

DRAFT OF  
INDIVIDUAL CALENDAR RULES

RULE 38A

PREPARED FOR DISCUSSION PURPOSES  
BY THE RULES COMMITTEE OF THE  
INDIVIDUAL CALENDAR DESIGN PROJECT TEAM

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## **INDIVIDUAL CALENDAR RULES**

### **RULE 38A**

#### **PART I - ADMINISTRATIVE RULES**

##### **1. APPLICATION OF RULE 38A**

Rule 38A applies only to cases assigned to an individual judge for management and trial. Where there is an inconsistency between Rule 38A and any other Rule, the provisions of Rule 38A shall apply.

##### **2. INDIVIDUAL CALENDAR DIVISION**

As a Pilot Project, the Vancouver Civil list will be divided into two divisions. One will be the Individual Calendar Division (ICD) made up of 8 Vancouver judges. The other will be the Master Calendar Division (MCD) comprising the balance of the Vancouver judges. All proceedings not assigned to the ICD will be administered under the MCD. The Chief Justice will assign judges to the two Divisions.

##### **3. ASSIGNMENT OF CASES TO ICD JUDGES**

- a) **Assignment by the Registrar:** The Registrar shall assign cases and matters to ICD judges by lot according to the



- b) **Supervision of the Assignment Committee:** Assignment of cases to the ICD judges shall be administered by the Registrar under the supervision of the Assignment Committee.
  
- c) **Composition of the Assignment Committee:** The Assignment Committee shall consist of the Chief Justice and 2 ICD judges of the court who shall be selected by rotation according to seniority and who shall serve 6 months only. The Committee may act by majority vote.

#### 4. GENERAL DUTY JUDGE

- a) **Appointment by the Assignment Committee:** From time to time, the Assignment Committee shall appoint an ICD judge to serve as the General Duty Judge.
  
- b) **Term of Office and Retention of Matters:** The General Duty Judge shall serve for a period of one month. Appointment of an ICD judge as the General Duty Judge shall be made on an equitable and rotating basis. Subject to the ruling of the Assignment Committee, any miscellaneous matter or motion brought before an ICD judge while serving as the General Duty Judge shall be retained by that judge until the matter is terminated.

- c) **Responsibilities:** The General Duty Judge shall decide all emergency motions in the event the assigned ICD judge is unavailable and perform such other duties as may be necessary for the efficient management of ICD cases.

**5. MOTION TO CHANGE ASSIGNMENT OF ICD JUDGE**

Any party may bring a motion with supporting affidavit to transfer the proceedings from the assigned ICD judge.

- a) **Motion and Affidavit:** A motion to transfer proceedings to another ICD judge shall be supported by an affidavit. The motion shall be directed to the assigned ICD judge. The affidavit shall allege that the assigned judge is prejudiced against the party who brings the motion and the party believes that he or she cannot have a fair and impartial trial before that judge. An affidavit need not be substantiated by proof and cannot be disputed.
- b) **Timeliness of Filing Motion and Affidavit:** Such a motion and affidavit must be filed before the judge has made any ruling in the proceedings involving judicial discretion.
- c) **Party May Make Only One Application:** A party may make only one such application in any proceeding.

- d) **No Further Proceedings Before the Assigned Judge:** The timely filing of the motion entitles the party to a change of judge as a matter of right. It divests the originally assigned judge of jurisdiction to continue hearing or deciding any matter relating to the proceedings.

#### **6. PURPOSE OF INDIVIDUAL CALENDAR DIVISION**

The ICD is established as a Pilot Project in order to assess the fairness and efficiency of assigning all proceedings to one judge from the time the proceedings commence until the trial or hearing concludes. Approximately 10% to 15% of all civil proceedings already commenced or to be commenced will be allotted at random to individual ICD judges.

### **PART II - PROCEDURAL RULES**

#### **7. TRANSFERRING EXISTING PROCEEDINGS FROM THE MCD TO THE ICD**

Any proceeding already commenced and set for trial may be transferred from the MCD to an ICD judge for all purposes by the Chief Justice or an ICD judge acting on the authority of the Chief Justice. Such proceedings shall be assigned at random to ICD

judges. Notice to the parties of the transfer and assignment shall be given in the following manner:

- a) **Mailing of Case Schedule by Registrar:** After such a transfer and assignment, the Registrar shall mail or Fax a Case Schedule in Form #3, 4, 5, 6 or 7 (as the case may be) to the plaintiff (the person who commenced the proceedings).
- b) **Service of Case Schedule on Other Parties by the Plaintiff:** Within 10 days of receipt of the Case Schedule, the plaintiff shall serve a copy of the Case Schedule on all other parties by ordinary mail.

#### 8. ASSIGNING NEW PROCEEDINGS TO THE ICD

Any proceeding commenced after the coming into force of Rule 38A may be assigned at random to a judge of the ICD within 10 days after it is filed:

- a) **Mailing of Case Schedule by Registrar:** After such assignment, the Registrar shall mail or fax a Case Schedule in Form #2, 4, 5, 6 or 7 (as the case may be) to the plaintiff (person who commenced the proceeding).

- b) **Service of Case Schedule on Other Parties by the Plaintiff:** The plaintiff may serve the Case Schedule along with the document commencing the proceeding. If the Case Schedule is not served with the document commencing the proceeding, then the plaintiff shall serve the Case Schedule within 10 days of the later of (1) the filing of the writ or petition, or (2) service of the defendant's or respondent's appearance.
- c) **Filing of Confirmation of Service:** Upon service of the document commencing the proceeding, the plaintiff shall file an affidavit of service within the time specified by the Case Schedule together with a paper entitled "Confirmation of Service." The Confirmation of Service paper shall be in Form #8.

