

**RULE 48**  
**SETTING DOWN FOR TRIAL**

**WHEN AND BY WHOM ACTION MAY BE SET DOWN FOR TRIAL**

**48.01** After the close of pleadings, any party to an action or to a counterclaim or crossclaim in the action who is not in default under these rules or an order of the court and who is ready for trial may set the action down for trial, together with any counterclaim or crossclaim.

**HOW ACTION IS SET DOWN FOR TRIAL**

**Defended Action**

- 48.02** (1) Where an action is defended, a party who wishes to set it down for trial may do so by serving,
- (a) a request for trial date (Form 48A) on every party to the action or to a counterclaim or crossclaim in the action and on any third or subsequent party;
  - (b) a trial record prepared in accordance with Rule 48.03 on every party to the action or to a counterclaim or crossclaim in the action and on any third or subsequent party who has delivered a statement of defence in the main action,
- and forthwith filing the request and trial record with proof of service.

**Undefended Action**

- (2) Subject to Rule 70, where the Court orders the trial of an undefended action, a party who wishes to set it down for trial may do so by filing a trial record prepared in accordance with Rule 48.03.

**TRIAL RECORD**

- 48.03** (1) The trial record shall contain, in the following order,
- (a) a table of contents, describing each document by its nature and date;
  - (b) a copy of any jury notice;
  - (c) a copy of the pleadings, including those relating to any counterclaim or crossclaim;
  - (d) a copy of any financial statement delivered under Rule 70.14 or 71.04 or waiver of financial statements filed under subrule 70.14(3);

- (e) a copy of any demand or order for particulars of a pleading or financial statement and the particulars delivered in response;
  - (f) a copy of any notice of amounts and particulars of special damages delivered under subrule 25.06(9)(b);
  - (g) a copy of any order respecting the trial;
  - (h) a memorandum setting forth the number of witnesses proposed to be called, the number of expert witnesses proposed to be called, the number of documents proposed to be presented and an estimate of the number of hours or days required to present the case; and
  - (i) a certificate (Form 48B) signed by the solicitor setting the action down, stating,
    - (i) that the record contains the documents required by clauses (a) to (g);
    - (ii) that the time for delivery of pleadings has expired; and
    - (iii) where applicable, that judgment has been obtained or that the action has been discontinued or dismissed against a defendant.
- (2) It is the responsibility of the party who filed the trial record to place with the record, before the trial, a copy of
- (a) any notice of amounts and particulars of special damages delivered after the filing of the trial record;
  - (b) any order respecting the trial made after the filing of the trial record;
  - (c) any memorandum signed by counsel or any order made by the court, following a pre-trial conference;
  - (d) in an undefended action, any affidavit to be used in evidence; and
  - (e) any report of the Public Trustee or Official Guardian (as the case may be) and supporting affidavit and any dispute of, or waiver of the right to dispute, the report or affidavit.

**PLACING UNDEFENDED ACTION ON TRIAL LIST**

- 48.04** (1) In an undefended action, on receipt of the trial record the registrar shall forthwith set a time and date for the trial and place it on the trial list.
- (2) When the registrar places the action on a trial list he shall mail a notice (Form 48BB) of the date, time and place of trial to all

parties.

- (3) Where an action is an undefended third party claim, a party who wishes to have it placed on the trial list shall serve a notice for trial and trial record on the plaintiff in the main action within five days after the third party claim is set down for trial and shall forthwith file the notice with proof of service.

### **PLACING DEFENDED ACTION ON TRIAL LIST**

#### **Registrar to Place on Trial List**

- 48.05** (1) In a defended action and after a pre-trial conference has been held, on receipt of the documents referred to in subrule 48.02(1), with proof of service, the registrar shall forthwith consult with the parties and after doing so shall set a time and date for the trial and place it on the trial list.
- (2) The registrar shall mail a notice (Form 48BB) to every party to the action of the time and place set for the trial.
  - (3) Where a defended action is a third party claim, a party who wishes to have the third party claim placed on the trial list shall in addition serve the notice for trial and trial record on the plaintiff in the main action within the time for service on the parties to the third party claim, and shall forthwith file the notice with proof of service.

### **CONSEQUENCES OF ACTION BEING PLACED ON TRIAL LIST**

**48.06** Where an action is placed on a trial list,

- (a) all parties shall be deemed to be ready for trial;
- (b) no party to the action shall initiate or continue any motion or form of discovery without leave of the court, but this does not relieve a party from complying with his undertaking on an examination for discovery or relieve a party from any obligation imposed by,
  - (i) Rule 30.07 (disclosure of documents or errors subsequently discovered),
  - (ii) Rule 30.09 (abandonment of claim of privilege),
  - (iii) Rule 31.07 (disclosure of information refused on discovery),
  - (iv) Rule 31.09 (disclosure of information subsequently obtained),
  - (v) Rule 51.03 (duty to respond to request to admit),
  - (vi) Rule 53.03 (service of report of expert witness) or

- (vii) Rule 70.14 (delivery of financial statement);
- (c) all parties shall be precluded from resorting to the provisions of Rule 51.02 (request to admit facts or documents);
- (d) the trial shall proceed when the action is reached on the trial list unless a judge orders otherwise.

