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<b>MANITOBA KING'S BENCH RULES ANNOTATED</b> <b>Jonathan M. Woolley</b> <b>Founding Author: Karen Busby</b> <b>Release 2023-4, November 2023</b>
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This work provides easy access to the Rules and case annotations and includes the King's Bench and Court of Appeal Rules of Practice and Procedure for both civil and criminal matters. The work provides commentary explaining the rules and annotations of all the decisions that interpret the civil rules. Commentary and other secondary resources include Tariffs, forms, practice directions, and Table of Rules Concordance.

### What's New in this Update

In this release, the author has updated the annotations to the following rules: 21.01, 24.02, 25.11, 30.04, 38.12, and 49.09. A new Year in Review has also been included.

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## Highlights

### **Rule 24.02(1)(b) Dismissal for Long Delay — Action Stayed or Adjourned**

— The plaintiff in this matter commenced an action in 2006 alleging that the defendant wrongfully failed to advance it funds pursuant to a loan agreement. In the course of this action, the defendant applied for an order seeking security for costs in the sum of \$10,000.00 which was given. The judge stayed the plaintiff's action pending payment of the security for costs. The plaintiff failed to provide the security for costs and the action remained dormant until August 2019 (some 12 years later) when the plaintiff advised that it was in possession of the funds required for the security for costs and wished to proceed with the action. The defendant sought an order dismissing the action under the long delay rule. The plaintiff acknowledged that more than three years had gone by without a significant advance in the action, but as the matter had been stayed by an Order of the Court, Rule 24.02(1)(b) applied as an exception which permitted the action to continue. The Court of Appeal endorsed the finding of the motion appeal judge in this matter who found that a stay of proceedings that can be ended solely by the actions of the plaintiff is not the type of stay contemplated by Rule 24.02(1)(b), and that a finding to the contrary would offend the modern principles of statutory interpretation and the clear intent of Rule 24.02(1): *Shreddfast Inc. v. Business Development Bank of Canada*, 2023 MBCA 9, 2023 CarswellMan 21 (Man. C.A.), *per* Cameron J.A.

**Rule 38.12 Dismissal of Application for Delay** — Dismissal for delay in an application under Rule 38.12 involves the same considerations as those under the former Court of King's Bench rule 24.01. To that end, the Court should take into account the following matters:

- i. the subject matter of the litigation;
- ii. the complexity of the issues between the parties;
- iii. the length of the delay;
- iv. the explanation for the delay; and
- v. the prejudice to the other litigant.

*Springfield Taxpayers Rights Corp v. R.M. of Springfield and Berger Peat Moss Ltd*, 2023 MBCA 57, 2023 CarswellMan 228 (Man. C.A.), *per* Cameron J.A. (for the Court)

## ProView Developments

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