## 9. MODIFICATION OF CASE SCHEDULE

The court on its own motion, or on the motion of a party, may change any date or omit any step in a Case Schedule for good cause.

- a) **Modification on Motion of a Party:** If a Case Schedule is modified on the motion of a party, that party shall prepare and present to the court for signature an Amended Case Schedule. Upon receipt of the signed copy of the

Amended Case Schedule, that party shall promptly file and serve a copy on all parties to the proceeding.

- b) **Modification on Court's Own Motion:** If a Case Schedule is modified on the court's own motion, the Registrar shall prepare and file the Amended Case Schedule and mail a copy to all parties.
- c) **Service Upon Joinder of an Additional Party:** A party who joins an additional party in a proceeding shall be responsible for serving the additional party with the current Case Schedule together with first pleading served on the additional party.
- d) **Form of Amended Case Schedule:** An Amended Case Schedule shall be in the same form as the original Case Schedule, except that an Amended Case Schedule shall be entitled "Amended Case Schedule" and it shall not include the "Notice to the Plaintiff".
- e) **Time Intervals:** The events and time intervals included in the Case Schedule shall be measured in weeks: (1) for new proceedings, from the date of filing the writ or petition; (2) for existing proceedings, from the date the proceeding was given a trial or hearing date.

- f) **Monitoring:** At such time as the Chief Justice may direct, the court will monitor cases to determine compliance with these rules.

#### 10. CONFIRMATION OF JOINDER OF PARTIES

- a) **Scope:** According to the Case Schedule the parties shall inform the court on the prescribed date as to whether there will be any further amendments to the pleadings or the addition of other parties.
- b) **Additional Parties, Claims and Defences:** No additional parties may be joined, and no additional claims or defences may be raised, after the date designated in the Case Schedule for Confirmation of Joinder of Additional Parties, Claims and Defences, unless the court orders otherwise for good cause.
- c) **Confirmation of Joinder Form:** Immediately after the designated deadline for joining additional parties and raising additional claims and defences as described in the Case Schedule, the plaintiff or petitioner shall, after conferring with all other parties pursuant to paragraph (d) of this rule, file and serve a report

entitled "Confirmation of Joinder of Parties, Claims and Defences", Form #9.

- d) **Parties to Confer in Completing Form:** The plaintiff shall confer with all other parties in completing the form. If any party fails to cooperate in completing the form, any other party may file and serve the form and note the refusal to cooperate.
- e) **Status Conference:** Unless the Confirmation of Joinder of Parties, Claims and Defences is timely filed and demonstrates that a Status Conference is not needed, all parties must, on the date designated by the court in the Case Schedule, attend a Status Conference before the ICD judge.
- f) **Status Conference Report:** For the purpose of this rule and on any other occasion where the court orders the holding of a Status Conference, 10 days before the holding of the Status Conference each party shall serve and file a written brief of no more than 15 pages setting out the following:
  - i. A concise statement of the facts.
  - ii. A concise statement of the issues.



- iii. An analysis of the relevant law that applies to the issues.
- iv. A statement of the remedy that is sought.
- v. A statement of the estimated time the trial will take.

g) **Waiver of Status Conference Report:** Ten days before the Status Conference Report is due, the parties may apply in writing to the court asking for waiver of the requirement to file a Status Conference Report and setting out the reasons therefor. Unless all parties join in the request, each party must file a Status Conference Report.

#### 11. COMPLETION OF DISCOVERY

Unless otherwise ordered, all discovery of parties must be completed no later than the date assigned in the Case Schedule.

#### 12. MOTIONS PRACTICE

The following process will apply to all pre-trial motions brought by the parties:

- a) **Date For Consideration of a Motion:** All motions (except motions for summary judgment under Rule 18 or 18A) shall

be returnable for consideration by the court on the third Friday after the motion is filed. Motions for summary judgment under Rule 18 or Rule 18A shall be returnable by the applicant for consideration by the court on the fourth Friday after the motion is filed.

- b) **Consideration of a Motion by the Court:** A motion may not be considered by the Court on its return date. If it is not considered on that date, it will be considered as soon thereafter as the schedule of the court allows. If Friday is a holiday, all motions shall be adjourned to the next following Friday which is not a holiday, or to such other day as the court may direct.
- c) **Motions to be Decided Without a Hearing:** Unless otherwise ordered by the court, all motions will be decided by the court without a hearing.
- d) **Request for Oral Argument:** A party who wishes to present an oral argument should so indicate by typing ORAL ARGUMENT REQUESTED in the caption of the motion or responsive brief. If a request for oral argument is granted, the court will notify the parties of the date and hour when it will be heard and the amount of time that will be allotted to each party.

- e) **Service of Motions:** Every motion shall be served upon the opposite party within 48 hours of its filing.
- f) **Extension of Time on Motions:** With the written consent of all the parties, the Registrar or Master, one extension of time for the court's consideration of a motion before the prescribed time elapses. Thereafter, all applications to extend the time shall be considered by the court.
- g) **Document Book and Brief of Applicant for the Motion:** In addition to the motion and affidavit material filed in support of the motion, the applicant shall also file and deliver to the other party a Document Book and a written Brief.
- h) **Document Book and Brief of Respondent to the Motion:** A party opposing the motion shall file and deliver to the applicant a Document Book containing the affidavit material relied upon by the respondent to the motion and a written Brief not later than 4:30 PM on the Monday immediately preceding the Friday appointed for consideration of the motion.

- i) **Material of the Applicant in Reply:** The applicant may, not later than 4:30 PM on the Thursday immediately preceding the Friday designated for consideration of the motion, file affidavit material and a written Brief in response to the Respondent's material and Brief.
  
