

**CITATION:** Daniels v. Grizzell, 2016 ONSC 7351  
**COURT FILE NO.:** CV-11-430594  
**DATE:** 20161125

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** MATTHEW JASON DANIELS, Plaintiff

**AND:**

NATASHA L.A. GRIZZELL, Defendant

**BEFORE:** MARROCCO A.C.J.S.C.

**COUNSEL:** *Christian Guerette*, for the Plaintiff

*Alexander J.D. Curry*, for the Defendant

**HEARD:** IN WRITING

**ENDORSEMENT**

[1] This action arises out of injuries the plaintiff sustained in a motor vehicle accident which occurred October 14, 2010. The parties have continued to work towards the resolution of this action. The parties agreed to a timetable for the completion of undertakings, mediation and setting this action down for trial.

[2] The parties seek an order pursuant to Rule 48.14 (4) directing the Registrar not to dismiss this action for delay. The consent timetable is attached to this order as a Schedule. The parties seek the order on consent and without an order concerning costs.

[3] The order sought by the parties is granted. The Registrar shall not dismiss this action pursuant to Rule 48.14.

[4] Because administrative dismissals can occur from and after January 1, 2017, I have decided to issue a brief written endorsement interpreting portions of Rule 48.14.

[5] The Registrar will not dismiss an action for delay if the following events takes place at least 30 days before the expiry of the applicable period:

- a party files a timetable signed by all the parties; and
- a party files a draft order establishing the timetable;

[6] In addition, if a consent timetable signed by all the parties, and a draft order is filed, the Registrar shall not dismiss the action pursuant to Rule 48.14.

[7] Absent consent, if a party brings a motion for an order continuing the action before the expiry of the applicable period, the Registrar shall not dismiss the action pursuant to Rule 48.14. If a motion has been brought within the applicable period, the Registrar shall not dismiss the matter until the motion is heard even if the matter is heard after the dismissal date prescribed by the Rule. For the sake of completeness, the dismissal of an action by the Registrar can be set aside under Rule 37.14.

[8] The current Rule does not include a statement that the Registrar shall dismiss the action for delay with costs. Accordingly, actions dismissed for delay by the Registrar should not contain a costs order and the phrase “with costs” in Form 48D should be deleted when the dismissal order using that form is executed. I appreciate that Rule 1.06 provides that the Forms prescribed by these rules shall be used “where applicable and with such variation as the circumstances require.” The fact that costs are not referred in Rule 48.14 (1) is a circumstance which requires a variation of Form 48D.

[9] Rule 24.05.1(1) does not apply to actions dismissed for delay pursuant to Rule 48.14. The phrase “dismissal for delay” in Rule 24.05.1(1) does not include a dismissal under Rule 48.14(1) because Rule 48.14 (9) does not incorporate Rule 24.05.1 into administrative dismissals; it only applies, per its plain wording, to Rules 24.03 to 24.05.

[10] Rule 48.14 does not apply to case managed actions. The concern which gave rise to the Rule; namely that parties to an action will decide not to proceed with or settle the action and neglect to inform the Court ought to have no application to a case managed file. Indeed, actions on the Court’s Commercial List, where Court supervision is assumed, are coded into the Court’s information management system in a way which precludes the application of timelines other than those imposed by order of the Court. Accordingly, Rule 48.14 cannot and therefore does not apply to case managed actions including Commercial List actions.

[11] Rule 48.14 applies to proceedings which are commenced as an action. It does not apply to proceedings commenced by an application. Accordingly, estate matters which are commenced by way of an action are subject to the Rule; estate matters commenced by application are not. For practical reasons grounded in the coding of actions and applications in the court’s information management system, the application of Rule 48.14 is determined at the time the proceeding is commenced. For the same reason, applications which are converted to actions are not subject to Rule 48.14.

[12] Rule 48.14 does not apply to actions which have been stayed. Rule 48.14 (1) states that the Registrar shall dismiss an action for delay unless the court orders otherwise. In cases in which the court has ordered that an action be stayed, the Court has ordered otherwise and the action shall not be dismissed pursuant to Rule 48.14.

[13] As can be appreciated from the above, Rule 48.14 exists in the interests of keeping court information current. It should be interpreted in a way which appreciates this purpose. It should not be interpreted in a way which makes it a trap for the unwary.

A handwritten signature in cursive script, appearing to read "Marrocco A.C.J.S.C.", positioned above a horizontal line.

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MARROCCO A.C.J.S.C.

**Date:** 20161125