

A LAWYER'S GUIDE TO SELF-HELP PUBLICATIONS BY CLAS

(B.C. SUPREME COURT CHAMBERS)

Prepared by: David Mossop, Q.C.
Community Legal Assistance Society (CLAS),
Vancouver, British Columbia
September 1st, 2004
[1st Edition]



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Community Legal Assistance Society
Suite 800, 1281 West Georgia Street
Vancouver, B.C.
V6E 3J7
Tel: 604-684-3425
Fax: 604-685-7611
Toll Free: 1-888-685-6222
website: <http://www.clasbc.net/>
website: <http://www2.povnet.org/clas>

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Introduction

The Community Legal Assistance Society (CLAS) has produced four publications for litigants in person appearing in BC Supreme Court Chambers. More are planned. This short article will describe how to access the publications, what is in the publications and finally how members of the profession might use the publications when advising pro bono clients. There is more to it than handing the client a copy.

The publications can be downloaded at:

<http://www2.povnet.org/clas/publications> or <http://www.clasbc.net/>

Contested Chambers Procedures: A Lay Person's Guide

This guide covers how to behave in BC Supreme Court Chambers. It covers such matters as, general information on self representation, how to organize your presentation (introduction, facts, issues, argument, order sought) and other useful topics. One feature is that the guide describes the manner of finding your court room. Here is a quote:

“Go down to the courthouse in plenty of time. There is a list of court cases to be heard for that day with the courtroom assigned. In the Vancouver Courthouse, this list is on the right side of the lobby next to the information booth. The cases are listed on the basis of who is suing whom. The list will give you the courtroom number and the name of the judge or master (some cases are heard by a master). Sometimes the list is very long and the various cases are given numbers 1, 2, 3, 34, 44, etc. You will need this number when you go to the courtroom. If you have trouble locating the list, ask any court official or the security guard.”

Bring a Friend to Court

This short guide deals with having a friend in court. Lawyers forget how terrified we were, the first time we went to chambers as an articling student. Think for a moment how a litigant in person feels attending chambers.

This guide also discusses the concept of “McKenzie Friend”, named after the famous case in England. A litigant in person can have a friend sit with him or her at the counsel table and whisper advice.

The case of *Pelling v Bow County Court* [1999] E.W.J. No. 4027 (see enclosed) explains what a McKenzie Friend is. Lord Woolf, MR states at paragraphs 5-7, the following:

“5 5. The title ‘McKenzie Friend’ draws its name from the decision of the Court of Appeal in *McKenzie v McKenzie* [1971] P 33. The role of a McKenzie Friend was first

recognised in *Collier v Hicks* [1831] 2 B & Ad.663. Lord Tenterden CJ in that case said (at p.669):

‘Any person, whether he be of a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions, and give advice; but no-one can demand to take part in the proceedings as an advocate, contrary to the regulations of the Court as settled by the discretion of the Justices’.

6. *McKenzie v McKenzie* was a contested divorce case. The husband had been legally aided but his legal aid was terminated. At the commencement of the hearing there was sitting beside him an Australian barrister, who was working for one of the firms of solicitors who had been acting for the husband. According to the report he was there ‘voluntarily in order to assist the husband in conducting his case’. The young man could have been of great value to the husband at the hearing of the case which was complicated and lasted some ten days or so. However the judge at first instance did not allow him to remain after he found out that his firm was no longer on the record. The three members of this court (Davies, Sachs and Karminski LJJ) considered that this was a wrong decision. In that case the court was of the opinion that the husband was entitled to the assistance of the McKenzie friend. Sachs LJ in his judgment stated that the error made by the judge did not render the trial a nullity. However he added ‘that where such an error takes place the onus rests on the opposite party to show that it did not cause prejudice’. Sachs LJ also stated:

‘All the assistance a litigant in person gets from a judge and from opposing counsel is not really the same thing as having skilled assistance at his elbow during the whole of a lengthy trial. In those circumstances it has not been shown that there was no prejudice to the husband on the adultery issue through lack of the assistance which he ought to have had. It is moreover always, to my mind, in the public interest that a litigant should be seen to have all available aid on conducting cases in court surroundings, which must of their nature to them seem both difficult and strange.’

Drafting Affidavits: A Lay Person’s Guide

This guide explains the purpose of an affidavit. It also explains how to draft an effective affidavit. A sample affidavit is also provided. Instructions are also given on locating other sample affidavits from the courthouse library and court files.

