



Law Reform
Commission of
Saskatchewan

Access to Justice – Needy Person Certificates and Waiver of Fees

Final Report

May 2013

As the costs of litigation and other legal services rise, concern about financial barriers to access to justice is increasing. Under *The Queen's Bench Rules*, a potential litigant may, in some circumstances, obtain a waiver of court fees by obtaining a Needy Person Certificate. Needy Person Certificates are useful, but challenges exist respecting their scope and availability under the *QB Rules*. A further challenge is that Certificates are only available to litigants in the Court of Queen's Bench and Court of Appeal. Individual rights are also adjudicated in the Small Claims Court and by boards and tribunals, which have varying policies regarding fee waivers. Responses to the *Consultation Paper* generally affirm that Needy Person Certificates and fee waivers in Saskatchewan need to be updated and expanded. This Final Report sets out the Commission's proposals on improving access to justice for the less advantaged members of our community through fee waivers.

The Law Reform Commission of Saskatchewan was established by *An Act to Establish a Law Reform Commission*, proclaimed in force in November, 1973, and began functioning in February, 1974.

The Commission is incorporated by an Act of the Saskatchewan Legislature. Commissioners are appointed by Order in Council. The Commission's recommendations are independent, and are submitted to the Minister of Justice and Attorney General of Saskatchewan for consideration.

Projects are initiated by the Commission in response to suggestions from the public and the legal community, or at the request of the Minister of Justice and Attorney General. After preliminary research, the Commission usually issues background or consultation papers to facilitate consultation. Tentative Proposals may be issued if the legal issues involved in a project are complex. Upon completion of a project, the Commission's recommendations are formally submitted to the Minister of Justice and Attorney General as final proposals.

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SUMMARY OF RECOMMENDATIONS

Availability of fee waivers

1. Needy Person Certificates and fee waivers should be available to self-represented litigants.
2. Needy Person Certificates and fee waivers should be available at any point in a proceeding.
3. A fee waiver program should be established in Small Claims Court.
4. Administrative tribunals in Saskatchewan that regularly adjudicate matters for members of the public should adopt fee waiver policies for individuals.
5. The fee waiver application policy and process should be the same across all Saskatchewan courts and tribunals.

Qualifying for a fee waiver

6. Fee waiver eligibility should be determined with reference to the Low Income Cut Off (LICO),¹ with flexibility to consider an applicant's extraordinary circumstances.
7. No merit or "reasonable grounds" test should be included in the fee waiver application process.
8. A fee waiver application form should be easy to use, clear and in plain language.
9. A litigant who has qualified for Legal Aid or met the income testing requirements of a Saskatchewan-based pro bono organization, such as Pro Bono Law Saskatchewan (PBLs) or Community Legal Assistance Services for Saskatoon Inner City Inc. (CLASSIC), should automatically qualify for a fee waiver without further application.
10. A fee waiver application should be made directly to a court official or officer of a tribunal.
11. A fee waiver application form should require a declaration of receipt of social assistance or a simple financial statement, with additional proof to be provided only upon request.
12. An applicant for a fee waiver who does not meet the financial eligibility requirement should be entitled to apply for a fee waiver on the basis of extraordinary circumstances to a court official or officer of a tribunal and the application may be referred to the court or tribunal for decision.

¹ Statistics Canada, *Table 18: Low income before tax cut-offs (1992 base) for economic families and persons not in economic families, 2005* (modified 11 December 2007), online: Statistics Canada <<http://www.statcan.gc.ca>> [LICO]. The LICO is the income level at which a family spends 20% more of its income on food, shelter and clothing than the average family and is a frequently used measure of poverty in Canada.

Consistency of fee waivers

13. Courts and tribunals should be responsible for issuing fee waivers for the fees they charge.
14. Court and tribunal staff should be trained about the process and be willing to assist people to fill out the application form.
15. All courts and tribunals should name their fee waiver “[Court/Tribunal] Fee Waiver” (e.g. Court of Queen’s Bench Fee Waiver, Highway Traffic Board Fee Waiver).
16. Education programs and materials should be available to inform people on the availability of, and application process for, fee waivers in Saskatchewan courts and tribunals.

1. INTRODUCTION

Access to the courts has been described as “one of the foundational pillars protecting the rights and freedoms of our citizens.”² In *BCGEU*, Chief Justice Dickson stated: “There cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women who decide who shall and who shall not have access to justice.”³ As the costs of litigation and other legal services rise, concern about financial barriers to access to justice is increasing. In 2006, the Canadian Bar Association (CBA) stated that “advocating for access to justice for poor people” had become its “top priority.”⁴ A report issued by the CBA observed that:

As lawyers, CBA members know that too many people have no access to the rights and protections our laws notionally provide. The poor people who are denied access to justice are the same people who already experience disadvantages of many other kinds, including women, children, people living with disabilities, Aboriginal people, members of racialized minorities, the elderly and refugees.⁵

The problem of access has no simple answers. Changes in procedures to assist unrepresented clients, improvements in legal aid programs, support for legal clinics such as Community Legal Assistance Services for Saskatoon Inner City Inc. (CLASSIC), and encouragement of lawyers who are willing to act *pro bono* are among the strategies that have been identified.⁶ This Final Report discusses, and makes recommendations for, another piece of the search for solutions: fee waivers for individuals unable to pay the costs of litigation.

Court fees are charged when a civil case is initiated by filing the proper documents with the court, and sometimes at later stages in a proceeding.⁷ Under *The Queen’s Bench Rules*, a potential litigant may, in some circumstances, obtain a waiver of court fees by obtaining a Needy Person Certificate.⁸ A Certificate is granted on application to the Saskatchewan Legal Aid Commission if a means test is met and if the applicant “has reasonable grounds for taking or

² *BCGEU v British Columbia (Attorney General)*, [1988] 2 SCR 214 at para 26, Dickson CJC [*BCGEU*] citing *Re Government Employees’ Union* (1985), 20 DLR (4th) 399 at 409 (BCCA).

³ *Supra* note 2 at para 31.

⁴ Canadian Bar Association (CBA), “Canada’s Crisis in Access to Justice” (Submission to the United Nations Committee on Economic, Social and Cultural Rights on the occasion of the consideration of its review of Canada’s Fourth and Fifth Reports on the *Implementation of the International Covenant on Economic, Social and Cultural Rights*, April 2006) at 1, online: CBA <<http://www.cba.org>>.

⁵ *Ibid.*

⁶ See Gaylene Schellenburg, “Access to Justice in Canada: Canadian Bar Association Strategies to Make it Happen,” *Clearinghouse Review: Journal of Poverty Law and Policy* (July-August 2006) 281.