- j) **Contents of Document Books:** Document books shall contain a Table of Contents and legible copies of all affidavits and documents relied upon by the party. Affidavit pages containing exhibits shall be numbered consecutively from the last page of the affidavit. When deciding the motion, the court will only consider affidavits contained within the Document Books.
  
- k) **Contents and Length of Briefs:** Every Brief shall contain a concise statement of:
  - i) the facts arising from the affidavit material;
  - ii) the issues;
  - iii) an analysis of the issues;
  - iv) the remedy sought.

Briefs shall be double spaced on paper size 8½ x 11. Those relating to motions for summary judgment under Rule 18 or Rule 18A shall not exceed 24 pages in length without approval of the court. Those relating to all

other motions shall not exceed 12 pages in length. Any reference to a case shall cite the exact page in the case where the point relied upon can be found. Where any party relies upon an unreported decision, a complete copy of that decision shall be included with the Document Book.

- l) **Filing and Marking Document Books and Briefs:** Every party bringing or responding or replying to a motion shall file with the court an extra copy of the Document Book and the Brief served on the other party. They shall be marked with the name of the ICD judge in the top right-hand corner of their covers. Briefs may be filed electronically if the circumstances permit.
- m) **Non-Compliance:** If a party fails to file the papers required under this rule, or fails to appear on the day appointed for oral argument, when such is allowed, that failure may be deemed by the court to be an admission that the motion, or the opposition to it, as the case may be, is without merit.
- n) **Summary Applications:** Any party may apply to the court by way of letter or fax requesting relief from the provisions of this rule by setting out the circumstances

and the reasons for the request. The court may decline such relief or grant it in whole or in part. Thereafter, it may re-impose all or part of the requirements of this rule as it deems necessary or expedient.

**13. DISCLOSURE OF LAY WITNESSES BEFORE TRIAL**

This rule does not apply to expert witnesses whose evidence is governed by Rule 40A. Each party shall disclose to the opposing party the names of witnesses and the nature of their testimony to be given at trial in the following manner:

- a) **Disclosure of Primary Witnesses:** On or before the scheduled day of the Pre-trial Conference, each party shall disclose to the opposite party all persons with relevant factual or expert knowledge whom the party reserves the option to call as witnesses at the trial.
- b) **Disclosure of Reply and Rebuttal Witnesses:** Ten days before trial, the plaintiff shall disclose the names of all rebuttal witnesses and the defendant shall disclose the names of all reply witnesses whose names were not disclosed at the pre-trial conference. Each party may then reserve the option of calling the rebuttal or reply witness at trial.

- c) **Scope of Disclosure:** Disclosure of witnesses under this rule shall include the following information:
1. *All Witnesses.* Name, address, and phone number.
  2. *Lay Witnesses.* A brief description of the witness's relevant knowledge.
  3. *Experts.* A summary of the expert's opinion and the bases therefor and a brief description of the expert's qualifications.
- d) **Failure to Disclose:** Any person not disclosed in compliance with this rule may not be called to testify at trial, unless for good cause the court otherwise orders.

#### 14. EXAMINATION OF WITNESSES BY DEPOSITION

With the consent of the parties, any party may examine a witness before trial in accordance with this rule.

- a) **Application of This Rule:** Any expert or lay witness, other than a party, may be examined under oath before trial. Pre-trial examination of parties is governed by Rule 27 - Examination For Discovery.

- b) **When Depositions May be Taken:** After service of a writ and statement of claim, any party may take the testimony of any person by deposition upon oral examination.
- c) **Compelling Attendance of a Witness:** The attendance of a witness may be compelled by subpoena in Form #10 together with the appropriate conduct money. The deposition of a person confined in prison may be taken only by leave of the court on such terms as the court prescribes.
- d) **Notice of Examination:** A party desiring to take the deposition of a witness shall give not less than 5 days notice in writing to every other party to the action and to the deponent in Form # 11. Notice to a deponent may be given by ordinary mail or by any other means that is reasonably likely to provide actual notice. Failure to give 5 days notice to a deponent may be grounds for the imposition of sanctions in favour of the deponent but shall not constitute grounds for quashing the subpoena.
- e) **Shortening or Enlarging the Length of Notice:** The court may for cause enlarge or shorten the time for taking a deposition.



- f) **Contents of Notice:** The contents of the notice to a deponent shall state the time and place for taking the deposition and the name and address of each person to be examined. Unless otherwise ordered, the examination shall take place at the registry nearest to the place where the person to be examined resides. If a *subpoena duces tecum* is to be served on the deponent, the designation of the materials to be produced shall be included or attached to the subpoena.
  
- g) **Videotape of Deposition:** By agreement of the parties or by order of the court, the deposition of a witness may be taken by means of a videotape. Unless otherwise agreed, the expense of videotaping shall be borne by the party wanting the videotaping. Those expenses shall not be taxed as costs in the action. Any party may obtain a copy of the videotape at that party's expense.
  
- h) **Stenographic Record of Evidence Given at a Deposition:** At the expense of the party wanting the deposition, a stenographic record shall be made of the evidence given by a witness at a deposition taken, with or without videotape. Any examination of a witness before trial shall be conducted before an official reporter who is empowered to administer the oath.

- i) **Proceedings at a Deposition:** Before a witness gives evidence at a deposition, he or she shall be placed under oath. Examination in chief of the witness shall be done by the party who initiated the deposition of the witness. Cross-examination of the witness shall be done by the party opposite in interest. Examination of a witness shall proceed as permitted under the laws of evidence that prevail at a trial except that when a party deposes a hostile witness or a witness identified with an adverse party, the examination may be by leading questions.
  
- j) **Objections to Questions:** All objections made at the time of the examination shall be noted by the official reporter. Except for objections on the grounds of privilege, evidence objected to shall be taken subject to the objection.
  
