

## **BY THE RULES...**

(NOTES & COMMENTS ON CIVIL PRACTICE & PROCEDURE)

## **Rule 48 of Ontario's *Rules of Civil Procedure***

EFFECTIVE JANUARY 1, 2015, RULE 48 OF ONTARIO'S *RULES OF CIVIL PROCEDURE* UNDERWENT SIGNIFICANT CHANGES. THE "NEW" RULE 48 PROCESS CHANGES THE PROCEDURE FOR ADMINISTRATIVE DISMISSALS OF CIVIL ACTIONS IN A WAY THAT ALL ONTARIO LITIGATORS MUST BE AWARE OF AND MUST BE PREPARED TO ADDRESS.

The "old" Rule 48 procedure was intended to reduce inefficiency by requiring litigants and their lawyers to organize civil proceedings toward resolution or trial in a more diligent fashion (i.e., two years, subject to Court permitted extensions). However noble the intent, the "old" Rule 48 procedure did not work, caused unwanted and unnecessary bureaucracy and ultimately created greater inefficiencies in the form of status hearings, inadvertent administrative dismissals, and the plethora of motions to set aside those dismissals. In many ways, and in many jurisdictions, it proved impractical to prosecute a civil action from the date of the issuance of claim to setting down for trial in merely two years. The "new" Rule 48 will, hopefully, be more in tune with the practical challenges that lawyers and litigants face and more in keeping with judicial resources, while at the

same time encouraging the diligent prosecution of civil proceedings.

There are features of the "new" Rule 48 that litigation lawyers should be aware of and, where necessary, should consider changing their administrative procedures and calendar management.

First, the revisions to Rule 48 have changed the language that is used in the preamble paragraphs used in Statements of Claim and Notices of Action (Forms 14A and 14C). Those pleadings must now include the following sentence (immediately above the Local Registrar's signature and the date):

**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**



### **James Round**

Associate, Litigation

#### **PHONE**

416 777 5368

#### **EMAIL**

[jround@torkinmanes.com](mailto:jround@torkinmanes.com)

James has a very diverse litigation practice, with a focus on commercial litigation matters, contractual disputes, shareholder disputes, professional liability and technology litigation.

action was commenced unless otherwise ordered by the court.

At the Toronto Courts, the Court office has refused to issue Statements of Claim or Notices of Action lacking this new language. It would be prudent for counsel to ensure that whatever precedents they are working from include this language. It would be unfortunate for counsel to miss a limitation period by virtue of having a pleading rejected by the Court office for lacking this paragraph in the preamble.

It is also noteworthy that the process under the new Rule 48 does not contemplate that the Court will issue notices in advance of automatic dismissals. Under the "old" Rule 48 regime, the Court would issue a notice to advise lawyers that an Action would be dismissed in ninety

days' time, unless certain steps were taken (i.e., scheduling a Status Hearing, or setting the matter down for Trial). Such notices will no longer be sent. It is up to counsel to diarize matters for themselves, as described below, to ensure that steps are taken to prevent the automatic dismissal of proceedings.

The new Rule 48 states that the Registrar "shall dismiss an action for delay" by the later of the 5th anniversary of the commencement of the action and January 1, 2017. For example, an action commenced in 2005 shall be dismissed for delay on January 1, 2017 whereas an action commenced in 2013 shall be dismissed for delay in 2018. Because no notices of impending dismissal will be issued by the Court, prudent counsel ought to diarize the five year anniversary of the issuance of every

Statement of Claim issued on or after January 1, 2012. Each such action will have a different five year anniversary date on which it will be automatically dismissed by the Registrar (unless it has been set down for trial or otherwise terminated). For all other matters, that is those commenced prior to January 1, 2012, it would be prudent for counsel to diarize January 1, 2017 as the date upon which they will be automatically dismissed by the Registrar (unless set down for trial or otherwise terminated before that time).

There are other aspects of the "new" Rule 48 that litigation lawyers will need to become familiar with in the months and years ahead. However, these are a few practical aspects of the "new" Rule 48 that all counsel ought to consider at the earliest stage in order to avoid pitfalls in the future.

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