

Rule 48.14 Transition Toolkit helps you prevent administrative dismissal of actions

The administrative dismissal of actions for delay has caught many lawyers by surprise, and has led to several hundred claims and almost \$10 million in claims costs in just three and a half years.

On January 1, 2015, a welcome amendment to the administrative dismissal rule – Rule 48 – came into force.

The amended rule puts off the dismissal of stalled actions until the later of January 1, 2017 or the five-year anniversary of commencement of the action. While this change buys lawyers time, it also opens the door to claims related to misunderstanding of the transition provisions, or to waiting for a future notice of dismissal that never comes: under the new version of the rule, actions will be dismissed without notice.

A resource to help bring your files up to speed

To help lawyers avoid these new pitfalls, the practicePRO program has developed a “Rule 48.14 Transition Toolkit” for lawyers. The toolkit is available at practicepro.ca/Rule48, and includes:

- A summary of significant changes under Rule 48.14
- Why lawyers let files stall, and tips on how to prevent dismissals
- Firm Transition Checklist
- Individual File Checklist
- File Progress Plan
- Rule 48 Transition Training PowerPoint

We invite you to download this useful resource and take the time to review your files, updating your tickler systems to match the new regime.

Wondering what's new?

Here's a summary of the dismissal regime in light of the amendments:

- 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 a court orders otherwise.
- 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 a court orders otherwise.

- 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 and any lawyer served with such an order must promptly give a copy to his or her client.
- 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.
- 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).
- The dismissal of an action under Rule 48.14 may be set aside under Rule 37.14.

The transition provisions provide that:

- 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.
- 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.
- Any status hearings scheduled, but not held, before January 1, 2015, will proceed under the old Rule 48.14.
- 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. ■