- k) **Questions by Parties Not Appearing:** In lieu of participating in the oral examination, a party may transmit written questions in a sealed envelope on the party taking the deposition and that party shall propound the questions to the witness whose answers shall be recorded.

- 1) **Control by the Court:** The court shall exercise reasonable control over the mode and order of examining witnesses before trial so as to:
  1. make the examination and presentation effective for the ascertainment of the truth;
  2. avoid needless consumption of time;
  3. protect witnesses from harassment or undue embarrassment.
  
- m) **Motion to Terminate or Limit a Deposition:** At any time during the taking of a deposition, on motion of a party or deponent, and upon showing that the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass or oppress the deponent, the court may order the examination to cease forthwith or limit the time for completing the deposition or make such other or similar order as may be necessary.
  
- n) **Marking Documents at a Deposition:** Documents and things produced at a deposition shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party. Copies of documents may be used instead of originals if the person producing the copy affords all parties a fair opportunity to verify the copies by comparison with the

originals. If a deponent asks for return of any material other than a document, it shall be marked and each party shall be given an opportunity to inspect it. The material shall then be returned to the person who produced it and can be used in the same manner as if it were annexed to the transcript of the deposition. Any party may bring a motion that the material be included with the deposition transcript pending final deposition of the case.

- o) **Payment for Transcript - Copy for the Court:** Upon payment of the proper fee, the court reporter who transcribed the deposition shall furnish a copy of the transcript to any party or to the deponent. Upon furnishing such a transcript, at the cost of the party or deponent who ordered it, the court reporter who transcribed the deposition shall file a copy of the deposition and any exhibits in a sealed envelope with the court. The outside of the envelope shall contain the name and number of the case together with a statement "Deposition of [name of witness]."

- p) **Failure to Attend or to Serve Subpoena - Costs:**

- 1) **Non Attendance by Party Giving the Notice:** If the party giving the notice of the taking of a

deposition fails to attend, and another party attends in person or by counsel pursuant to the notice, the court may order the party giving the notice to pay the other party the reasonable expenses incurred in attending, including a reasonable amount for solicitor's fees.

- 2) **Failure to Serve a Subpoena on the Witness:** If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness who does not then attend, and if another party attends in person or by counsel because he or she expects the deposition to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred in attending, including a reasonable amount for solicitor's fees.

q) **Use of Depositions in Court Proceedings:**

- 1) **General:** At the trial or upon the hearing of a motion, any part or all of a deposition that is admissible under the rules of evidence may be used as if the witness was present at the trial or motion. The deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice

thereof in accordance with the following provisions.

- 2) **Prior Inconsistent Statement:** Any deposition may be used by any party for the purpose of contradiction or impeaching the testimony of a deponent as a witness at the trial for any purpose permitted by the rules of evidence.
- 3) **Absence of a Witness:** The deposition of a witness may be used by any party for any purpose if a court finds:
  - i) that the witness is dead;
  - ii) that the witness is unable to attend or testify because of age, illness, infirmity or imprisonment;
  - iii) that such exceptional circumstances exist as to make it desirable in the interest of justice to allow the use of the deposition.
- 4) **Introducing all of the Deposition:** If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part, which ought in fairness to be considered with the part introduced, and any other party may introduce any other parts.
- 5) **Effect of Taking or Using Depositions:** A party does not make a witness his or her own witness for

any purpose by taking a deposition of that witness. The introduction in evidence of the deposition or any part thereof for any purpose other than contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition. At the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or her or by any other party.

**6) Effect of Errors and Irregularities in Depositions:**

- i) All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.
- ii) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the ground of the objection is one which might have been obviated or removed if presented at that time.
- iii) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the

conduct of the parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

iv) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the transcriber are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

r) **Conduct Money Payable to the Witness:** A party serving a subpoena or subpoena duces tecum upon a witness shall also give to the witness at the time of service a witness fee in compliance with Schedule 3 of Appendix C. Failure to provide the appropriate witness fee relieves the witness from attending at the deposition.

s) **Costs of Depositions:** The costs and disbursements of any deposition are in the discretion of the court. If



allowed, they shall be taxed as if it were an examination of a debtor under Appendix B, Tariff item #15. The number of units awarded to a party will be in the discretion of the court.

## 15. TRIAL BRIEFS

Every party shall produce and exchange with the opposing party a Preliminary Trial Brief at the Pre-Trial Conference 5 days before the Conference and shall serve and file a Final Trial Brief on the opposing party 5 days before the first day of trial.

- a) **Contents of Preliminary and Final Trial Briefs:**  
Preliminary and Final Trial Briefs shall cover the following matters:
  - i) A concise statement of the relevant facts the party intends to prove.
  - ii) A statement of the issues.
  - iii) An analysis of the law as it applies to the relevant facts.
  - iv) A statement of the relief or remedy sought.
  - v) An estimate of the length of time the trial will take.

- b) **Size and Length of Trial Briefs:** Trial Briefs shall be double spaced on paper size 8½ x 11. They shall not exceed 25 pages in length without approval of the court. Approval may be obtained upon application in writing to the ICD judge in a summary way. Any reference to case authority shall cite the exact page in the case where the point relied upon can be found.
- c) **Filing and Marking Trial Briefs:** Every party filing a Final Trial Brief shall mark the name of the ICD judge in the top right-hand corner of the cover.

#### 16. EXCHANGE OF EXHIBIT LISTS

Not later than 21 days before the scheduled trial date, the parties shall exchange:

- a) A chronological list of the exhibits that each party expects to offer at trial, except exhibits to be used for cross-examination purposes.
- b) Copies of all documentary exhibits, except those to be used for illustrative purposes.
- c) Each listed exhibit shall contain a statement as to the purpose of introducing the exhibit into evidence.

