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NOTICE TO THE PROFESSION

As the bar will be aware, a number of changes were made to Rule 48.14 of the Rules of Civil Procedure (Dismissal of Action for Delay) in 2015. This notice is being sent as a courtesy reminder to the profession because automatic dismissal orders under the new rule will be generated beginning January 1, 2017.

While the registrar will no longer send a notice before dismissal orders are generated, it now takes significantly longer from the date of commencement for an action to be dismissed. In the past, defended actions could be dismissed 2 years and 90 days after the first defence was filed and undefended actions could be dismissed 181 days after issuance.

Actions will not be dismissed under the new Rule 48.14 unless 5 years have passed from their start date, subject to the court ordering otherwise. Dismissal orders also will not be generated if the plaintiff has been identified as under a legal disability at the time the action is to be dismissed.

Actions that are struck from the trial list and not restored to the trial list within 2 years will also be subject to automatic dismissals under Rule 48.14.

If you are unable to have your action set down for trial within five years, or placed back on the trial list within two years, you can keep your action from being dismissed if you:

- have the consent of all the parties or
- bring a motion for a status hearing.

If you have the consent of all parties, you can draft a timetable that:

- identifies the steps you need to complete before the action can be set down for trial or restored to the trial list,
- shows the date(s) by which you need to complete the steps, and
- shows a date (no more than seven years after the claim) before which the action must be set down for trial or placed back on the trial list.

If all parties consent to the timetable, you can file the timetable and draft order with the court 30 days before the five or two year deadlines. If you have missed the 30 day timeline, you can still bring your timetable and draft order to the court. Filings will be accepted as long as practicable before a dismissal order is generated.

If all parties do not consent to a timetable, you can bring a motion for a status hearing to ask the court for an order allowing the action to move forward. This motion may be brought at any time before the five or two year deadlines. Please note that motions for status hearings need not be heard before the timelines expire. Once a motion is brought, the registrar will not send a dismissal order until after the motion is heard and the court makes an order.

When an order under Rule 48.14 is made dismissing an action, there are consequences for counterclaims, crossclaims and third and subsequent party claims. These consequences are outlined in Rule 48.14(9).

Dismissal orders are not generated for actions on the Commercial List in Toronto or for actions commenced under the *Class Proceedings Act, 1992*.