⁷ See e.g. Saskatchewan, *Tariff of Costs*, Schedule II, “A”, “B”.

⁸ Saskatchewan, *The Queen’s Bench Rules*, r 570 [QB Rules]; Saskatchewan, *The Queen’s Bench Rules (2011)*, r 13-43 [new QB Rules](the new QB Rules will come into force on July 1, 2013).

defending or being a party to proceedings.”⁹ A Certificate also relieves the proposed litigant from responsibility for paying the other party’s court costs if the litigation is unsuccessful.¹⁰

Needy Person Certificates are useful, but challenges exist respecting their scope and availability under the *QB Rules*. Certificates are only available to litigants in the Court of Queen’s Bench and Court of Appeal, which is a further challenge. Individual rights are adjudicated in the Small Claims Court and by boards and tribunals, which have varying policies regarding fee waivers.

Court fees may be a bar to access. CLASSIC surveyed its clients to determine how frequently tribunal and court fees were a barrier to pursuing legal avenues:

Of the clients who faced fees, 21% were not able to pursue their matter because they could not afford the fee and no mechanism existed to have the fee waived. It is of significant concern that approximately one-fifth of low-income clients are not able to move forward with meritorious claims because they were not able to afford the fee.¹¹

Legal aid in Saskatchewan is only available for criminal and family law matters, and not to individuals who wish to sue for injury or breach of contract, or who seek other remedies available only in court.¹² CLASSIC provided the Law Reform Commission with two examples of situations in which fees were a barrier for its clients. The first involved an application in the Court of Queen’s Bench:

Ms. W. is an elderly woman whose only source of income is her pension. Her adult son has a brain injury and lives in a care home. Ms. W.’s daughter-in-law is her son’s Personal and Property Guardian, but she has left the country and been neglecting her duties.

Ms. W. wished to pursue Guardianship for her son, to access the funds in his bank account to pay for his medical needs. Her application had a high probability of success. All of their family members indicated that they would consent to the application and a hearing would not be necessary.

When CLASSIC advised Ms. W of the costs associated with the application (which included a \$200 filing fee at the Court of Queen’s Bench), Ms. W instructed us to drop the application. She said she would not be able to find the funds necessary to proceed. Ms. W. was forced to abandon her application because of the costs involved. She advised that she would continue caring for her son on her limited income as she could not afford to become his guardian.¹³

⁹ *Ibid.*

¹⁰ *QB Rules*, *supra* note 8, r 574; *new QB Rules*, *supra* note 8, r 13-47.

¹¹ Letter from Pamela Kovacs, Executive Director of Pro Bono Law Saskatchewan, to Kathleen Robertson and Mike Finley, Chair and Director of Research of the Law Reform Commission of Saskatchewan (January 13, 2009).

¹² “What Services Do We Provide?” (2004-09), online: Saskatchewan Legal Aid Commission <<http://legalaid.sk.ca>>.

¹³ Letter from Amanda Dodge, Executive Director of CLASSIC, to Allan Snell, Q.C., Chief Executive Officer of Legal Aid Saskatchewan [nd].

Fees may be a problem even in Small Claims Court, which is intended to be less expensive to access:

Ms. F lives on social assistance in Saskatoon. She contacted CLASSIC in 2008 for assistance after she slipped and fell at a chain grocery store. After attempting to settle with the grocery store, the supervising lawyer decided the best course of action would be to file a statement of claim with Small Claims Court for the amount of \$20,000.00. The filing fee for such a claim is \$100.00. Although Ms. F had known about the fee for some time, she was unable to gather the funds to pay it. CLASSIC has now lost contact with this client and, unless she contacts CLASSIC of her own volition, will most likely close the file once the limitation date for filing the claim passes.¹⁴

In 2003, the Ontario Divisional Court held that the absence of a statutory mechanism for the waiver or reduction of court fees in Small Claims Court is unconstitutional.¹⁵ As a result, the system for waiving court fees has recently been examined and revised in British Columbia and Ontario.¹⁶

The Law Reform Commission of Saskatchewan issued *Access to Justice – Needy Person Certificates and Waiver of Fees: Consultation Paper* in December 2011.¹⁷ The *Consultation Paper* described Needy Person Certificates and other fee waiver policies in Saskatchewan courts and tribunals. Problems in the present system were identified and discussed. Readers were invited to respond to a series of questions:

1. Should Needy Person Certificates be available to self-represented litigants?
2. Should Needy Person Certificates be available to qualified applicants at any stage in a proceeding?
3. What can be done to increase accessibility to Needy Person Certificates, e.g., by changes in the granting process, improved information services or other strategies?
4. Should the Legal Aid Commission continue to be responsible for issuing Needy Person Certificates?
5. Should a fee waiver program be established in Small Claims Court?

¹⁴ Anecdotal information provided by CLASSIC to Law Reform Commission of Saskatchewan [nd].

¹⁵ *Polewsky v Home Hardware Stores Ltd* (2003), 229 DLR (4th) 308 (Ont Div Ct) (while the prescribed fees were not unconstitutional and a constitutional right of access to the courts does not preclude reasonable user fees, the absence of a statutory mechanism for the waiver or reduction of such fees (in certain limited circumstances) was unconstitutional).

¹⁶ See generally Michael McCubbin, *Waiving Filing Fees in BC Small Claims Court*, (Community Legal Assistance Society, February 2011); Legal Services Society, *How to get an indigency order in Supreme Court*, online: Family Law in British Columbia <<http://www.familylaw.lss.bc.ca>>; Ontario Ministry of the Attorney General, *Court Fee Waiver Guide and Forms*, online: <<http://www.attorneygeneral.jus.gov.on.ca>>.

¹⁷ Law Reform Commission of Saskatchewan (LRCS), *Access to Justice – Needy Person Certificates and Waiver of Fees: Consultation Paper* (December 2011), online: LRCS <www.lawreformcommission.sk.ca> [*Consultation Paper*].

6. Should administrative tribunals in Saskatchewan be required to adopt a fee waiver policy?

7. Should the means test for fee waivers be determined by reference to:

- (a) criteria for determining eligibility for legal aid?
- (b) receipt of social assistance or similar benefits?
- (c) the Low Income Cut Off (LICO)?
- (d) other criteria?

The Commission received comments from a tribunal, pro bono organizations, a refugee/immigrant support organization, and interested individuals. We thank all those who contributed to this project, either by providing research for, or responding to, the *Consultation Paper*.

Responses to the *Consultation Paper* generally affirm that Needy Person Certificates and fee waivers in Saskatchewan should be updated and expanded. This Final Report sets out the Commission's proposals on improving access to justice for the less advantaged members of our community through fee waivers.

