

# Updating firm systems and processes

While tasks and deadlines must be handled on an individual file basis, firm systems and processes are critical to ensuring deadlines are not missed and that files are kept moving. Firms can take many steps to lessen the risk of an administrative dismissal claim. These are discussed in more detail below and are highlighted in the Firm Checklist for Rule 48.14 Transition (see next page).

First and foremost, firms should update the dates in all tickler systems (electronic and/or paper) to reflect the administrative dismissal and set down deadlines under the new Rule 48 for all open files. Remember, the courts will dismiss actions without sending notices of any type to parties or their lawyers – your tickler systems must remind you of relevant dismissal deadlines.

Have a succession plan and build systems so you can easily respond to any situation where a lawyer unexpectedly leaves practice for an extended period of time (See page 1, *The worst case scenario: When lawyers drop the ball on all their files*).

## Use our Rule 48 Transition Training PowerPoint presentation

We have created a PowerPoint presentation that you can use to train your lawyers and staff on the new Rule 48 and other best practices for managing files. Download a copy at [practicePRO.ca/Rule48](http://practicePRO.ca/Rule48)

### Tips for building more robust firm systems:

- Ensure your tickler system is effective, is populated properly, and staff is well-trained in the use of the system.
- Ensure that the ticklers are sent to at least two individuals at the firm (e.g., lawyer with carriage and an assistant).
- As a best practice, go beyond just entering relevant dismissal deadlines in your tickler systems. Establish a timetable for each matter and tickle start and finish reminders for each step in the litigation (e.g., file defence, file affidavit of documents, complete discoveries, answer undertakings, etc.). Some accounting and practice management products allow you to automatically create a standard series of tickler dates.
- Most firm accounting and practice management programs can generate a report of files that have had no activity on them for a particular period of time. Consider generating these reports monthly and review any files that have had no activity for 90 days.
- Make sure junior lawyers are appropriately supervised and understand the operation of Rule 48. Pay attention to signs that suggest they are overwhelmed and at risk of missing deadlines.
- Build a culture of openness so that lawyers and staff are comfortable seeking answers to questions and asking for help on problems.
- To help ensure the work on individual files is more actively managed and monitored, consider creating file progress plans for all open files. See page 7 for information on these plans and how to create and use them.

# \$10,000 increase in deductible

## for certain administrative dismissal claims

Where an administrative dismissal is not set aside despite any steps that may have been taken by or under the direction of LAWPRO, the deductible for the resulting claim will be deemed to apply to claim expenses, indemnity payments and/or repair costs and will be \$10,000 more than the deductible chosen by the insured and/or listed on the declarations page of the policy. (There is an exception to this, for claims arising out of certain *pro bono* work.)

This increased deductible started with the 2014 policy year and was a response to escalating claims costs on administrative dismissal claims, despite extensive efforts by LAWPRO to educate the bar on how to avoid these easily preventable claims. It is our hope that this increased deductible will have an influence on lawyers' practice habits similar to that of the "double deductible" on conflicts claims after it was introduced. Administrative dismissal claims can often be repaired if early notice is provided, so we urge lawyers to report actual and potential claims as soon as they are discovered to permit LAWPRO counsel every opportunity to have the proceeding reinstated and to avoid the application of the increased deductible.



# Firm Checklist

For Rule 48.14 Transition

Person responsible for completing: \_\_\_\_\_

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

- Update ticklers to reflect timelines in any existing orders
- Update ticklers to reflect assignment court dates or trial dates, if already set
- Update ticklers for new dismissal dates (where there is no assignment court or trial date):

Status of action:	Set ticklers as follows:	Updated? (Circle)	
Action has not been set down	Set dismissal date ticklers to later of <b>5 years</b> from issue date or <b>January 1, 2017</b>	Yes	No
Action was set down but struck from the trial list	Prudent to set task to <b>immediately</b> bring motion to restore action to trial list, well before <b>30 day</b> deadline prior to dismissal date, AND  Set dismissal date ticklers to later of <b>2 years</b> from date action was struck or <b>January 1, 2017</b>	Yes	No
All files	Set ticklers to <b>30 days</b> prior to dismissal date to file consent timetable, or bring motion for status hearing/restore to trial list	Yes	No
If...	Then...	Updated?	
Status hearing is scheduled	Set ticklers to status hearing date	Yes	No
Plaintiff will be under disability on <b>January 1, 2017</b>	Set ticklers to appropriate date to review disability status and, if applicable, when plaintiff will reach age of majority	Yes	No

- Train lawyers and staff on changes to Rule 48
- Use LAWPRO's Rule 48 Transition Training Powerpoint ([practicepro.ca/Rule48](http://practicepro.ca/Rule48))
- Create file progress plans for all open files
- Use cascading ticklers feature within your practice management programs to automatically create deadlines for major steps on each file
- Ensure your tickler system is effective and is being populated properly
- Train lawyers and staff on how to use the firm's tickler system
- Remind lawyers and staff to contact LAWPRO when you might be facing an administrative dismissal-related claim
- Create a policy and set reminders for a monthly review of inactive file reports (e.g., no activity in last 90 days)
- Implement a process to allow files to be transferred in the event the responsible lawyer becomes unable to carry files
- Implement a culture that ensures appropriate supervision of junior lawyers and staff