorsed the draft.

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The most important principles behind the new rules are proportionality, planning, and focusing on what is in dispute. “Proportionality” means that the amount of time, expense and process involved in resolving a dispute would be proportionate to the dollar amount involved in the dispute, importance of the issues, and complexity of the proceeding.

“Planning” in the context of litigation means that the parties would have to get together and agree on a case plan, with timelines for completion of key events. This is especially important in today’s era of electronically stored information. If the parties cannot agree, they would have to attend a meeting with a judge who will set timelines and decide on a plan for moving the case forward.

“Focusing on what is in dispute” is especially important in modern litigation. Under the existing rules, parties allege a wide array of claims and defences in order to preserve their ability to raise as many issues as possible. The proposed new rules would put some limits on this by requiring parties to sign a statement that they believe the facts alleged are true.

The proposed rules also put reasonable limits on the exchange of documents. The law that determines which documents one has to produce in litigation was formulated in the late 1800s, when typewriters were still in their primitive stages. Applying this rule in the electronic age means that truckloads of documents are exchanged, but rarely used. The new rules would only require the exchange of documents that may be used to prove or disprove a material fact in the case. The new rules would also limit the amount of time that parties may be questioned in oral examinations for discovery. The current rules have no limits.

Finally, the new rules provide that the use of experts would have to be planned. In today’s litigation, experts are often overused, causing large and unnecessary expense.

The Law Society of British Columbia recognizes the need for reform and asked for more time to review the draft rules, as have the Judges of the Supreme Court and others. For this reason, the Justice Review Task Force has extended the consultation period to December 31, 2008.

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For more information about the proposed new rules of civil procedure, please visit www.bcjusticereviewforum.ca/civilrules/. Information about the B.C. Justice Review Task Force is available at www.bcjusticereview.org/.