2. NEEDY PERSON CERTIFICATES AND FEE WAIVERS IN SASKATCHEWAN

2.1. Needy Person Certificates

At common law, a person unable to bring a civil action because of poverty was entitled to sue *in forma pauperis*.¹⁸ Needy Person Certificates were adopted to regulate this ancient protection for indigent litigants. The mechanics for granting Certificates were included in the Rules of the Court of Queen's Bench in 1942.¹⁹ Order XLVII of the 1942 Rules contained rules relating to "Proceedings by and against needy persons," which were adopted from English and Alberta rules.²⁰ Under this system, Certificates were "issued by the Law Society of Saskatchewan after enquiry by a committee appointed by the Law Society... [and] signed by two members of the

¹⁸The *Statute of Henry VII*, 1495 (UK), c 12, established rules for suing *in forma pauperis*, but the practice of waiving fees appears to predate the statute. The purpose of allowing someone to proceed *in forma pauperis* was to allow those that were truly indigent and had meritorious claims or defences a right to justice. To this end, practice under the statute established a "but for" test: if, but for a reduction or waiver of the fees, the prospective litigant would not be able to access the court, the relief was granted by the court.

¹⁹ *The Revised Rules of Court of the Province of Saskatchewan* (1942) [1942 Rules].

²⁰ *Ibid*, marginal notes.

committee present at the enquiry.”²¹ Applications were received by local legal aid committees composed of volunteer lawyers. The final decision was at the discretion of a committee of Benchers of the Law Society that had to be satisfied that the applicant was indigent and had a reasonable likelihood of success. In other respects, the 1942 Rules were similar to those now in force.

The most significant change to the rules occurred when publicly-funded legal aid was introduced in 1974. The Community Legal Services Commission (the precursor to the Legal Aid Commission) was assigned the task of receiving applications and granting Needy Person Certificates, formerly the responsibility of the Law Society.²² It appears to have been assumed that legal aid would make the Certificates largely unnecessary to assist needy individuals to gain access to court. Rather, once eligibility for legal aid had been determined, the lawyer handling the file would be issued a Needy Person Certificate as a matter of course, used to defray the costs incurred by the legal aid program. Since issue of a Certificate was tied in practice to determination of eligibility for legal aid, the Commission was given responsibility for Needy Person Certificates.

Since 1974, the scope of legal aid has been significantly reduced. As a result, the Legal Aid Commission now administers applications for Needy Person Certificates made both by individuals eligible for legal aid and by individuals who meet the means test, but are not eligible for legal aid.

Needy Person Certificates are now governed by Part 47 of the *QB Rules*, entitled “Proceedings by and against needy persons.”²³ These rules apply to civil actions initiated in the Court of Queen’s Bench, and, under rule 581, with leave of the Court of Appeal a Needy Person Certificate will remain in effect on appeal. Certificates are issued by the Saskatchewan Legal Aid Commission, and a Certificate “certifies”:

- (1) that the needy person named therein is in indigent circumstances;
- (2) that such person has reasonable grounds for taking or defending or being a party to proceedings;
- (3) the name and address of the solicitor who has been nominated and has consented to conduct the proceedings on behalf of the needy person (hereinafter called the “conducting solicitor”); and

²¹ *Ibid*, r 586.

²² *Consolidated Rules of Court of the Province of Saskatchewan*, r 570 (1981).

²³ *Supra* note 8, r 569-582. See also *new QB Rules*, *supra* note 8, r 13-42 – 13-55. Although the rules in this Part have been reworded, they remain the same in content.

(4) that there are reasonable and proper grounds for believing that the applicant may recover under execution, or obtain other substantial benefit or remedy under any judgment or order which may be made in the proceedings.²⁴

Rule 569 requires that the applicant reside in Saskatchewan.

Although the Legal Aid Commission is given discretion to determine eligibility for a Needy Person Certificate, the court retains a supervisory function:

The court may at any time (and whether or not any application be made by the Law Society or by any person for that purpose) discharge the certificate and direct it to be taken off the file, and the needy person shall not thereafter have the benefit of the certificate...²⁵

The *QB Rules* appear to require that a Needy Person Certificate be obtained before an action is commenced and be filed in court.²⁶ Thereafter, when it is produced by the conducting solicitor, court fees will be waived. In addition, “the needy person shall not be required to pay costs to any other party, except as provided by these rules,” and the conducting solicitor may not charge any fees to his or her needy client.²⁷ However, if the needy person recovers money or costs in the proceedings, costs and fees may become payable and the Certificate may be discharged.²⁸

An unusual aspect of the Needy Person Certificate rules is the limitations placed on the solicitor-client relationship. Leave of the court or of the Legal Aid Commission is required for the needy person to discharge his or her solicitor, for the solicitor to withdraw, or to discontinue or settle a proceeding.²⁹

2.2. Fee waivers in other courts and tribunals

Needy Person Certificates are available only in the Court of Queen’s Bench and the Court of Appeal, undoubtedly since the Certificates evolved from the ancient *in forma pauperis* proceedings in the English High Courts. In Saskatchewan today, justice is also administered in the Provincial Court and by a wide range of tribunals. As the Law Reform Commission has previously noted:

²⁴ *QB Rules*, *supra* note 8, r 570.

²⁵ *Ibid*, r 575(1).

²⁶ *Ibid*, r 571.

²⁷ *Ibid*, r 574.

²⁸ *Ibid*, r 578.

²⁹ *Ibid*, r 576.

Boards, commissions, and review panels have become an important part of the administration of justice in Saskatchewan. These “administrative tribunals” make decisions in a wide range of cases affecting Saskatchewan residents and businesses. Nearly fifty tribunals adjudicate disputes between citizens and government agencies.³⁰

Fee waiver policies analogous to those in place in the superior courts would be appropriate in Provincial Court and many tribunals, particularly those that deal frequently with needy applicants. However, a survey of Saskatchewan tribunals undertaken by the Law Reform Commission shows no consistency in fee waiver policies.

Some tribunals do not charge fees, including several that often receive applications from individuals with scant financial resources, such as the Workers’ Compensation Board and Social Services appeal tribunals. However, even in these cases there may be fees related to appeals to the courts.

