

Superior Court of Justice  
BRANTFORD

Court File Number/Numéro de dossier du greffe  
CV-18-00000296-0000

Civil Endorsement Sheet/  
*Page d'inscription*

DATE June 19, 2026

---

**Plaintiff(s)/Applicant(s):** 1224553 ONTARIO INC. OPERATING AS BRANTFORD GYMNASTICS ACADEMY

**Counsel:** Jeffrey Wm. Strype

**Defendant(s)/Respondent(s):** CANADA BROKERLINK (ONTARIO) INC.

**Counsel:** Rebecca J. Brown Greer

---

1. The plaintiff seeks to set aside the administrative dismissal of this case which occurred on July 23, 2024.
2. Under rule 37.14(2), the court has discretion to set aside or vary a dismissal order on such terms as are just. Specifically, rule 37.14(1) and (2) provide:
  - 37.14(1) Motion to set aside or vary – A party or other person who,
    - (a) is affected by an order obtained on motion without notice;
    - (b) fails to appear on a motion through accident, mistake or insufficient notice; or
    - (c) is affected by an order of a registrar,may move to set aside or vary the order, by a notice of motion that is served forthwith after the order comes to the person's attention and names the first available hearing date that is at least three days after service of the notice of motion.
  - (2) On a motion under subrule (1), the court may set aside or vary the order on such terms as are just.
3. The following dates are material:
  - a. The action arises out of a fire on the plaintiff's property which occurred on November 7, 2016.
  - b. The plaintiff sued its insurance broker (the defendant) for failing to procure adequate insurance coverage. A Notice of Action was issued on November 6, 2018. The Claim issued on December 4, 2018.
  - c. The Statement of Defence was delivered on May 24, 2019.

- d. Examinations for discovery occurred on December 8 and 9 of 2021.
  - e. The parties subsequently did not act upon those discoveries in terms of:
    - i. answering undertakings;
    - ii. bringing motions for refusals; or
    - iii. creating a time-table.
  - f. The plaintiff's original counsel was replaced on or about September 11, 2023.
  - g. No further steps were taken by new counsel to advance the matter until on June 24, 2024 when new plaintiff's counsel wrote to the Court office seeking to know if the matter had been administratively dismissed for delay. The Court office replied in the negative.
  - h. Plaintiff's new counsel then wrote to defence counsel on November 13, 2024 seeking answers to undertakings. No reply was received.
  - i. Plaintiff's new counsel again wrote a follow-up email seeking answers to undertakings on December 3, 2024.
  - j. On March 18, 2026, the plaintiff's new counsel wrote to the Court office indicating that he wished to set the matter down for trial and inquired "if this matter is still ongoing with the court." The Court office replied that the matter had been administratively dismissed on July 23, 2024.
  - k. The plaintiff brought this motion on April 13, 2026.
  - l. The defendant delivered its responding material on or about June 3, 2026.
4. Rule 48.14(1) of the *Rules of Civil Procedure* indicates that if an action has not been set down within five (5) years of its commencement, it will be administratively dismissed by the Registrar. To avoid such a dismissal at the five-year mark, parties may either
- a. on consent establish a timetable (Rule 48.14(4)) to move the matter forward; or
  - b. move for a status hearing (Rule 48.14(5)).

In either case, this is supposed to be done at least 30 days before the expiry of the fifth anniversary of the action.<sup>1</sup>

- 5. Despite apparent awareness on the part of the plaintiff's new counsel that the five-year anniversary of the proceeding was pending – given the inquiry to the Court office on June 24, 2024, the plaintiff proffers no evidence that he took steps pursuant to Rule 48.14(4) or (5) to obtain a timetable on consent, or absent consent, obtain a status hearing.
- 6. The test on a motion to exercise discretion under Rule 37.14 to set aside a registrar's dismissal order has four components:
  - a. The plaintiff must show a satisfactory explanation for delay;

---

<sup>1</sup> It is to be noted that the intervention of Covid 19 resulted in an extension of the five-year anniversary period by 183 days given the operation of O.Reg. 73/20 under the Emergency Management and Civil Protection Act, RSO 1990, c E.9, revoked by O.Reg. 457/20 under the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, SO 2020, c 17.

