

# New Rule 48.14



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## (Administrative Dismissals) Transition Toolkit

Effective January 1, 2015, a new Rule 48.14 brought significant changes to the administrative dismissal regime in Ontario. After several hundred claims and almost \$10 million in claims costs in just three and a half years, LAWPRO was happy to see old Rules 48.14 and 48.15 revoked.

While LAWPRO believes the new rule may stem the tide of administrative dismissal-related claims under the old rules, the changed deadlines, processes and transition provisions introduce new claims risks that may trap the unwary lawyer. Remember, **under the new rule courts will automatically dismiss any action not set down for trial five years after commencement, without sending notices of any type** to parties or their lawyers. Your tickler systems must remind you of relevant dismissal deadlines.

LAWPRO encourages all lawyers to familiarize themselves with the requirements under the new Rule 48.14 and make all necessary changes to internal firm systems and processes. While claims may happen for reasons beyond your control, many of the claims risks under Rule 48.14 can be significantly reduced or eliminated with some proactive claims prevention efforts.

This Toolkit provides advice and tools lawyers and law firms can use to lessen the risk of a claim under the new rule. For ease of reading, all references to Rule 48.14 in this Toolkit are to the new rule, unless noted.



### Critical dates under the new Rule 48.14

- New Rule 48.14 is effective **January 1, 2015**
- Actions commenced on or after **January 1, 2012** will automatically be dismissed without notice 5 years after commencement
- Actions commenced before **January 1, 2012**, will be automatically dismissed **January 1, 2017**
- Transition provisions impact whether a status hearing will occur for **pre-January 1, 2015** actions (see page 2 for details)

There are four tools in this Toolkit:

- 1 A **Firm Transition Checklist** containing a list of the steps firms should take to update ticklers and other firm systems and processes to ensure Rule 48 requirements are met on all files.
- 2 An **Individual File Checklist** containing a list of the steps to be taken and ticklers to be updated for an individual file.
- 3 A **File Progress Plan** that can be used to help actively manage and monitor the status and progress of work on an individual file.
- 4 A **Rule 48 Transition Training PowerPoint®** to help train law firm lawyers and staff on Rule 48 and file management best practices (available at [practicepro.ca/Rule48](http://practicepro.ca/Rule48)).

An electronic version of this Toolkit and LAWPRO's Rule 48 Transition Training PowerPoint are available at [practicePRO.ca/Rule48](http://practicePRO.ca/Rule48)

### The worst case scenario: When lawyers drop the ball on all their files

A very dangerous scenario arises when a lawyer takes an unexpected hiatus from legal practice (for example, due to illness, substance abuse or family emergency) or is still in the office but overwhelmed and "not present," which leads to the ball being dropped on several files, or even his or her entire practice. This triggers a "cluster" of administrative dismissals and it is a scenario that LAWPRO sees all too frequently, even at law firms that should have systems to prevent this from happening. When we see these clusters it appears that the departed lawyer's active files were not being monitored by a staff person or transferred to a colleague.

Lawyers and law firms should be prepared for unexpected work interruptions. Consider the possibility that an illness, injury or other contingency could cause someone to struggle with keeping up, or even leave practice for a significant amount of time. Ask yourself: does your firm have systems that will recognize and be prepared to handle these situations? Who will handle urgent client matters in these circumstances? Will the lawyer taking over a file be able to review files to identify matters requiring prompt action? Consider how you would improve your firm's systems to address these situations.



# Summary of significant changes under Rule 48.14

The significant changes under Rule 48.14, effective January 1, 2015, are summarized in the following points:

- For actions commenced on or after January 1, 2012, automatic dismissal will occur for cases not set down for trial, without notice to parties or their counsel, five 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)]
- New actions must include the following warning in the preamble of the Statement of Claim and/or Notice of Action, above the registrar's issuance date and signature: "TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court."
- 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/or impose 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)]

For more information on Rule 48-related claims and risk management contact:  
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### Call LAWPRO if you have a show cause hearing or think there might be a claim

If you are required to attend a contested show cause hearing there is the potential for a claim and you should contact LAWPRO and your excess insurer(s), if any, immediately so you can get help dealing with it. The same goes if, for any other reason, you think you might be facing an administrative dismissal-related claim. Often these types of claims can be repaired when early notice is provided. This permits LAWPRO counsel every opportunity to have the proceeding reinstated and to avoid the application of the \$10,000 increase in deductible (see page 4).