Some tribunals, such as the Office of Residential Tenancies, waive fees for applicants on social assistance. Availability of the fee waiver is noted on the forms provided by the Office.³¹ Others, such as the Automobile Injury Appeal Commission (AIAC), will waive fees on grounds of “substantial hardship” or similar criteria. Although “substantial hardship” is not defined, the AIAC requires applicants for a fee waiver to make extensive financial disclosure of benefits received, income, assets and living expenses.³²

The Provincial Court of Saskatchewan does not have a fee waiver policy, nor do many Saskatchewan tribunals, including some that frequently deal with needy applicants:

Tribunals that frequently receive applications from needy persons

<i>Tribunal/Appeal Board</i>	<i>Fees Associated with Claim</i>	<i>Information</i>
Automobile Injury Appeal Commission	\$75	This fee may be waived if it will cause substantial hardship for the claimant. The AIAC will refund the fee if the appeal is successful.

³⁰Law Reform Commission of Saskatchewan, *Model Code of Administrative Procedure for Saskatchewan Administrative Tribunals* (October 2005) at i.

³¹*The Residential Tenancies Regulations, 2007*, RRS, c R-22.0001, Reg 1. The Office’s website notes that “the fee is waived for anyone who is on social assistance or receives an Old Age Security Income Supplement.” In addition, there is “no fee for a tenant to apply for a return of security deposit.” See Office of Residential Tenancies <<http://www.justice.gov.sk.ca/ORT>>.

³²See *Certificate of Substantial Hardship*, online: Automobile Injury Appeal Commission <<http://www.autoinjuryappeal.sk.ca/subhardship>>.

Highway Traffic Board	\$25	The fee may be refunded if the appeal is successful.
Labour Relations Board (Duty of Fair Representation complaints)	No fee	While there is no fee, the application form must be commissioned or notarized at an average cost of \$25 to \$50.
Office of Residential Tenancies	\$50	An application by a tenant for return of a security deposit incurs no fee. A \$50 fee is charged for any other application. Fees are waived for recipients of social assistance or Old Age Security Income Supplement.

3. FEE WAIVERS IN OTHER JURISDICTIONS

3.1. Ontario

The fee waiver process in Ontario is governed by the *Administration of Justice Act*³³ and the *Fee Waiver* regulations.³⁴ The regulations and the amendments to the Act came into effect on January 29, 2005, following the Divisional Court’s decision in *Polewsky*.³⁵ The fee waiver applies to most fees in civil and small claims court proceedings, and family law cases. The fee waiver does not apply to lawyers’ fees, and some court fees cannot be waived, including:

- transcript fees and other fees to court reporters and monitors;
- official examiners’ fees;
- fees and allowances to witnesses;
- fees to mediators for civil mandatory mediation (these fees may be waived under the Mandatory Mediation Program’s Access Plan);
- fees to mediators in estates, trusts and substitute decisions cases;
- fees to mediators for family mediation services;
- fees relating to criminal matters;
- disbursements to the sheriff for enforcement of orders (except for enforcement of an order made under subsection 35(3) of the *Tenant Protection Act*, 1997);
- federal Central Registry of Divorce Proceedings fee;
- fees for service of documents;
- fees for bankruptcy proceedings under the Bankruptcy and Insolvency Act; and
- costs ordered to be paid to another party.³⁶

³³ RSO 1990, c A.6, s 4.1-4.9.

³⁴ O Reg 2/05.

³⁵ *Supra* note 15.

³⁶ *Fee Waiver*, *supra* note 34, s 3.

Fee waiver is not available if the litigant’s court and/or enforcement fees are being paid by Legal Aid Ontario or are being paid by a lawyer under a contingency fee agreement.³⁷ A fee waiver may be requested at any time: before the case has started, at any time after it has started, or at the enforcement stage.³⁸

The individual (not a business or an organization) requesting a fee waiver must be a party in a case or intend to be a party. If the party is being represented by a litigation guardian or special party representative, the guardian or representative must complete a different application form.³⁹ A fee waiver may be requested in two ways:

- if a litigant qualifies under the financial eligibility criteria, the litigant may apply for fee waiver to the registrar or clerk of the court,⁴⁰ or
- if a litigant does not qualify under the financial eligibility criteria but believes his or her fees should be waived, the litigant may apply to the court.⁴¹

The financial eligibility criteria set out in the *Fee Waiver* regulation are:⁴²

1. The primary source of household income is one or more of:

- income assistance from Ontario Works;
- income support from the Ontario Disability Support Program;
- Family Benefits Act allowance;
- Old Age Security Pension together with the Guaranteed Income Supplement;
- War Veterans Allowance; or
- Canada Pension Plan benefits.

OR

2. The household income and assets are below the following cut-offs:

<i>Number of persons in household</i>	<i>Gross monthly household income</i>
1	\$1,500
2	2,250
3	2,583
4	3,083

³⁷ *Ibid*, s 4.

³⁸ *Administration of Justice Act*, *supra* note 33, s 4.3(2).

³⁹ *Fee Waiver*, *supra* note 34, s 7.

⁴⁰ *Administration of Justice Act*, *supra* note 33, s 4.3.

⁴¹ *Ibid*, s 4.4.

⁴² *Fee Waiver*, *supra* note 34, s 2, 6.

5 or more	3,583
Household liquid assets: \$1,500	
Household net worth: \$6,000	

There is no charge to request a fee waiver.⁴³ If a fee waiver is denied, a litigant may reapply when his or her financial circumstances change.⁴⁴

3.2. British Columbia

The fee waiver process in British Columbia is set out in the *Supreme Court Civil Rules*, rule 20-5, and is referred to as an “indigency order.”⁴⁵ An indigency order covers only the fees set out in Schedule 1 of Appendix C to the *Supreme Court Civil Rules* and *Supreme Court Family Rules*. The rules provide that if the applicant:

- receives benefits under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*, or
- is otherwise impoverished, and
- the court does not find that the claim or defence:
 - discloses no reasonable claim or defence, as the case may be,
 - is scandalous, frivolous or vexatious, or
 - is otherwise an abuse of the process of the court,

then the court may order that no fee is payable by the person to the government under Schedule 1 of Appendix C in relation to the proceeding.⁴⁶ The scope of the fee waiver rule was recently enlarged by the British Columbia Court of Appeal:

The enlarged scope of the exemption in Rule 20-5, then, should be read as saying “impoverished or in need”. The phrase is intended to cover those who could not meet their everyday expenses if they were required to pay the fees. Courts will continue to use their discretion to determine whether a litigant is impoverished or in need to the point that but for the hearing fees, they would be able to pursue their claim, thus qualifying for an exemption.⁴⁷

In order to prove that the litigant is “impoverished or in need” the litigant must file an *Affidavit*

⁴³ *Administration of Justice Act*, *supra* note 33, s 4.9.

⁴⁴ Ministry of the Attorney General, *A Guide to Fee Waiver Requests* (Queen’s Printer for Ontario, 2005) at 3.

