

## **NOTICE TO THE PROFESSION AMENDMENTS TO RULES 37A, 39 AND 40**

Several months ago, a suggestion was made to the Rules Committee to amend the Rules so that a settlement conference could be requested at the time that the Certificate of Readiness was filed with the court. This change would allow litigants to have a settlement conference in advance of the pre-trial conference.

After much discussion of this suggestion as well as a proposal for a more simplified procedure for cases that are less complex, the Rules Committee passed amendments to Rules 37A, 39 and 40. At the same time, the language of these rules was modernized and rules that are no longer used or necessary have been eliminated. These amendments were published in the *Gazette* on Friday, December 17, 2010 as Regulation 111/10 and will come into force on **Tuesday, January 11, 2011**.

The major procedural changes to the rules are:

- **Settlement Conferences:** Under rule 39B.02, if the parties consent and they all agree that it is likely that the matter will be resolved with the assistance of a judge, the parties can request a settlement conference at any time after the pleadings have closed by filing a Request for Settlement Conference Form with the court (Form 39B.02A). The matter will then be placed on the settlement conference list and proceed in the normal course. If the parties request a settlement conference under this rule and it was not appropriate to do so, the judge may make an order as to costs [rule 39B.02(3)].
- **Short Trials:** As a way to quickly move forward cases that do not require all of the usual pre-trial procedures, rule 40.03 has been added. It allows a party to make an application for directions to the court if the trial is expected to take five days or fewer. The judge hearing the application will determine which pre-trial processes (examinations for discovery, agreed statement of facts, etc.) are appropriate and make the necessary order. This application process is tied to the number of anticipated trial days and not to a dollar amount, recognizing that there are legally simple matters which involve a lot of money. If the application for a short trial is not successful, the matter proceeds through the regular litigation process. The parties must apply within 90 days of the close of pleadings for a short trial.

Other substantive changes of note are:

- **Filing Mediation Brief:** The parties and the mediator may now agree to a deadline for the brief other than the seven day deadline set out in the rules: rule 37A.04(2).
- **Memorandum of Settlement:** The rules now provide that the plaintiff is responsible for filing the Memorandum of Settlement if an agreement is reached during mediation. The current rules simply indicate that the parties are responsible: rule 37A.06(9).
- **Pre-Trial Conference, Settlement Conferences and Mini-Trials Generally:** The current rules covering pre-trial conferences, settlement conferences and mini-trials have been reorganized. Rule 39 sets out the rules that apply to both pre-trial and settlement conferences. Rules specific to pre-trial conferences and settlement conferences are found in Rules 39A and 39B respectively. The rules relating to mini-trials are found in Rule 39C.

- **Pre-Trial Conferences and Settlement Conferences:** There are now provisions for both pre-trial conferences and settlement conferences with respect to:
  - a. getting a date for a conference;
  - b. conference procedures;
  - c. dispositions of conferences; and
  - d. whether a judge who presides over a conference can also preside as the trial judge.
- **Consequences for Failing to Attend a Conference:** The new rule is broader than the current rule: rule 39.11.
- **Deadline for Pre-Trial Conference Brief:** This deadline has been changed from two days to five days: rule 39A.03(1).
- **Expert Reports:** The sentence, “Such an exchange of opinions and reports shall be deemed to have been made on a without prejudice basis and without waiver of any claim to privilege with respect to non-production of them pursuant to the rules or at trial” has been removed from the equivalent of current rule 39.02(4): rule 39A.03(2).
- **Trial Record and Certificate of Readiness:** There are two changes to these documents. First, the trial record must be filed at the same time as the Certificate of Readiness: rule 40.04(2). The registry staff will be rejecting these documents if they are not filed together. Second, if the parties have both signed the Certificate of Readiness, the plaintiff is responsible for filing the trial record and the Certificate of Readiness: rule 40.04(3).
- **Consequences of Setting Down for Trial:** Under rule 40.08(2), if a trial does not go ahead when the proceeding is reached on the trial list and no order otherwise is made, the proceeding will be struck off the trial list.
- **Brief for the Trial Judge:** If a party wishes to rely on his/her pre-trial brief at the trial instead of filing an amended brief, the party can simply file confirmation of his/her intention to do so and provide a copy to the other party: rule 40.10.

Please note that the lists that are currently at the registry for conferences and trials will carry over after the changes to the rules come into force. You are not required to re-file Certificates of Readiness.

Appended to this Notice are Tables of Concordance for Rules 37A, 39 and 40. They will assist you to find a similar or related provision in the amended rules. Please note that an asterisk indicates that there are merely differences between the old rule and the new rule – this means that no matter how minor the change is, it is noted with an asterisk.

You may forward any comments or concerns to the court’s Legal Officer, Angela Whitehead, at [angelawhitehead@supreme.court.nl.ca](mailto:angelawhitehead@supreme.court.nl.ca) or (709) 729-4743.

