

Amendments to Rule 48 bring major changes to administrative dismissals

Significant changes to the *Rules of Civil Procedure* relating to administrative dismissals appear in *Ontario Regulation 170/14*, published in the September 6, 2014 *Ontario Gazette*. Specifically, the existing Rules 48.14 (Action not on trial list) and 48.15 (Action abandoned) were revoked, and a new Rule 48.14 (Dismissal of an action for delay) was substituted in their place. For ease of reading, all references to Rule 48.14 in this article are to the new rule, unless noted.

In the past three years, LAWPRO has experienced a significant spike in the number and cost of claims involving administrative dismissals. We are hopeful the provisions in the new Rule 48.14 will help reduce administrative dismissal-related claims. However, there remains a claims risk if lawyers do not comply with the requirements under the new rule, or are not aware of the operation of the transition provisions.

The major change is that an action will be dismissed for delay if not set down for trial by the later of five years after the commencement of the action or January 1, 2017.

The significant changes, effective January 1, 2015, are summarized in the following points:

- For actions commenced on or after January 1, 2012, automatic dismissal will occur, **without notice to parties or their counsel**, 5 years after the commencement of the action, unless the court orders otherwise. [Rule 48.14(1)]
- Any action struck from the trial list after January 1, 2015, and not restored by the second anniversary of being struck off, will be dismissed on that date, **without notice to parties or their counsel**, unless the court orders otherwise. [Rule 48.14(1)]
- The registrar must serve 48.14 dismissal orders (Form 48D) on all parties [Rule 48.14(2)] and any lawyer served with such an order must promptly give a copy to his or her client. [Rule 48.14(3)]
- A dismissal can be avoided if a party, with the consent of all other parties, files a timetable and draft order, at least 30 days prior to the relevant dismissal deadline. The timetable and draft order must set out the dates by which outstanding steps necessary for set-down will be completed and a date (no more than two years after the automatic dismissal deadline for the action) by which the action will be set down or restored to the trial list. [Rule 48.14(4)]
- Where the parties do not consent to a timetable, one party can bring a motion for a status hearing. At that hearing, *the plaintiff* must show cause why the matter should not be dismissed for delay. The court can dismiss the matter, adjourn the matter, make a Rule 77 case management order, or set deadlines for completion of the steps necessary prior to set-down and a deadline for set-down for trial (or restoration to the trial list). [Rule 48.14 (5-7)]
- The dismissal of an action under Rule 48.14 may be set aside under Rule 37.14. [Rule 48.14 (10)]

Transition provisions

The transition provisions provide the following:

- Any action commenced before January 1, 2012 that has not been dismissed or scheduled for a status hearing by January 1, 2015 will be dismissed January 1, 2017 **without notice to parties or their counsel**. [Rule 48.14(1)]
- Any action struck from the trial list before January 1, 2015 that has not been restored by January 1, 2017 will be dismissed on that date, **without notice to parties or their counsel**. [Rule 48.14(1)]
- Any status hearings scheduled, but not held, before January 1, 2015, will proceed under the old Rule 48.14. [Rule 48.14(12)]
- Old Rule 48.14 and 48.15 status notices received by parties prior to January 1, 2015 will cease to have effect on that date, unless a status hearing has already been scheduled or the action has already been dismissed. [48.14(11) and (13)]

Risk management steps

LAWPRO encourages all lawyers to take steps to familiarize themselves with the requirements under the new Rule 48.14, and in particular, the transition provisions. Please update the dates in your tickler systems to reflect the new administrative dismissal and ultimate set down deadlines for all your open files. **Remember: the courts will be dismissing actions without sending notices of any type – your tickler systems must remind you of relevant dismissal deadlines.** We will be providing more risk management advice to the profession as the changes under the new Rule 48.14 are being phased in. And as there is the potential for a malpractice claim, please contact LAWPRO promptly for advice if you are required to attend at a contested show cause hearing.