⁴⁵ British Columbia, *Supreme Court Civil Rules*, r 20-5. The *Small Claims Rules*, BC Reg 261/93, s 20(1), allow for fee waiver applications but do not set out the factors or process in detail.

⁴⁶ *Ibid*, r 20-5(1).

⁴⁷ *Vilardell v Dunham*, 2013 BCCA 65 at para 41.

in Support of Indigent Application that includes information about the applicant’s income, expenses, assets, and debts, past or future employment, education status, and workplace skills.⁴⁸

An indigency order may apply to a proceeding generally, any part of a proceeding, a specific period of time, or one or more particular steps in a proceeding.⁴⁹ There is no charge to request an indigency order. If the litigant’s financial circumstances change, the court may revoke the order on application or on the court’s own motion.⁵⁰

4. AVAILABILITY OF FEE WAIVERS

4.1. Self-represented litigants

In order for the Legal Aid Commission to issue a Needy Person Certificate, the *QB Rules* require the applicant to have a “solicitor who has been nominated and has consented to conduct the proceedings on behalf of the needy person” (a “conducting solicitor”).⁵¹ The conducting solicitor must file the Certificate with the court, and is required to sign “[e]very notice of motion, summons or petition” on behalf of the needy person and ensure that no application is made without reasonable cause.⁵² The rules require leave of the court or of the Legal Aid Commission for the needy person to discharge his or her solicitor, for the solicitor to withdraw, or to discontinue or settle a proceeding.⁵³ The rules intimately tie the conducting solicitor to the ongoing conduct of the needy person’s proceeding. Thus, the Legal Aid Commission administers Needy Person Certificates but cannot provide them to unrepresented litigants.

In order to make Certificates more accessible, the Legal Aid Commission and CLASSIC have endeavored to develop a protocol allowing the Commission to issue Certificates to clients of CLASSIC and other *pro bono* counsel.⁵⁴ Even if Certificates are made more accessible for represented clients, the current system will be adequate only if there are enough lawyers taking on cases *pro bono*. If Needy Person Certificates are not available to all needy litigants in

⁴⁸ *Ibid*, r 20-5(3), Form 80.

⁴⁹ *Ibid*, r 20-5(2).

⁵⁰ *Ibid*, r 20-5(4).

⁵¹ *Supra* note 8, r 570.

⁵² *QB Rules*, *supra* note 1, r 571, 579.

⁵³ *Ibid*, r 576.

⁵⁴ Letter from Amanda Dodge, Executive Director, CLASSIC to Gerald Tegart, Deputy Minister of Justice, Saskatchewan Ministry of Justice (7 December 2009) [Letter from CLASSIC].

Saskatchewan, the decision of the Ontario Divisional Court in *Polewsky* may invite a constitutional challenge.⁵⁵

The legislation in both British Columbia and Ontario provide for fee waivers for litigants who cannot afford to pay, whether or not they are represented by a lawyer.⁵⁶

Each respondent to the *Consultation Paper* who addressed this question indicated that self-represented litigants should have access to Needy Person Certificates. Self-representation is becoming the only option for many litigants, given the cost of legal services and the limited scope of legal aid. Often, a litigant who cannot afford a lawyer also cannot afford the court fees associated with seeking their legal remedy, including the filing fee to commence an action. Limiting the availability of fee waivers to those who qualify for Legal Aid or can obtain pro bono representation is a significant barrier to many attempting to access justice.

In its response, Pro Bono Law Saskatchewan (PBLs) noted that the need for pro bono counsel far exceeds its availability. The vast majority of people assisted by PBLs receive summary advice through a free legal clinic so that they can better self-represent. In 2010, PBLs was able to match 123 clients with pro bono counsel while 926 self-represented individuals received summary advice at a free legal clinic. Meeting the demand for even summary advice is a constant challenge for PBLs. Another respondent suggested that this is a tangible access to justice issue: The existence of fees to access justice systems creates a significant and, in some cases, insurmountable barrier to the adjudication of claims.

Recommendation

1. Needy Person Certificates and fee waivers should be available to self-represented litigants.

4.2. Timing

A Needy Person Certificate must be filed in advance of any proceedings.⁵⁷ This precludes lawyers from filing Certificates on behalf of *pro bono* clients if they do not become involved with the proceeding until after it is initiated. Both British Columbia and Ontario allow for fee

⁵⁵ *Supra* note 15.

⁵⁶ British Columbia: *Supreme Court Civil Rules*, *supra* note 45; Ontario: *Administration of Justice Act*, *supra* note 33, *Fee Waiver*, *supra* note 34.

⁵⁷ *QB Rules*, *supra* note 8, r 571.

waiver applications to be made at any point during a proceeding.⁵⁸

Respondents to the *Consultation Paper* who addressed this issue indicated that a Needy Person Certificate should be available at any stage in a proceeding. Respondents suggested that a restriction on when, during a proceeding, a Certificate is available may prevent a litigant from pursuing his or her matter in the event his or her financial situation changes.

CLASSIC suggested that the combination of short limitation periods with the challenge of accessing free legal advice is another reason to make Certificates available at any point in a proceeding. For example, the time to file an appeal to the Court of Queen’s Bench of a decision of the Office of Residential Tenancies is only 30 days. However, there are waitlists to access the free legal clinics in the province. Low-income litigants may have to wait over a month before they can speak to a volunteer lawyer, or over two months to be granted pro bono counsel. In such a case, the limitation period expires before the litigant can speak to a lawyer to arrange an application for a Needy Person Certificate. CLASSIC further noted that “[i]f the impetus for reform is to increase access to justice systems, it seems counter-intuitive that an eligible party would be barred due to an arbitrary time restriction placed on that access.”

Recommendation

2. Needy Person Certificates and fee waivers should be available at any point in a proceeding.

4.3. Small Claims Court

Needy Person Certificates are available in the Court of Queen’s Bench and the Court of Appeal.⁵⁹ However, there is no fee waiver policy in the Provincial Court. When the jurisdiction of the Provincial Court was confined largely to criminal cases, this was not a significant issue. However, the Small Claims Court now handles claims of up to \$20,000.⁶⁰ Since the Small Claims Court was created as a less expensive, more accessible alternative to the Court of Queen’s Bench, the absence of a fee waiver policy is particularly problematic. The minimum fee for filing a claim in the court is \$20.⁶¹ As CLASSIC noted:

While these fees may not be considered significant to a middle income earner, to those

⁵⁸ British Columbia: *Supreme Court Civil Rules*, *supra* note 45, r 20-5(2); Ontario: *Administration of Justice Act*, *supra* note 33, s 4.3(2).

⁵⁹ *QB Rules*, *supra* note 8, r 569, 581.