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## Appendix A

**TABLE OF CONCORDANCE – RULE 37A**

**Please note:** The column on the left lists the current rules. The column on the right shows the rules in force after January 11, 2011 which are similar and/or related to the current rules. An asterisk (\*) indicates that the rule is not identical to the rule listed in the column on the left. Both minor and substantive changes are noted with an asterisk. Some of the more substantial changes are outlined in the Notice to the Bar dated January 4, 2011. A list of new rules, i.e. those with no current similar or related rule, is found following this table.

<b>PRIOR TO JANUARY 11, 2011</b>		<b>JANUARY 11, 2011 AND AFTER</b>
<b>TITLE</b>	<b>RULE</b>	<b>SIMILAR/RELATED RULE</b>
<b>Definitions</b>	37A.01.(a)	Rule 37A.01.(a)
	37A.01.(b)	Rule 37A.01.(b)*
	37A.01.(c)	Rule 37A.01.(d)
	37A.01.(d)	Rule 37A.01.(e)
	37A.01.(e)	Rule 37A.01.(f)
<b>Purpose</b>	37A.02.	Rule 37A.02.
<b>Court ordered mediation</b>	37A.03.(1)	Rule 37A.03.(1)
	37A.03.(2)	Rule 37A.03.(2)*
	37A.03.(3)	Rule 37A.03.(3)*; Rule 37A.07.
	37A.03.(4)	Rule 37A.03.(4)*
	37A.03.(5)	Rule 37A.03.(5)*
	37A.03.(6)	Rule 37A.03.(6)*
<b>Mediators</b>	37A.04.(1)	n/a
	37A.04.(2)	Rule 37A.06.(3)*
	37A.04.(3)	Rule 37A.09.(1)*
	37A.04.(4)	n/a
<b>Procedure at mediation sessions</b>	37A.05.(1)	Rule 37A.04.(1)
	37A.05.(2)	Rule 37A.04.(2)*
	37A.05.(3)	Rule 37A.04.(3)

PRIOR TO JANUARY 11, 2011		JANUARY 11, 2011 AND AFTER
TITLE	RULE	SIMILAR/RELATED RULE
	37A.05.(4)	Rule 37A.04.(4)*
	37A.05.(5)	Rule 37A.04.(5)*
	37A.05.(6)	Rule 37A.04.(6)*
	37A.05.(7)	Rule 37A.04.(7)
<b>Failure to attend and other non-compliance</b>	37A.06.(1)	Rule 37A.05.(1)
	37A.06.(2)	Rule 37A.05.(2)*
<b>Results of Mediation</b>	37A.07.(1)	Rule 37A.06.(1)*
	37A.07.(2)	Rule 37A.06.(2)*
	37A.07.(3)	Rule 37A.06.(7)
	37A.07.(4)	Rule 37A.06.(9)*
	37A.07.(5)	Rule 37A.06.(10)
	37A.07.(6)	Rule 37A.05.(11)
<b>Costs of mediation</b>	37A.08.(1)	Rule 37A.07.
	37A.08.(2)	Rule 37A.08(1); Rule 37A.09(2)
	37A.08.(3)	Rule 37A.08.(2)*
<b>Exemption</b>	37A.09.	Rule 37A.10.

**Rules with no prior similar rule:**

- Rule 37A.01.(c)
- Rules 37A.06.(4)-(6), (8)

## Appendix B

**TABLE OF CONCORDANCE – RULE 39**

**Please note:** The column on the left lists the current rules. The column on the right shows the rules in force after January 11, 2011 which are similar and/or related to the current rules. An asterisk (\*) indicates that the rule is not identical to the rule listed in the column on the left. Both minor and substantive changes are noted with an asterisk. Some of the more substantial changes are outlined in the Notice to the Bar dated January 4, 2011. A list of new rules, i.e. those with no current similar or related rule, is found following this table.

<b>PRIOR TO JANUARY 10, 2011</b>		<b>JANUARY 11, 2011 AND AFTER</b>
<b>TITLE</b>	<b>RULE</b>	<b>SIMILAR/RELATED RULE</b>
<b>Setting Down Pre-Trial Conferences</b>	39.01.(1)	Rule 39.02.(1)*
	39.01.(2)	Rule 39.02.(2)*
	39.01.(3)	Rule 39.02.(3)*
	39.01.(4)	n/a
	39.01.(5)	n/a
<b>Conference Procedures</b>	39.02.(1)	Rule 39A.06.
	39.02.(2)	Rule 39.04.*
	39.02.(3)	Rule 39A.03.(1)*
	39.02.(4)	Rule 39A.03.(2)*
	39.02.(5)	Rule 39A.01.*
	39.02.(6)	Rule 39.06.(1)*
	39.02.(7)	Rule 39.06.(2)*
	39.02.(8)	Rule 39.07.*
<b>Consequences of Failure to Attend or Lack of Preparedness</b>	39.03.	Rule 39.11.*
<b>Disposition of Pre-Trial Conference</b>	39.04.	Rule 39A.04.*
<b>Mini-Trials and Settlement Conferences</b>	39.05.(1)	Rule 39C.01.*
	39.05.(2)	Rule 39B.01.(1)*
	39.05.(3)	Rule 39B.06.*; Rule 39C.05.*