In addition, 14 days before trial, each party shall make available for inspection to all other parties, all non-documentary exhibits. Any exhibit not listed may not be used at trial unless the justice of the case says otherwise.

**17. PRE-TRIAL CONFERENCES**

- a) **Case Scheduled Pre-trial Conference:** The parties and their counsel shall appear at a Pre-Trial Conference in accordance with a Case Schedule.
- b) **Other Pre-trial Conferences:** On the motion of the court or the motion of any party the ICD judge may in his or her discretion direct the parties to appear at any pre-trial conference.
- c) **Counsel in Charge of Proceedings to Attend:** Unless excused by the ICD judge, the counsel who is personally in charge of each party's case shall attend any pre-trial conference.
- d) **Adjournment of Pre-trial Conferences:** No pre-trial conference may be adjourned without the consent of the ICD judge.

- e) **Matters for Discussion at a Pre-trial Conference:** The following matters may be considered at any pre-trial conference:
1. Any matter mentioned in the parties' Preliminary Trial Briefs where the conference is held pursuant to a Case Schedule.
  2. Any matter mentioned in Rule 35 (3) and (4).
- f) **Minutes of a Pre-trial Conference:** The ICD judge may appoint one of the counsel present at the pre-trial conference to act as Secretary of the meeting. He or she will be responsible for taking minutes of the discussions and any orders made by the ICD judge. Within 5 days after the conference, the Secretary shall deliver a copy of the minutes to each counsel present at the meeting and to the ICD judge. Unless any counsel objects to the minutes within 10 days of their receipt then, subject to the approval of the ICD judge, they shall represent the contents of any agreement reached and any order made at the conference. Where there is a dispute between the Secretary and others, they should first try to settle it between them. Failing settlement, they may apply to the ICD judge for that purpose.

## **18. SETTLEMENT CONFERENCES**

By consent of all the parties or on the order of the ICD judge, a settlement conference may be held at least 10 days before trial but after the filing of the Trial Briefs.

- a) **Settlement Conference Before Another ICD Judge or Master:**  
Any settlement conference must be held before another judge than the ICD judge assigned to manage and try the action, or before a master.
- b) **Counsel in Charge of Action to Attend:** The counsel who is personally in charge of each party's case shall attend the settlement conference and shall come prepared to discuss in detail the following:
  - 1) All liability issues.
  - 2) All items of special and general damages.
  - 3) An explanation of position on settlement.
- c) **Presence of Parties:** The parties to the proceedings shall be available at the settlement conference but the judge or master conducting the conference shall decide whether the parties shall be present in the conference room.

- d) **Representative of Insurer:** Parties whose defence is provided by a liability insurer need not be present at a conference, but a person who is a representative of the insurer of that party who has authority to settle or can obtain that authority sufficient to bind the insurer to any settlement shall attend.
- e) **Court May Excuse Attendance:** The conference judge or master may excuse the attendance of a party for reasons of health, absence from the city, or other good and sufficient reason.
- f) **Adjournments of Settlement Conferences:** Only a settlement conference judge or master may authorize an adjournment of a settlement conference on timely application.
- g) **Proceedings Privileged:** All proceedings at a settlement conference are privileged and shall not be transcribed or recorded. No party shall be bound unless a settlement is reached. If a settlement is reached in whole or in part, the judge or master may order that the settlement be transcribed or recorded.

- h) **Judge Disqualified for Trial:** A judge presiding at a settlement conference shall be disqualified from acting as the trial judge unless all parties agree in writing and the judge consents.

## **19. ADJOURNMENT OF TRIALS**

Trial dates already set under Rule 38A (4) and trial dates set under Rule 38A (5) may be changed as follows:

- a) **Changing Trial Date to Resolve a Scheduling Conflict:**  
With the approval of the ICD judge a trial date may be adjusted prior to trial by written agreement of the parties or by order upon motion by a party, but only to a date that is no more than 30 days before or 30 days after the trial date that is already set.
- b) **Adjournment of Trial Date for Good Cause:** Any party may apply to the ICD judge to change the assigned trial date to more than 30 days after the original assigned date. The motion will not be granted unless there are extraordinary circumstances and there is no alternative means of preventing a substantial injustice. The motion must contain both the signature of counsel and the signature of the party requesting the adjournment. If it

is impractical for the party to sign the motion, his or her counsel must file a certificate that a copy of the motion was mailed or delivered to the party before it came before the court for consideration.

- c) **Change of Trial Date on Court's Own Motion:** By 3 days notice to the parties and on consultation with the parties where that is practicable, the ICD judge may change the trial date in order to meet unexpected circumstances.

## 20. ELECTRONIC COMMUNICATIONS

By agreement of the parties, an ICD judge may conduct any of the pre-trial proceedings by way of telephone conference, electronic mail, facsimile machine or other form of technological device. Any order made by an ICD judge in that way is not effective until signed by the judge and entered in the registry.

## 21. ASSIGNMENT OF MOTIONS TO THE MASTER

On written application to the ICD judge and with the consent of all parties, motions scheduled to last no longer than 20 minutes may be referred to the Master for decision. Subject to the



discretion of the Master hearing the motion, written briefs will not be required.

## **22. PETITION HEARINGS**

Originating applications by way of petition under Rule 10 may be considered and disposed of by a hearing or by the exchange of briefs pursuant to Rule 38A (12) - Motions Practice, upon the order of the ICD judge.

## **23. SANCTIONS**

- a) **Costs For Failure to Comply:** In the event a party or his or her counsel neglects or declines to obey any Case Schedule, appear at a status, scheduling, pre-trial or settlement conference, is substantially unprepared for any conference, motion or trial, or multiplies the proceedings in a case as to increase the cost thereof unreasonably and vexatiously, the court may require the party or counsel to pay monetary sanction to the court or costs to the other party, or both.
- b) **Costs May be Ordered Payable Forthwith:** Such monetary sanctions or costs may be ordered payable forthwith or at such other time as may be set by the court and may be

additional to any costs that are payable by the defaulting party.