⁶⁰ *The Small Claims Act, 1997*, SS 1997, c S-50.11, s 3; *The Small Claims Regulations, 1998*, RRS, c S-50.11, Reg 1, s 3.

⁶¹ *Ibid*, s 4.

living in poverty even a \$20 fee can be insurmountable. Many of our clients living on social assistance or other forms of income support (e.g. pension) can earn less than \$1,000 per month. Their income is quickly consumed by their basic necessities. After paying rent, utilities and groceries, our clients often have no disposable income that can be put towards legal fees.⁶²

The Ontario fee waiver system, following *Polewsky*, now extends to Ontario's Small Claims Court.⁶³ British Columbia's Small Claims Court provides for fee waivers.⁶⁴

All of the respondents who addressed this question agreed that a fee waiver program should be established in Saskatchewan's Small Claims Court. The Small Claims Court's current sliding scale system to determine filing fees does not reflect the means of the litigants, but rather the remedy sought. As a result, fees continue to act as a barrier to accessing justice at the Small Claims Court. In view of the *Polewsky* decision that the absence of a statutory mechanism for waiver or reduction of fees in the Ontario Small Claims Court is unconstitutional, there may be a positive obligation to institute a fee waiver program.⁶⁵

Recommendation

3. A fee waiver program should be established in Small Claims Court.

4.4. Tribunals

Administrative tribunals make decisions in a wide range of cases affecting Saskatchewan residents and businesses. Approximately fifty tribunals adjudicate disputes between citizens and government agencies.⁶⁶ Fee waiver policies analogous to those recommended for the courts would be appropriate in many of these tribunals, and particularly in those that deal frequently with low-income individuals. However, a survey of Saskatchewan tribunals undertaken by the Law Reform Commission shows no consistency in tribunal fee waiver policies.⁶⁷

In a submission to the Ministry of Justice in 2009, CLASSIC recommended that fee waivers be available in all tribunals and courts and that a uniform policy be adopted in place of the variety

⁶² Letter from CLASSIC, *supra* note 54.

⁶³ *Administration of Justice Act*, *supra* note 33, s 1.

⁶⁴ *Small Claims Rules*, *supra* note 45, s 20(1).

⁶⁵ *Polewsky*, *supra* note 15.

⁶⁶ Law Reform Commission of Saskatchewan, *supra* note 30 at i.

⁶⁷ See discussion in Part 2.2.

of approaches now in place.⁶⁸ All of the *Consultation Paper* respondents who addressed this question agreed that administrative tribunals in Saskatchewan should adopt fee waiver policies. Some suggested that not only should all administrative tribunals adopt a fee waiver policy, but the policy should be consistent among all tribunals and courts.

The policy variation in application and qualification for a fee waiver at a court or tribunal creates an unpredictable and unfair scenario for low-income applicants. In its response, CLASSIC gave the following example: “the same person may be affected by decisions of both Social Services and SGI. In one scenario, enforcing their right to appeal is free, whereas in another scenario, it will cost \$75. To a social assistance recipient receiving a basic monthly allowance of \$215, a \$75 fee will be wholly unaffordable. That person is therefore likely to abandon the expensive appeal route.”

Over 300 boards, commissions and agencies exist in Saskatchewan. The need for a fee waiver policy for tribunals regularly accessed by members of the public (e.g. the Office of Residential Tenancies) is much greater than for tribunals that adjudicate matters between mainly government agencies and corporations (e.g. provincial utilities regulation or the Saskatchewan Financial Services Commission). A more practical approach may require fee waiver policies for those tribunals regularly accessed by members of the public, and to limit fee waivers to individuals, not businesses or corporations. Consistent fee waiver policies would reduce the confusion and uncertainty in the fee waiver process for low-income individuals.

Recommendations

4. Administrative tribunals in Saskatchewan that regularly adjudicate matters for members of the public should adopt fee waiver policies for individuals.

5. The fee waiver application policy and process should be the same across all Saskatchewan courts and tribunals.

⁶⁸ Letter from CLASSIC, *supra* note 54.

5. QUALIFYING FOR A FEE WAIVER

5.1. Measurement of need

In practice, when the Legal Aid Commission considers an application for a Needy Person Certificate, it applies the means test for legal aid. Eligibility is usually limited to persons in receipt of social assistance or who qualify for social assistance.⁶⁹ In addition, the Commission has discretion in cases of “undue hardship.”⁷⁰ An applicant not in receipt of social assistance will usually qualify if net family income is at or below the level set out in an income grid adopted by the Commission. The cut-off income presumably reflects social assistance eligibility.

While this approach makes qualification for legal aid and qualification for Certificates consistent, it may not be entirely appropriate. The eligibility requirement for legal aid may not be broad enough to meet the need. Fee waivers may be a relatively inexpensive way to make the courts more accessible. In addition, simplification of the application process might help make Certificates more accessible. A straightforward means test would further this goal.

In 2009, CLASSIC recommended to the Ministry of Justice that all courts and tribunals should waive fees if the applicant is on social assistance or has an income below the low income cut-off (LICO) level set by Statistics Canada.⁷¹ CLASSIC also recommended avoiding policies requiring an applicant to prove “undue hardship.” This formula would cover a larger number of people than the legal aid means test. For example, the LICO in Saskatoon is currently \$17,895 per annum for an individual without dependants.⁷² The cut-off set by the Legal Aid Commission in the same situation is \$11,820.⁷³

The Ontario fee waiver legislation adopts an approach similar to the Saskatchewan Legal Aid Commission. Qualified individuals are those whose income is restricted to Ontario social assistance (Family Benefits Program, Disability Supports Program), government pensions (Old Age Security, Guaranteed Income Supplement, Canada Pension Plan, Veterans Allowance) or whose family income falls below a cut-off set out in a table in the regulations.⁷⁴ However, the

⁶⁹ Defined as financial assistance received from the Government of Saskatchewan's Social Assistance Program (SAP), or through a Band from the Indian & Northern Affairs Canada Income Assistance program: *Am I Eligible?*, online: Legal Aid Saskatchewan <<http://69.27.116.234/index.php>>.

⁷⁰ *The Legal Aid Regulations, 1995*, RRS, c L-9.1, Reg 2, s 3(2)(b)(ii).

⁷¹ *Supra* note 1.

⁷² *Ibid.*

⁷³ *Am I Eligible?*, *supra* note 69.

