

## **RULE 11**

### **TRANSFER OR TRANSMISSION OF INTEREST**

#### **EFFECT OF TRANSFER OR TRANSMISSION**

**11.01** Where at any stage of a proceeding the interest or liability of a party is transferred or transmitted to another person by assignment, bankruptcy, death or other means, the proceeding shall be stayed until an order to continue the proceeding by or against the other person has been obtained.

#### **ORDER TO CONTINUE**

**11.02** (1) Where a transfer or transmission of the interest or liability of a party takes place while a proceeding is pending, any interested person may, on filing an affidavit verifying the transfer or transmission of interest or liability and on notice to all parties in the proceeding, obtain from the Prothonotary, on requisition, an order to continue (Form 11 A).

(2) An order to continue shall be served forthwith on every other party.

#### **FAILURE TO OBTAIN ORDER TO CONTINUE ACTION**

**11.03** Where a transfer or transmission of the interest of a plaintiff takes place while an action is pending and no order to continue is obtained within a reasonable time, a defendant may move to have the action dismissed for delay, and Rules 24.02 to 24.05 apply with necessary modifications.

*Connick v. Ramsay*, 2008 PESCTD 42

On a motion by the defendant for summary judgment and a motion to have the action dismissed for delay, the court considered whether it had jurisdiction to hear the motion because, following the death of one of the defendants, an order had not been taken out continuing the action against his estate. The court held the plaintiff was responsible for taking out such an order and as this had not been done, the action had not been stayed and the court retained jurisdiction to hear the motion.