

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Chief Justice Richard J. Chartier  
Madam Justice Karen I. Simonsen  
Madam Justice Lori T. Spivak

***BETWEEN:***

<b><i>BRYAN DAVID OLIVER</i></b>	)	
	)	
<i>(Plaintiff) Appellant</i>	)	<b><i>B. D. Oliver</i></b>
	)	<i>on his own behalf</i>
<i>- and -</i>	)	
	)	
<b><i>THE GOVERNMENT OF MANITOBA</i></b>	)	<b><i>T. J. Bjornson</i></b>
	)	<i>for the Respondent</i>
<i>(Defendant) Respondent</i>	)	
	)	
<i>- and -</i>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
<b><i>MANITOBA AGRICULTURAL SERVICES</i></b>	)	<b><i>May 28, 2019</i></b>
<b><i>CORPORATION</i></b>	)	
	)	
<i>(Defendant)</i>	)	

**CHARTIER CJM** (for the Court):

[1] In 2007, the plaintiff issued a statement of claim alleging that the Government of Manitoba (the defendant) failed to remedy a flooding situation affecting his land. The defendant successfully moved to have the plaintiff's claim dismissed for delay. The plaintiff now appeals.

[2] In his reasons, the motion judge stated the applicable legal principles and accurately set out the facts and the relevant timeframes. He found the delay in this case to be inordinate and inexcusable, resulting in a presumption

of significant prejudice to the defendant. The motion judge also concluded that the evidence filed by the plaintiff did not rebut the presumption, finding that his explanation for the inactivity was not reasonable. Key to his decision was that, despite repeated inquiries by the defendant, there had been nearly ten years of virtual inactivity on the part of the plaintiff.

[3] The plaintiff argues that the motion judge erred by applying r 24 of the Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88, and by finding significant prejudice resulting from the delay. He submits that, because his damages are ongoing and the limitation period prescribed by section 21(1) of *The Public Officers Act*, CCSM c P230, has not expired, r 24 has no application or, in the alternative, there can be no finding of prejudice.

[4] A decision to dismiss a claim for delay is an exercise in judicial discretion and is entitled to deference. Failing a reviewable error on the law or the facts, this Court will not intervene unless it is so clearly wrong as to amount to an injustice (see *Simeonidis v Manitoba Public Insurance Corp*, 2011 MBCA 48 at para 2).

[5] We are all of the view that the plaintiff has not demonstrated any error by the motion judge on the law or with respect to the facts and the evidence referred to in his analysis. The motion judge recognised that the damages were ongoing but, nonetheless, correctly concluded that, having commenced the action, the plaintiff had a responsibility to proceed with reasonable diligence. Simply put, this was not a limitation case. We have not been convinced that his decision is wrong, let alone so clearly wrong as to yield a truly unjust result. To the contrary, we are of the view that this was a proper exercise of judicial discretion.

[6] As a result, the appeal is dismissed with costs.

Chartier CJM

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Simonsen JA

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Spivak JA

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