⁷⁴ *Fee Waiver*, *supra* note 34, s 6.

cut-off set in Ontario is closer to the LICO than its Saskatchewan counterpart.⁷⁵ In British Columbia, if an applicant receives benefits under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*, they are not required to file a financial statement, but they must still show that their claim has merit.⁷⁶

The *Consultation Paper* respondents who addressed this issue agreed that the LICO is the most appropriate measure for fee waiver eligibility, because it is an accurate, reasonable and reliable measure of where the poverty line falls in Canada. Social assistance rates in Saskatchewan, despite some recent increases, are still quite low. Many low-income earners' incomes exceed social assistance rates, yet they are still poor and struggle to obtain the basic necessities of life. Using a threshold that reflects market forces vis-à-vis household income would address this issue.

Many respondents suggested that, in addition to the LICO, the fee waiver policy should incorporate flexibility to consider an applicant's extraordinary circumstances. Examples included socio-economic barriers that prevent the applicant from being able to work, physical or mental disability, physical or mental illness, sudden personal emergency (e.g. accident), or extraordinary medical costs.

Recommendation

6. Fee waiver eligibility should be determined with reference to the Low Income Cut Off (LICO), with flexibility to consider an applicant's extraordinary circumstances.

5.2. Reasonable grounds

A Needy Person Certificate certifies that the applicant has "reasonable grounds for taking or defending or being a party to proceedings."⁷⁷ As a result, the Saskatchewan Legal Aid Commission must assess the merit of an applicant's action before issuing a Certificate, even if the applicant has met the income test. In Ontario, if an applicant does not meet the financial eligibility criteria he or she may apply to a judge (instead of the clerk or registrar of the court)

⁷⁵ The cut-off for a person without dependants is set by the regulation at \$18,000 per annum: *ibid*. This is slightly above LICO in smaller communities but below LICO in cities with populations of 500,000 or more: LICO, *supra* note 1.

⁷⁶ *Supreme Court Civil Rules*, *supra* note 45, r 20-5(1). The financial statement must provide evidence that the applicant is otherwise impoverished or in need.

⁷⁷ *QB Rules*, *supra* note 8, r 570.

for a fee waiver.⁷⁸ In addition to finding financial need, the court must find that the applicant's part in the proceeding "is not frivolous, vexatious or otherwise an abuse of the process of the court," before issuing a fee waiver.⁷⁹ The court in British Columbia must make a similar determination of merit on all fee waiver applications.⁸⁰

None of the respondents who addressed this issue supported a requirement that a fee waiver applicant prove that his or her matter has merit. They suggested that a merit requirement complicates the application process and is discriminatory, imputing bad faith on the part of the poor. Litigants who can afford legal counsel and the filing fee are able to file their pleadings without this scrutiny. Regardless, all litigants may be subject to a court's assessment of the merit of their claim on a rule 173 application.⁸¹ This rule empowers the Court to dismiss baseless claims and to penalize offending parties with costs.

One respondent commented that for some litigants, the deterrent aspect of a fee may be the only thing preventing them from bringing successive unmeritorious claims to the courts. The respondent suggested a process whereby the granting of a fee waiver could be challenged by the litigant on the other side of a proceeding on the basis of the merit of the proceeding, or if the litigant on the other side was aware of undisclosed financial information which would affect eligibility. A process to challenge the merit of an action is unnecessary in the Court of Queen's Bench because of rule 173, but the Commission invites careful consideration of whether such a process should be available in other courts and tribunals.

Recommendation

7. No merit or "reasonable grounds" test should be included in the fee waiver application process.

⁷⁸ *Administration of Justice Act*, *supra* note 33, s 4.4.

⁷⁹ *Ibid*, s 4.4(7).

⁸⁰ *Supreme Court Civil Rules*, *supra* note 45, r 20-5(1).

⁸¹ *QB Rules*, *supra* note 8; *new QB Rules*, *supra* note 8, r 7-9.

5.3. Evidence of need

In order to qualify for a Needy Person Certificate, an applicant must prove receipt of social assistance or meet Legal Aid Saskatchewan’s income grid.⁸² The grid is based on net income and family size. Applicants must provide proof of all sources of household income and assets.⁸³

In Ontario, those applicants who meet the financial eligibility criteria need only file a simple, sworn, application with the clerk or registrar of the court.⁸⁴ If applying to the court (because they do not meet the financial eligibility criteria), the litigant must submit a fee waiver request form, an affidavit in support of the request, a financial statement, and either the first document filed or to be filed in the proceeding that sets out the litigant’s position, or a copy of the order to be enforced.⁸⁵

In British Columbia, a fee waiver applicant may only apply to the court, and must file a requisition, a draft order, and an affidavit.⁸⁶ The affidavit must include exhibits:

- proof of benefits under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with a Disabilities Act*, or
- a financial statement, and
- a description of the applicant’s educational and employment history,
- a description of the applicant’s workplace skills, and
- a copy of the document that the litigant wishes to file or to proceed with.⁸⁷

Respondents to the *Consultation Paper* were strongly in favour of a simple application process with limited evidence requirements. The Commission has recommended that the LICO be used to determine eligibility for a fee waiver. One respondent commented that “a litigant should not have to be income tested twice.” If a litigant has qualified for Legal Aid or met the income testing requirements of PBLs or CLASSIC, either of which could be established through correspondence from the agency in question, then that litigant should automatically qualify – without further application – for a fee waiver.

Litigants who have not already been income tested could apply to a court official or officer of

⁸² *Am I Eligible?*, *supra* note 69. The Saskatchewan Legal Aid Commission has discretion in cases of “undue hardship”: *The Legal Aid Regulations, 1995*, *supra* note 70, s 3(2)(b)(ii)

⁸³ *Am I Eligible?*, *supra* note 69.

⁸⁴ *Administration of Justice Act*, *supra* note 33, s 4.3(1); Ministry of the Attorney General, *supra* note 44 at 7-8.

⁸⁵ *Administration of Justice Act*, *supra* note 33, s 4.4(1); Ministry of the Attorney General, *supra* note 44 at 9-15.

⁸⁶ *Supreme Court Civil Rules*, *supra* note 45, r 20-5(3).

⁸⁷ *Ibid*, Form 80.

the tribunal (for example, a court clerk for the Court of Queen’s Bench) for a fee waiver. The application could be an affidavit in which applicants must declare that they receive social assistance or, if not, applicants must complete a simple financial statement (similar to Ontario). If the financial statement establishes that the applicant’s income falls below the LICO, a fee waiver would be granted. Respondents suggested that proof of income should not be required, as applicants may have difficulty obtaining the requisite documents. However, a notice could be included on the application form that by submitting the application, the litigant agrees to provide proof of the information on the form if asked by the court or tribunal.⁸⁸

Litigants who do not meet the financial eligibility criteria could apply to a court official or officer of the tribunal for a fee waiver on the basis of their extraordinary circumstances. The officer could choose to refer an extraordinary circumstances application to the court or tribunal.