- c) **Terms in Addition to Costs:** Alternatively, or together with an order for monetary sanctions or costs, the court may impose terms on the defaulting solicitor or party for failure to comply.
- d) **Definitions:** For the purpose of this rule, "monetary sanctions" means a financial penalty payable to the court. "Costs" means costs payable by the defaulting party as provided for by this rule and Rule 57. "Terms" means, but is not limited to, the dismissal of the proceeding, the striking out of a defence or answer, or the exclusion of evidence.

#### 24. LIMITING EVIDENCE AND ARGUMENT

The court may set reasonable limits on:

- a) **Length of Examination:** The length of examination in chief and cross-examination of witnesses.
- b) **The Length of Oral Argument:** The length of oral argument on a motion or at trial.

- c) **The Length of Written Argument:** The length of any written argument that is ordered after a trial.

**25. CONSENT ORDERS - INITIALS OF JUDGE ON ORDERS**

When a proceeding is assigned to an ICD judge, the parties may not enter an order by consent without the signature or initials of the ICD judge. Any other orders made by ICD judges do not require their signature or initials unless they otherwise order.

**26. PRACTICE DIRECTIONS**

The Chief Justice may issue Practice Directions on any matters that are not inconsistent with this rule.

Mr. Justice J.C. Bouck

15 March 1995

## INDIVIDUAL CALENDAR RULES

### LIST OF FORMS

NAME	RULE #
1. Cover Sheet	
2. Case Schedule - New Proceedings	5(a)
3. Case Schedule - Existing Proceedings	4(a)
4. Case Schedule - Divorce Petitions	4(a) & 5(a)
5. Case Schedule - Family Relations Act	4(a) & 5(a)
6. Case Schedule - Small Claims Appeal	4(a) & 5(a)
7. Case Schedule - Civil Petitions	4(a) & 5(a)
8. Confirmation of Service	
9. Confirmation of Joinder of Parties, etc.	10
10. Subpoena to Depose a Witness	11(c)
11. Notice to Parties to Depose a Witness	11(d)

27 March 1995--10:21 am:

FORM #1

COVER SHEET

[ICD Rule \_\_\_\_ ]

- 1 We are trying to settle an appropriate form of Cover Sheet for all MCS and ICS proceedings.
2. It will be used in the ICS system as a basis for weighting the proceedings so that each ICS judge gets a proportionate share of the easy and difficult cases.
3. When the form is settled it will probably be enacted as part of the MCS Rules.
4. Attached is a recommended sample that is designed to fit the ICS and MCS systems. It still may need some fine tuning.

5 March 1995--9:53 am:

# COVER SHEET FOR CIVIL LITIGATION

FORM ???

Location Code: ???

Court File Number: ???

Date Record filed: ???

**A. Plaintiff(s)/Petitioner(s)/Appellant(s)**

- complete name (as on originating document) and complete residential address of each plaintiff/petitioner/appellant

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**B. Defendant(s)/Respondent(s)**

- complete name (as on originating document) and complete residential address of each defendant/respondent

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**C. Solicitor for Plaintiff(s)/Petitioner(s)/Appellant(s)**

- name of solicitor, firm, telephone number, facsimile number and complete business address

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**D. Check ONE box Only:**

**0 WRIT 0 PETITION 0 OTHER**

**E. Check ONE Box Only - Check Box that Describes the principal claim advanced:**

- 1. APPEALS [new] 0 b. WRONGFUL DISMISSAL [38]
- 0 a. SMALL CLAIMS [new] 0 c. OTHER (DESCRIBE) (new) 0 b. **REGISTRAR**
- (new)
- c. OTHER (DESCRIBE)[new]\_\_\_\_\_
- 0 10. EXTRADITION (17)
- 0 11. FORECLOSURE OR CANCELLATION [19]
- 2. CLAIMS UNDER A STATUTE (1) 0 12. FRAUD/MISREPRESENTATION [20]
- a. **BANKRUPTCY/INSOLVENCY** [2] 0 13. INSURANCE [21]
- b. **ART-9 OF EXCHANGE** [3]
- 0 c. BUILDERS' LIEN [8] 0 14. JUDICIAL REVIEW [22]
- d. COA PFIImON [9]
- 0 e. COMPANIES (10) 0 15. LABOUR [23]
- f. HUMAN RIGHTS [now] 0 16. LANDLORD AND TENANT [24]
- C S. MUNICIPAL (271) 0 17. MARTIALITY [25]
- h. OTHER (IDENTIFY) [new]\_\_\_\_\_
- 18. NEGLIGENCE
- a. NEGLIGENT MISREPRESENTATION
- 3. COLLECTION [13] 0 MOTOR VEHICLE
- 0 4. CONSTITUTIONAL [11] 0 b. Bodily Injury [4]
- S. CONTRACT [51] 0 c. Property Damage (26)
- 6. COPYRIGHT C PROFESSIONAL NEGLIGENCE
- 7. DEFAMATION 0 d. Lawyers [33(a)]
- a. Libel [14] 0 e. Doctors [33(b)]
- b. Slander [14] 0 f. Dentists [33(c)]
- g. Accountants [33(d)]
- 8. DIVORCE AND FAMILY RELATIONS 0 h. Architects and Engineers [33(e)]
- a. DIVORCE ACT **ONLY** [15] 0 i. Other (33(f)) 0 b. FAMILY RELATIONS ACT
- ONLY [ 18]
- c. BOTH (16)
- d. OTHER (DESCRIBE)(30)\_\_\_\_\_ 0 19. PARTNERSHIP [31]
- 20. PROPERTY
- 9. EMPLOYMENT LAW 0 a. Fire and Explosion [12(a)]
- a. HUMAN RIGHTS [now] 0 b. Flood (12(b))