Preparing A Chambers Record: A Lay Person’s Guide

This guide has two important aspects. First, it deals with what is a chambers record and what has to go in it. Secondly, it provides samples for the lawyer to fill in for the client. A blank cover is provided so that the lawyers can fill it in. Also, a blank index is provided for the lawyer to fill in. Here is a quote:

‘A Chambers Record can be any form of three-ring binder. The binder must be big enough. The court documents should be able to fit easily in the binder with plenty of

wiggle room. For this reason, it is best to use a large width three ring binder. Remember the judge will have the binder on his or her desk. The binder should be able to be open at any tabbed document with ease. We do not want the judge struggling because the documents are squashed into the binder. There is no requirement of a specific colour. The most commonly used colour for binders is black. The binder can be purchased at any school or office supply store. Alternately, you might use one of the kids' spare binders, provided it is clean and big enough. Please do not use Britney Spears or Mickey Mouse binders. Don't short change yourself by using an inadequate binder. The binder is the first opportunity for you to make an impression on the judge."

How To Use These Publications

Lawyers who attend pro bono clinics have another tool to serve their clients. Remember you do not just hand the guide to the client and walk away.

Your attention is drawn to the article *Self-help legal aid: abandoning the disadvantaged?* by Jeff Giddings and Michael Robertson, 12 Consumer Policy Review, 127 @ pp. 128-131:

"The views of legal aid staff

We recently conducted a focus group on self-help at Legal Aid Queensland (LAQ). More than a dozen LAQ and CLC staff participated in two hours of discussions and group work designed to gather feedback and gauge responses to some of our findings from the qualitative research we have undertaken in a funded study on self-help legal services in Australia. ...

The key message we received was that self-help services need to be viewed as part of a broader strategy that also includes advice and, where appropriate, representation. The more specific the material contained in a self-help product, the more important it is than the product is provided on the suggestion of a professional who has been in discussion with the potential user. ... Crucially, the LAQ and CLC staff were more sceptical about the unaccompanied use of self-help services than we had anticipated and their comments were very insightful. ...

Most participants emphasized that they would tell the potential user that the self-help service was part of a strategy rather than being offered as a stand-alone service. Hence, 'used along with advice, this material will help you fill out the forms and help you go to court' or 'they are just a guide, a map that assists clients to navigate their way through a court or tribunal process.' The service is seen only as a guide, which often provides easy access to the relevant application forms for the task or action in question. ...

Self-help services are viewed as useful in reinforcing other advice provided to a client. LAQ staff explained that they will often tailor a self-help kit to the particular

interests and needs of individual clients. They will work through a kit with a client they are seeing face-to-face and highlight particularly important parts of the process outlined in the kit as well as crossing out sections of the kit which are not relevant to that particular client. Self-help services such as kits are seen as useful in breaking down legal issues and transactions into manageable segments which can be addressed by the user, either on their own or, ideally, in conjunction with a legal adviser. ...

LAQ and CLC staff identified that in order to make effective use of self-help services, clients require a high level of literacy and comprehension and also need to want to help themselves and have the confidence to do so. Users of self-help services need both to understand the material provided and be able to effectively pursue their own interests based on their circumstances and the material provided. Literacy and language issues are arguably more significant in legal aid contexts because of the multiple disadvantages many legal aid clients face.

Cultural issues and expectations regarding the role of lawyers can reinforce education-based limitations on the usefulness of self-help. Older people tend not to make use of self-help options. Likewise, people with mental health or intellectual disability issues are clearly not suited to using self-help law materials.

Effective self-helpers were said to be those who were determined, persistent and who had a high level of emotional stability at the relevant time. People might feel that they would usually be able to address a particular legal issue on their own but then find their emotional state at a particular time makes self-help options less viable. Confidence on the part of the self-helper is also important. Unless people believe they have the ability to deal with a matter without a lawyer, it will be difficult for them to address their situation effectively. The flipside of this is that some people are seriously mistaken in expecting to be able to deal with a matter with only a self-help guide. ...”

I agree with those comments, except I do not agree that all people with mental health or intellectual disability issues are not suited to using self-help material. Like everybody else, their ability to use self-help material, should be determined on an individual basis.

Here are suggested guidelines:

1. Verbally go through the guide, emphasising important matters. Scratch out the unimportant and underline the important. For quick reference, check out the checklist that is provided in many of the guides. Some people respond best to verbal information. This method also allows the client to ask questions.
2. Answer the sample questions provided in the guide. Most of the guides have suggested questions that the client should ask the lawyer. Try to provide written answers for the client to remember (space is provided). Most clients forget a lot of what the lawyer said after the client has left the clinic. It is best the client write out the answers as it is easy for them to recognize their own hand writing. Lawyers generally got an “F” in elementary school for writing.

3. Some of the guides have court forms that can be easily filled in for the client and have Express Lanes for quick service.
4. Encourage the client to have a friend accompany him or her to court. Also, where appropriate, encourage the client to come back with a friend to the clinic for further questions if necessary. It is also a good idea to have a client's friend read over the guides. Two heads are better than one.

Conclusion

These publications will be revised from time to time. If you have any comments, criticisms or compliments, please free to e-mail us at drossop@clasbc.net. We need your views.

Finally, we would like to thank the Law Foundation of British Columbia for their continual financial support.