Recommendations

- 8. A fee waiver application form should be easy to use, clear and in plain language.**
- 9. A litigant who has qualified for Legal Aid or met the income testing requirements of a Saskatchewan-based pro bono organization, such as Pro Bono Law Saskatchewan (PBLs) or Community Legal Assistance Services for Saskatoon Inner City Inc. (CLASSIC), should automatically qualify for a fee waiver without further application.**
- 10. A fee waiver application should be made directly to a court official or officer of a tribunal.**
- 11. A fee waiver application form should require a declaration of receipt of social assistance or a simple financial statement, with additional proof to be provided only upon request.**
- 12. An applicant for a fee waiver who does not meet the financial eligibility requirement should be entitled to apply for a fee waiver on the basis of extraordinary circumstances to a court official or officer of a tribunal and the application may be referred to the court or tribunal for decision.**

⁸⁸ See e.g. Ministry of the Attorney General, *supra* note 44 at 8.

6. CONSISTENCY OF FEE WAIVERS

6.1. Administration

The Legal Aid Commission administers applications for Needy Person Certificates made both by individuals eligible for legal aid and by individuals who meet the means test, but are not eligible for legal aid. In the result, very few Certificates are issued to people who are not legal aid clients:

Currently, 99.9% of such certificates are provided to Legal Aid counsel or private counsel contracted under contract with Legal Aid; the remainder (1-2 per year) are granted to private Bar counsel in other cases...it may be that raising awareness among the profession regarding the certificates may encourage counsel to take on more *pro bono* cases.⁸⁹

Although CLASSIC was granted permission to seek and obtain Needy Person Certificates from the Legal Aid Commission, it has done so only a handful of times given the restriction of its services to student-appropriate matters (generally Provincial Court and administrative tribunals).⁹⁰

The role of the Saskatchewan Legal Aid Commission under the Needy Person Certificate rules creates other problems. In 1998, the Chair of the Legal Aid Commission stated that:

The Legal Aid Commission would like to get out of the position as gatekeeper for Needy Person's Certificates. It has become onerous, requiring the Commission to obtain legal advice, defend its decision to grant Needy Person's Certificates in court, and in appeal to the Court of Appeal, and also obtain counsel to defend its decision not to grant Needy Person's Certificates. One of the last ironies is that when we determine that a client is no longer indigent, and so not entitled to a Needy Person's Certificate, under the Rules, we have to make an application to the Court to have the Certificate removed.⁹¹

Rule 576 of the *QB Rules* involves the Commission when an action by a needy person is settled or discontinued and when a lawyer is discharged or seeks to withdraw as the conducting solicitor named in a Certificate. Rule 578 involves the Commission in issues of judgment recovery.⁹² These rules place the Commission in the unusual position of deciding issues involving lawyers and clients in cases where they do not represent either party.

While historically the Legal Aid Commission was a good fit for administering Needy Person Certificates, the current process is challenging for many low-income litigants who are not

⁸⁹ Tania Sarkar, *Access to Justice in Saskatchewan: report presented to the Access to Justice Committee of the Law Society of Saskatchewan* (Regina: Law Society of Saskatchewan, 2001) at 107.

⁹⁰ CLASSIC response to *Consultation Paper*.

⁹¹ Letter from Jane Lancaster, Q.C., Chair, Saskatchewan Legal Aid Commission (21 May 1998).

⁹² *QB Rules*, *supra* note 8.

eligible for legal aid's services. The current system appears to discourage low-income and self-represented litigants, as well as burden the Legal Aid Commission.

One respondent to the *Consultation Paper* suggested that the Legal Aid Commission should continue to be responsible for issuing Needy Person Certificates. Another respondent was concerned that, unless greater funding becomes available, no organization would volunteer to act as gatekeeper for the eligibility determination for an expanded fee waiver program. The remaining respondents suggested that the application for a fee waiver should be made directly to the court or tribunal, which removes a requirement for any one organization to manage the fee waiver program.

Courts and tribunals should be responsible for issuing a fee waiver for the fees they charge. Several respondents suggested that court and tribunal staff should be trained about the process and be willing to assist people in filling out the application form. Courts and tribunals who frequently deal with individuals are generally already providing a similar level of service on other applications.

Recommendations

13. Courts and tribunals should be responsible for issuing fee waivers for the fees they charge.

14. Court and tribunal staff should be trained about the process and be willing to assist people to fill out the application form.

6.2. Naming

One respondent raised a concern with the current naming of the Court of Queen's Bench fee waiver program, suggesting that the name of the program be changed from "Needy Person Certificates" to "Persons in Need Certificates," or something similar because the title "Needy Person" is oppressive, and the applicant may feel embarrassed or ashamed of being labeled as a "Needy Person."

A consistent and clear system of naming the fee waivers will increase the ease with which low-income individuals are able to access the justice system. Removing any reference to the personal circumstances of the recipient addresses the concern about oppressive nomenclature.

Recommendation

15. All courts and tribunals should name their fee waiver “[Court/Tribunal] Fee Waiver” (e.g. Court of Queen’s Bench Fee Waiver, Highway Traffic Board Fee Waiver).

6.3. Education

Currently, Needy Person Certificates are not often applied for outside of legal aid, likely due to a lack of information. Because legal aid is not available in most civil matters, potential litigants do not attempt to apply for legal aid and are unlikely to discover that Needy Person Certificates are available. The legal profession is often unaware that eligibility for legal aid and eligibility for Needy Person Certificates are different things.

British Columbia has made an effort to improve access by providing information about fee waivers. The Legal Services Society of British Columbia, with funding from the Law Foundation of British Columbia, makes available a self-help kit that includes forms and instructions for applying for an indigency order.⁹³ The Community Legal Assistance Society has published a self-help guide for fee waivers in BC Small Claims Court with similar funding.⁹⁴ In Ontario, the Ministry of the Attorney General’s *Guide to Fee Waivers* and fee waiver request forms are available online or on request at any court or enforcement office.⁹⁵

Respondents noted a need for further education about fee waivers. The public, lawyers, and government and community agencies working with low-income individuals should be educated so that people in need will be referred to fee waiver programs. Public interest law organizations, such as PBLs, the Public Legal Education Association (PLEA) and CLASSIC, could partner with the courts, tribunals, and government to promote awareness in the community about fee waivers.

Recommendation

16. Education programs and materials should be available to inform people on the availability of, and application process for, fee waivers in Saskatchewan courts and tribunals.

⁹³ Legal Services Society, *supra* note 16.

⁹⁴ Michael McCubbin, *supra* note 16.

⁹⁵ *Supra* note 16.