PRIOR TO JANUARY 10, 2011		JANUARY 11, 2011 AND AFTER
TITLE	RULE	SIMILAR/RELATED RULE
	39.05.(4)	Rule 39B.03.(2)*; Rule 39C.03.(1)*
	39.05.(5)	n/a
	39.05.(6)	Rule 39B.03.(3)*; Rule 39C.03.(2)*
	39.05.(7)	Rule 39.06.(2)*; Rule 39C.04.(1)*
	39.05.(8)	Rule 39B.04.(3)*; Rule 39C.04.(2)*
<b>Settlement Following Conference or Mini-Trial</b>	39.06.	Rule 39.09.*
<b>General Powers</b>	39.07.(1)	Rule 39.03.*; Rule 39C.02.
	39.07.(2)	n/a

**Rules with no prior similar rule:**

- Rule 39.01.
- Rule 39.05.
- Rule 39.08.(1) and (2)
- Rule 39.10.
- Rule 39A.02.
- Rule 39A.05.
- Rule 39B.01.(2)
- Rule 39B.02.(1)-(3)
- Rule 39B.03.(1)
- Rule 39B.04.(1) and (2)
- Rule 39B.05.(1)-(3)

## Appendix C

**TABLE OF CONCORDANCE – RULE 40**

**Please note:** The column on the left lists the current rules. The column on the right shows the rules in force after January 11, 2011 which are similar and/or related to the current rules. An asterisk (\*) indicates that the rule is not identical to the rule listed in the column on the left. Both minor and substantive changes are noted with an asterisk. Some of the more substantial changes are outlined in the Notice to the Bar dated January 4, 2011. A list of new rules, i.e. those with no current similar or related rule, is found following this table.

<b>PRIOR TO JANUARY 11, 2011</b>		<b>JANUARY 11, 2011 AND AFTER</b>
<b>TITLE</b>	<b>RULE</b>	<b>SIMILAR/RELATED RULE</b>
<b>Application and Interpretation</b>	40.01.	Rule 40.01.*
<b>Place of Trial</b>	40.02.(1)	Rule 40.02.*
	40.02.(2)	n/a
	40.02.(3)	n/a
<b>Mode of Trial</b>	40.03.(1)	n/a
	40.03.(2)	n/a
	40.03.(3)	n/a
<b>Time, etc., of Trial of Questions or Issues</b>	40.04.	n/a
<b>Certificate of Readiness</b>	40.05.(1)	Rule 40.04.(1)*
	40.05.(2)	Rule 40.04.(4)*
	40.05.(3)	Rule 40.04.(5)*
<b>Application where no Certificate of Readiness</b>	40.06.(1)	Rule 40.05.(1)*
	40.06.(2)	Rule 40.05.(2)
	40.06.(3)	Rule 40.05.(3)*
<b>Setting Down for Trial</b>	40.07.(1)	Rule 40.06.(1)*
	40.07.(2)	Rule 40.06.(2)*
	40.07.(3)	Rule 40.06.(3)*
<b>Settlement</b>	40.08.	Rule 40.07.*

<b>PRIOR TO JANUARY 11, 2011</b>		<b>JANUARY 11, 2011 AND AFTER</b>
<b>TITLE</b>	<b>RULE</b>	<b>SIMILAR/RELATED RULE</b>
<b>Consequences of Setting Down</b>	40.09.(1)	Rule 40.08.(1)*
	40.09.(2)	Rule 40.08.(2)*
	40.09.(3)	Rule 40.08.(3)*
	40.09.(4)	Rule 40.08.(4)*
<b>Publication of General List</b>	40.10.(1)	Rule 40.09.(1)*
	40.10.(2)	n/a
	40.10.(3)	Rule 40.09.(2)*
	40.10.(4)	Rule 40.14.(b)*
	40.10.(5)	Rule 40.09.(3)
<b>Brief for trial judge</b>	40.11.(1)	Rule 40.10.*
	40.11.(2)	Rule 40.10.*
<b>Dismissal for Want of Prosecution</b>	40.12.	Rule 40.11.
<b>Notification of Change in Status</b>	40.13.	Rule 40.12.*
<b>Abatement, etc. of Proceeding</b>	40.14.	n/a
<b>Order for Separate Trials, etc.</b>	40.15.	Rule 40.13.
<b>General Powers</b>	40.16.	Rule 40.14.*
<b>Transition</b>	40.17.	Rule 40.15.

**Rules with no prior similar rule:**

- 40.03.(1)-(4)
- 40.04.(2) and (3)