- ☐ c. Escape of Dangerous Agencies [12(c)]
- ☐ d. Trespass [12(d)]
- ☐ e. Other [12(e)] \_\_\_\_\_

- ☐ 21. TAXATION [35]
- ☐ 22. TRADE MARK AND PASSING OFF [36]

23. TRUST

- ☐ a. BREACH OF [7]
- ☐ b. CLAIM OF [new]

24. WILLS & ESTATES

- ☐ a. ADMINISTRATION [32]
- ☐ b. PROBATE [32]
- ☐ c. OTHER [37] \_\_\_\_\_

24. OTHER [29]

- ☐ Briefly describe: \_\_\_\_\_

F. Amount Involved: \_\_\_\_\_

G. Related Proceeding(s), If any - provide complete style of proceeding and court registry number for any proceeding of which you are aware that is related to this proceeding. By related we mean a proceeding in which the same or related parties are involved in either making or defending a claim.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of Solicitor of Record: \_\_\_\_\_



FORM #2

*[Style of Proceedings]*

CASE SCHEDULE - NEW CIVIL ACTIONS

[ICD Rule 5 (a)]

Event	Weeks After Issuance of Writ
1. Filing of writ	0
2. File assigned to ICD judge	4
3. Confirmation of service	6
4. Confirmation of joinder of parties, claims and defences	46
5. Status Conference	50
6. Disclosure of primary witnesses	58
7. Disclosure of reply witnesses	62
8. Discovery cutoff	66
9. Exchange of exhibit lists	70
10. Deadline for Rule 18A motions	71
11. Preliminary trial briefs	72
12. Pre-trial conference	73
13. Final trial briefs	75
14. Settlement conference	76
15. Trial	78

**CIVIL CASE SCHEDULE**

**NOTICES**

**NOTICE TO THE PLAINTIFF:**

1. The plaintiff may serve a copy of this Case Schedule (the Schedule) on the defendant(s) along with the writ of summons and statement of claim. Otherwise, the plaintiff shall serve the Schedule on the defendant(s) within \_\_ days after the later of: (1) the filing of the writ and statement of claim, or (2) service of the defendant's appearance. The Schedule may be served by regular mail, with proof of mailing filed promptly in Form # \_\_\_\_.

**NOTICE TO ALL PARTIES**

2. All parties should make themselves familiar with the provisions of Rule 38A. In order to comply with the Schedule, it will be necessary for the parties to pursue their cases vigorously from the day the action is commenced. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims and defences (see Rule 38A \_\_) and for disclosing possible witnesses (see Rule 38A \_\_) and with the discovery cutoff date (see Rule 38A \_\_).

### **STATUS CONFERENCE**

3. If no confirmation of joinder of parties is filed, parties are required to appear at a Status Conference, as shown on the Schedule, to obtain court directions.

### **SETTLEMENT OR JUDGMENT**

4. It is the responsibility of the parties to promptly file any judgment or order disposing of the action within 45 days of the resolution of the case (Rule 38A\_\_\_). When a final decree, judgment or order of dismissal is entered that disposes of all claims, the pending dates are automatically cancelled, including the scheduled trial date.

### **FAILURE TO FILE FINAL ORDER OR JUDGMENT**

5. If a final order or judgment is not filed in a timely fashion, the court may dismiss the case.

### **FAILURE TO APPEAR AT A SCHEDULED TRIAL DATE**

6. If the parties fail to appear at the scheduled trial date, the court will enter an order of dismissal.

FORM #3

*[Style of Proceedings]*

CASE SCHEDULE

EXISTING CIVIL CASE - 12 MONTHS TO TRIAL

[ICD Rule 4(a)]

Event	Weeks After Assignment of Trial Date	Approximate Date
1. Assignment of trial date	0	
2. File assigned to ICD judge	1	
3. Registrar sends Case Schedule to plaintiff	2	
4. Confirmation of joinder of parties, claims, etc.	6	
5. Status conference	10	
6. Disclosure of primary witnesses	25	
7. Disclosure of reply witnesses	29	
8. Discovery cutoff	34	
9. Exchange of exhibit lists	38	
10. Deadline for Rule 18A motions	40	
11. Preliminary trial briefs	42	
12. Pre-trial conference	44	
13. Final trial briefs	46	
14. Settlement conference	48	
15. MCS trial date	52	

4 March 1995

FORM #4

*[Style of Proceedings]*

CASE SCHEDULE - DIVORCE PETITIONS

[ICD Rules 4(a) and 5 (a)]

Event	Weeks after Issuance of Petition
1. Confirmation of service	4
2. Service of Property and Financial Statement of Petitioner - R. 60(2)	8
3. Service of Property and Financial Statement of Respondent R. 60(4) (Where applicable)	12
4. Confirmation of joinder of parties	16
5. Status Conference - if necessary	20
6. Disclosure of Primary witnesses	24
7. Disclosure of Reply witnesses	28
8. Discovery cutoff date	32
9. Exchange of Exhibit lists	34
10. Deadline for Rule 18A applications	36
11. Preliminary trial briefs	38
12. Pre-trial conference	40
13. Final trial briefs	44
14. Settlement conference	48
15. Trial	52

28 March 1995

FORM #5

*[Style of Proceedings]*

CASE SCHEDULE

FAMILY RELATIONS ACT

[ICD Rule 4(a) and 5(a)]