### **SEPARATE TRIAL LISTS**

**48.07** Actions to be tried with a jury shall be placed on a trial list of jury actions and actions to be tried without a jury shall be placed on a trial list of non-jury actions.

### **SEPARATE SPEEDY TRIAL LIST**

**48.08** The registrar shall keep a separate speedy trial list on which only actions for which a speedy trial has been ordered shall be listed.

### **ACTIONS STRUCK OFF TRIAL LIST**

**48.09** Where an action is struck off a trial list, it shall not thereafter be placed on any trial list except with leave of a judge.

### **DUTY TO INFORM REGISTRAR OF SETTLEMENT**

**48.10** Every party to an action, whether it is placed on a trial list or not, shall promptly inform the registrar of any settlement of the action and shall confirm in writing that the action has been settled.

### **APPLICATION OF THE RULE**

**48.11** Rules 48.01 to 48.10 apply to any proceeding in which the court has directed the trial of an issue, unless the court orders otherwise.

### **PRE-TRIAL BRIEF**

- 48.12** (1) Unless ordered otherwise, each party to an action shall, at least 7 days prior to the date for trial, deliver to the trial judge and to each opposite party a brief containing,
- (a) a succinct outline of the facts he intends to establish,
  - (b) a concise statement of the principle of law on which he relies, and
  - (c) citation of relevant statutory provisions and leading authorities.
- (2) Documentary evidence shall not be included with the pre-trial brief unless all parties have consented to its admission as evidence.

## **ACTION NOT ON TRIAL LIST WITHIN ONE YEAR**

### **Status Notice**

- 48.13** (1) Where an action in which a statement of defence has been filed has not been placed on a trial list or terminated by any means within one year after the filing of a statement of defence, the registrar shall serve on the parties a status notice (Form 48C) that the action will be dismissed for delay unless it is set down for trial or terminated within ninety days after service of the notice.
- (2) A solicitor who receives a status notice shall forthwith give a copy of the notice to his or her client.

### **Dismissal by Registrar**

- (3) The registrar shall dismiss the action for delay, with costs, ninety days after service of the status notice, unless
- (a) the action has been set down for trial;
  - (b) the action has been terminated by any means; or
  - (c) a judge presiding at a status hearing has ordered otherwise.
- (4) Where an action is not set down for trial or terminated by any means within the time specified in an order made at a status hearing, the registrar shall dismiss the action for delay, with costs and shall serve on the parties a copy of the order (Form 48D).
- (4.1) A solicitor who is served with an order dismissing the action for delay shall forthwith give a copy of the order to his or her client, and shall file proof that a copy was given to the client.

### **Status Hearing**

- (5) Where a status notice has been served, any party may request that the registrar arrange a status hearing, in which case the registrar shall mail to the parties a notice of the hearing, and the hearing shall be held before a judge.

### **Attendance at Status Hearing**

- (6) The solicitors of record shall attend, and the parties may attend, the status hearing.
- (7) Where a party represented by a solicitor does not attend the hearing, the party's solicitor shall file proof that a copy of the status notice and notice of the time and place of the status

hearing were given to the party.

### **Disposition at Status Hearing**

- (8) At the status hearing, the plaintiff shall show cause why the action should not be dismissed for delay, and,
  - (a) if the presiding judge is satisfied that the action should proceed, the judge may set time periods for the completion of the remaining steps necessary to have the action placed on a trial list and may order that it be placed on a trial list within a specified time, or may adjourn the status hearing to a specified date, on such terms as are just; or
  - (b) if the presiding judge is not satisfied that the action should proceed, the judge may dismiss the action for delay.

### **Plaintiff Under Disability**

- (9) Where the plaintiff is under disability, the action may be dismissed for delay only if,
  - (a) the defendant gives notice to the Official Guardian or, if the Public Trustee is committee of the estate or litigation guardian of the plaintiff, to the Public Trustee; or
  - (b) the presiding judge or a judge on motion orders otherwise.

### **Effect of Dismissal**

- (10) Rules 24.03 to 24.05 (effect of dismissal for delay) apply to an action dismissed for delay under subrule (3), (4) or (8).
- (11) An order under this rule dismissing an action may be set aside under rule 37.14.

*Metro Credit Union Limited v. McInnis* 2011 PECA 7; [2011] P.E.I.J. No. 13.

Pursuant to Rule 48.06(b), leave of the court is required to bring a motion to strike a jury notice after the proceeding has been placed on the trial list (Rule 48.05). Except where substantive rights are affected, only a substantial or unexpected change in circumstances will justify granting leave to resume interlocutory proceedings after a proceeding has been placed on the trial list.