- b. The plaintiff must provide satisfactory evidence that the plaintiff intended to prosecute the action but failed to do so due to inadvertence;
  - c. Whether the plaintiff moved forthwith to set aside the dismissal order; and
  - d. Whether the defendant has suffered any significant prejudice in presenting their case at trial as a result of the plaintiff's delay or as a result of steps taken following dismissal of the action.<sup>2</sup>
7. Having read the affidavit of Ms. Denesi, the law clerk from the office of the plaintiff's counsel tendered on this motion, the court concludes that no satisfactory explanation is tendered by the plaintiff explaining the delay in this action.
8. The proceeding largely went dormant after completion of the discoveries in December 2021. Counsel was replaced 21 months after that. Yet, new counsel apparently took no steps – except to ask the court 30 days before expiry of the Covid amended 5-year anniversary – whether the action was still ongoing.
9. After that date, the next step plaintiff's counsel took was to ask for undertakings five months later; and again one month after that in December 2024. No information is disclosed as to what progress was made in the litigation after December 2024 and 15 months later when the plaintiff's counsel discovered the claim had been dismissed 21 months previously.
10. As for the second component of the test, inadvertence, it is strange that 30 days before the claim was dismissed for delay under Rule 48, the office of the plaintiff's counsel wrote to the Court office asking whether the matter had been dismissed for delay. Advised by the Court that it had not been dismissed; yet presumably cognizant that administrative dismissal was impending, counsel for the plaintiff took no steps available under Rule 48.14(4) or (5) to establish a timetable or get a status hearing in order to forestall a dismissal of the action for delay. No explanation is provided for this omission. There is not even an acknowledgement in the affidavit supporting the motion tendered by the plaintiff that such was inadvertence.
11. Given this lack of acknowledgement of inadvertence, the court cannot conclude that there was inadvertence on the part of the plaintiff or his counsel in failing to move this matter along in the proper fashion despite intending to do so.
12. On the third element of the test, it is clear that the plaintiff did move with alacrity to set aside the administrative dismissal of this action once advised of the dismissal in March of 2026. The motion was filed within three weeks.
13. However, the failure on the part of the plaintiff to take the appropriate steps under Rule 48.14(4) and (5) allowed the matter to be dismissed for over 20 months before the fact of dismissal of the action was discovered. It was only discovered after the office of the plaintiff's counsel sent an email to the Court office inquiring "...if this matter is still ongoing with the court ..." Such an inquiry suggests a lack of urgency or concern about the

---

<sup>2</sup> *Scaini v. Prochnicki*, 2007 ONCA 63 at para. 13 and *Prescott v. Barbon*, 2018 ONCA 504 at para. 14.

matter on the part of the office of the plaintiff's counsel. No evidence was tendered from the plaintiff itself.

14. Lastly, with respect to the issue of prejudice suffered by the defendant, the plaintiff / moving party has led no evidence suggesting there would be no prejudice to the defendants arising from the delay in this action.
15. Further, finality is a principle to be considered.<sup>3</sup> The fire and issues of adequacy of insurance coverage in this case arose ten years ago. The issues of communication between the broker who sold the insurance (defendant) to the insured (plaintiff) would have transpired prior to the fire. Memory diminishes over time. There were five years between the material events and discovery. Five further years have transpired since discovery. Minimal steps have been taken to move this along. The parties deserve finality. The delays in this proceeding are inexplicable and inordinate.
16. The plaintiff's motion to set aside the order dismissing the action for delay is dismissed.



---

SPURGEON J.

---

<sup>3</sup> *Prescott* at para. 36; and *Marche D'Alimentation Denis Theriault Ltee v. Giant Tiger Stores Ltd.*, 2027 ONCA 695 at para. 38.