Event	Weeks after Issuance of Writ
1. Confirmation of service	4
2. Service of Property and Financial Statement of Petitioner - R. 60(2)	8
3. Service of Property and Financial Statement of Respondent R. 60(4) (Where applicable)	12
4. Confirmation of Joinder of Parties	16
5. Status Conference - if necessary	20
6. Disclosure of Primary witnesses	24
7. Disclosure of Reply witnesses	28
8. Discovery cutoff date	32
9. Exchange of Exhibit lists	34
10. Deadline for Rule 18A applications	36
11. Preliminary trial briefs	38
12. Pre-trial conference	40
13. Final trial briefs	44
14. Settlement conference	48
15. Trial	52

FORM #6

*[Style of Proceedings]*

CASE SCHEDULE

SMALL CLAIMS APPEAL

[ICD Rule 4(a) and 5(a)]

Event	Weeks After Filing the Notice of Appeal
1. Filing Notice of Appeal	0
2 Confirmation of Service	4
3. Status Conference - if required	7
4 Appellant's Trial Brief	11
4. Respondent's Trial Brief	15
5. Trial	20

4 March 1995--10:17 am:

**FORM #7**

***[Style of Proceedings]***

**CASE SCHEDULE**

**CIVIL PETITIONS**

**[ICD Rule 4 (a) and 5 (a)]**

<b>Event</b>	<b>Weeks after Issuance of Petition</b>
1. Filing of Petition	0
2. Confirmation of service	4
3. Joinder of Parties and defences	6
4. Filing and Exchange of Briefs	10
5. Date for Hearing	11

4 March 1995--10:13 am:



FORM #8

*[Style of Proceedings]*

CONFIRMATION OF SERVICE

[ICD Rule 5 (c)]

- [ ] All the named defendants/respondents have been served or have waived service. (Check if appropriate; otherwise, check the box below.).
- [ ] One or more of the named defendants/respondents have not yet been served. (If the box is checked, the following information must also be provided.)

The following defendants have been served or have waived service:

\_\_\_\_\_  
\_\_\_\_\_

State reasons why service has not been obtained:

\_\_\_\_\_  
\_\_\_\_\_

State how service will be obtained:

\_\_\_\_\_  
\_\_\_\_\_

State date by which service is expected to be obtained:

\_\_\_\_\_  
\_\_\_\_\_

Dated at Vancouver, B.C. this \_\_\_\_ day of \_\_\_\_\_ 19\_\_ .

\_\_\_\_\_  
Solicitor or Party

14 March 1995--8:44 am:

FORM # 9

*[Style of Proceedings]*

CONFIRMATION OF JOINDER OF PARTIES, CLAIMS AND DEFENCES

[ICD Rule 7(c)]

To: Mr./Madam Justice \_\_\_\_\_ [ICD Assigned Judge]

[ ] The parties make the following joint presentations:

[IF THIS BOX IS CHECKED, THERE WILL NOT BE A STATUS  
CONFERENCE]

1. No additional parties will be joined.
2. All parties have been served or have waived service.
3. All pleadings have been filed and served.
4. No additional claims or defences will be raised.
5. The parties anticipate no problems in meeting the deadlines for disclosing possible witnesses and other subsequent deadlines in the case schedule.
6. All parties have cooperated in completing this report.

7. At this time, we estimate the trial will take \_  
days to complete.

OR

[ ] The parties do not join in making the foregoing  
representations, as explained below (where appropriate  
check both the box at left and every applicable box  
below)

[ IF THE BOX ADJACENT TO THE PRECEDING SENTENCE IS  
CHECKED, THERE *WILL* BE A STATUS CONFERENCE, WHICH ALL  
PARTIES MUST ATTEND.]

[ ] An additional party will be joined.

[ ] A party remains to be served.

[ ] A pleading remains to be filed.

[ ] An additional claim or defence will be raised.

[ ] One or more parties anticipate a problem in meeting  
the deadlines for disclosing possible witnesses of  
other, subsequent deadlines in the Case Schedule. [ ]

Other explanation:

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In order to obtain the court's direction in the matters described above, the parties will appear at an initial Status Conference, the date of which is stated in the Case Schedule as the \_\_ day of \_\_ 19 \_\_.

Signed at \_\_\_\_\_ B.C. this \_\_ day of \_\_\_\_\_ 19 \_\_

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Plaintiff or Counsel

28 March 1995--7:30 am:

FORM # 10

*[Style of Proceedings]*

SUBPOENA TO DEPOSE A WITNESS

[ICD Rule 11 (c)]

To: [name and address of person to be examined]

Take notice that your attendance is required to testify as a witness on a pre-trial hearing at the time, date and place set out below. You are also required to bring with you all things or documents in your possession or power relating to the matters in question in these proceedings;

Please note the provisions of the Rules of Court reproduced on the back of this subpoena.

Time \_\_\_\_\_

Date \_\_\_\_\_  
(Day) (Month) (Year)

Place \_\_\_\_\_

Dated at \_\_\_\_\_ B.C. this \_\_\_\_\_

day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Party or Party's Solicitor

28 March 1995--7:31 am:

FROM # 11

*[Style of Proceedings]*

NOTICE TO THE PARTIES TO DEPOSE A WITNESS

[ICD Rule 11 (d)]

To: [Parties or their solicitors]

Take notice that \_\_\_\_\_ [defendant/plaintiff] intends to examine \_\_\_\_\_ [person to be deposed] by way of a pre-trial deposition at the following place and time:

Time \_\_\_\_\_

Date \_\_\_\_\_  
                    (Day)                      (Month)                      (Year)

Place \_\_\_\_\_

Dated at \_\_\_\_\_ B.C. this \_\_\_\_\_

day of \_\_\_\_\_ 19 \_\_\_\_

\_\_\_\_\_  
Party or Party's Solicitor

28 March 1995--7:32 am: