

# KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 67

Date: 2026 03 24  
File No.: QBG-MJ-00176-2005  
Judicial Centre: Moose Jaw

BETWEEN:

KEVIN ARNOLD

PLAINTIFF  
(DEFENDANT BY COUNTER-CLAIM)

- and -

SASKATCHEWAN CROP INSURANCE CORPORATION

DEFENDANT  
(PLAINTIFF BY COUNTER-CLAIM)

**Counsel:**

Randy T. Klein, K.C.  
Tim Hansen

for the plaintiff  
for defendant

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FIAT  
March 24, 2026

D.N. ROBERTSON J.

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## INTRODUCTION

[1] This decision addresses an application filed January 12, 2026 by the defendant, Saskatchewan Crop Insurance Corporation [SCIC], to dismiss the claim for want of prosecution. For the following reasons, I dismiss SCIC's application. Costs of the application are reserved to the trial judge.

## **BACKGROUND**

### **Affidavit evidence filed for application**

[2] SCIC filed an Affidavit of Alan Evans sworn January 5, 2026 and filed January 12, 2026 [Evans Affidavit].

[3] The plaintiff, Kevin Arnold [Mr. Arnold], filed his affidavit sworn and filed February 27, 2026 [Arnold Affidavit].

### **History of litigation**

[4] The Court files and affidavits record the following events over the course of the litigation. Where there is a discrepancy in dates between the Court file and affidavits, I rely on the Court file. Where I rely upon the affidavit evidence, I cite the affidavit.

#### 2005

- |            |   |
|------------|---|
| July 27    | Statement of Claim issued claiming breach of contract for failure to pay crop insurance for 2002 and 2003 |
| October 24 | Statement of Defence and Counter-Claim filed  |
| October 21 | Statement of Defence to Counter-Claim filed   |

#### 2006

- |             |  |
|-------------|--|
| February 24 | Mandatory mediation completed (Certificate filed March 3, 2006)          |
| October 5   | Questioning held in Moose Jaw, Saskatchewan (Evans Affidavit at para 10) |

2007

- March 23 Reply to Undertakings given at Questioning by Guy Shepherd (Evans Affidavit at para 10(b))
- April 12 Supplementary Statement as to Documents of SCIC (Evans Affidavit at para 10(c))
- November 9 Mr. Arnold files Statement as to Documents

2008

- April 30 Questioning held with Mr. Arnold providing undertakings to provide further information
- October 1 SCIC files Notice of Change of Solicitors from Olive Waller Zinkhan and Waller to MacDermid Lamarsh

2009

- January 9 Mr. Arnold provides SCIC with Reply to Undertakings
- April 27 Mr. Arnold files Revised Statement as to Documents

2011

- February 9 SCIC files Notice of Intent to Proceed under Rule 536 of the former *Queen's Bench Rules*

2014

- July 16 SCIC files Appointment for questioning of Mr. Arnold on October 14, 2014 (later adjourned by consent – Evans Affidavit at para 30)

2015

- February 15 SCIC conducts questioning of Mr. Arnold
- July 2 Mr. Arnold files Reply to Undertakings from discovery on February 20, 2015

2016

- September 20 Brown J. conducts pre-trial conference, with no settlement and pre-trial adjourned

2017

- February 21 SCIC Supplementary Affidavit of Documents (Evans Affidavit at para 36(a))
- March 7 Parties file Joint Request for Pre-Trial Conference
- June 24 Mr. Arnold's Supplementary Affidavit of Documents (Evans Affidavit at para 36(b))
- September 1 Mr. Arnold's Supplementary Affidavit of Documents (Evans Affidavit at para 36(c))
- September 27 Brown J. directs resumption of pre-trial conference on December 5, 2017
- September 27 SCIC files Notice of Application under Rule 5-15 of *The Queen's Bench Rules* (since rep) seeking production of third-party records from Royal Canadian Mounted Police [RCMP] about fraud investigation

November 6 Tholl J. grants consent Order for RCMP to provide records of fraud investigation to SCIC and Mr. Arnold

December 5 Brown J. adjourns pre-trial conference to January 22, 2018

2018

January 22 Brown J. adjourns pre-trial conference *sine die*

September 10 Brown J. sets management pre-trial conference for October 4, 2018

September 27 SCIC files Notices of Application under Rule 7-9 of *The Queen's Bench Rules* to strike paras. 13, 14 and 15 of Statement of Claim (relief clauses) on the basis the provisions disclose no reasonable cause of action

September 27 SCIC files letter with the Court to attention of Justice Brown requesting adjournment in the setting of a trial date pending decision on its application to strike

October 3 Mr. Arnold files Notice of Demand for jury trial

October 31 Brown J. sets pre-trial management conference for November 7, 2018 and re-schedules hearing of SCIC's application to strike to January 14, 2019, due to judicial conflict

November 7 Brown J. sets trial for January 13-31, 2020

November 8 Brown J. adjourns SCIC's application to strike to January 14, 2019

2019

- January 14 Hildebrandt J. hears SCIC application to strike claim with decision reserved
- September 12 Brown J. vacates 2020 trial dates, pending decision on application to strike pleadings, remaining seized with pre-trial management

2020

- February 24 Hildebrandt J. Fiat dismissing SCIC's application to strike claim and granting Mr. Arnold leave to amend statement of claim [*Hildebrandt Fiat*]
- March 9 SCIC files Motion for Leave to Appeal *Hildebrandt Fiat*
- March 24 Amended Statement of Claim filed adding as causes of action malicious conduct, abuse of power, intimidation, misfeasance and defamatory allegations against the Plaintiff
- September 9 Court of Appeal denies SCIC leave to appeal
- October 16 SCIC Demand for Particulars (Evans Affidavit at para 51 and Exhibit "Z")

2021

- September 24 Mr. Arnold delivers Amended Reply to Request for Particulars to SCIC (Evans Affidavit at para 53 and Exhibit "BB")

2022

September 14 Mr. Arnold delivers further Amended Reply to Request for Particulars to SCIC (Evans Affidavit at para 55 and Exhibit “EE”)

November 10 SCIC files Notice of Application for better response to October 16, 2020 Demand for Particulars

2023

January 13 Consent adjournment from January 17 to February 28, 2023

2025

November 19 Brown J. sets filing deadlines with return date of March 10, 2026

2026

January 12 SCIC files Notice of Application to strike claim for want of prosecution

March 10 SCIC application to dismiss claim for delay heard by Robertson J. in Chambers, with decision reserved

**ISSUE**

[5] Should Mr. Arnold’s claim be dismissed for delay?

**POSITION OF PARTIES**

**SCIC**

[6] SCIC says that the over 20-year delay in moving this case forward is

inordinate and inexcusable and justifies striking the claim without leave to amend. SCIC points to multiple extended periods of delay attributable to Mr. Arnold;

- (a) Eight months to provide Reply to Undertakings from April 30, 2008 questioning to January 9, 2009;
- (b) Twenty-one months between May 20, 2009 letter from SCIC asking to continue questioning of Mr. Arnold and February 8, 2011, when SCIC filed Notice of Intention to Proceed;
- (c) Seven months to reply to SCIC letter of March 7, 2011 requesting dates to resume questioning and copies of documents to October 4, 2011;
- (d) Twenty-eight months to provide documents or dates for questioning from March 2, 2012 to issuance of Appointment for Questioning and Subpoena *Duces Tuce*m on July 16, 2014;
- (e) Eleven months to provide Reply to Demand for Particulars from October 16, 2020 to September 24, 2021;
- (f) Nine months to provide Amended Reply to Request for Particulars from December 6, 2021 to September 14, 2022; and
- (g) Twenty-three months of no communication from Mr. Arnold's law firm after Mr. Arnold's lawyer was appointed a judge from July 2023 to June 2025.

[7] These repeated delays add up to nearly 9 years or almost half of the over 20 year delay since the claim was issued. Mr. Arnold, as plaintiff, was responsible for moving the action forward to trial. He failed to do so.

[8] The claim relates to events in 2002 and 2003. SCIC remains able to defend the original claim, based on reliable records, including satellite images showing seeded acres which prove misrepresentation sufficient to void the insurance contracts. However, SCIC is seriously prejudiced by the passage of time in defending the amended claims, including defamation added in 2020. Potential witnesses have left SCIC's employment, have no or little memory of relevant events or are now dead. It would be unjust to allow those claims to proceed to trial.

[9] There is ample authority supporting striking of claims in these circumstances, including striking of claims both by and against SCIC. For example:

- (a) *Saskatchewan Crop Insurance Corporation v Gustafson*, 2022 SKQB 5
  - Defence struck and judgment awarded after five and one-half year delay and failures by defendant to comply with court orders
- (b) *Saskatchewan Crop Insurance Corporation v McVeigh*, 2018 SKCA 76, [McVeigh] aff'g 2017 SKQB 52
  - Plaintiff's claim struck after 19-year delay
- (c) *Gelinas v Saskatchewan Crop Insurance Corporation*, 2017 SKQB 270
  - Plaintiff's claim struck after 11-year delay
- (d) *Agri Resource Mgt. 2001 Ltd. v Saskatchewan Crop Insurance Corporation*, 2017 SKCA 35, aff'g 2016 SKQB 254
  - Plaintiff's claim struck after 23-year delay

**Mr. Arnold**

[10] Mr. Arnold says the application to strike for delay was brought in response to his new lawyer trying to move the action forward. The change in counsel resulted from appointment of his former lawyer as a judge. The changes in counsel were outside Mr. Arnold's control. Any resulting delay cannot be attributed to Mr. Arnold. Further, Chow McLeod remained counsel of record throughout, so SCIC could always contact Mr. Arnold's lawyers.

[11] SCIC is a sophisticated litigant. Mr. Arnold is not. SCIC has not yet filed a defence to the Amended Statement of Claim, although it was filed in 2020. SCIC chose to "lay in the weeds" and then bring this application to strike for delay.

[12] While lengthy delay is conceded, this is a complex litigation which is well-advanced. Discovery has occurred. There is tremendous evidence now in the record. Dismissal of the action would be an extreme remedy. It would be unwarranted and unjust, having regard to all of the circumstances.

**ANALYSIS**

**Application to strike for delay**

[13] Rule 4-44 of *The King's Bench Rules* allows the Court to dismiss a claim where the delay is inordinate and inexcusable and it is not in the interests of justice that the claim proceed:

**Application to deal with delay**

**4-44** If delay occurs in an action, on application the Court may:

- (a) dismiss all or any part of a claim if the Court is satisfied that the delay is inordinate and inexcusable

and that it is not in the interests of justice that the claim proceed; or

(b) make a procedural order or any other order provided for by these rules.

[14] The framework for analysis on such an application was set out in *International Capital Corporation v Robinson Twigg & Ketilson*, 2010 SKCA 48 at paras 43-45 [ICC]. In *Taylor v Moose Jaw Downtown and Soccer/Field House Facilities Inc. (Mosaic Place)*, 2021 SKCA 123 at para 17, Richards C.J.S. for the Court of Appeal confirmed that the leading case in this area is ICC. He went on at paras. 17-18 to set out the following framework for analysis of an application to strike a claim for delay.

- (a) Was the delay inordinate?
- (b) Was the delay inexcusable?
- (c) If the delay was inordinate and not excusable, then is it in the interests of justice that the action proceed, having regard to the following factors:
  - (i) prejudice to the other party if it proceeds;
  - (ii) length of the inexcusable delay;
  - (iii) stage of the litigation;
  - (iv) impact of the inexcusable delay on the other party;
  - (v) context in which the delay occurred;
  - (vi) reasons offered for the delay;
  - (vii) role of counsel in causing the delay; and

(viii) the public interest.

**(a) Was the delay inordinate?**

[15] I find the delay to be inordinate. Simply put, it should not take decades to bring an action to trial. See *Agecoutay v Avison*, 2026 SKKB 52 at paras 12-14.

**(b) Was the delay inexcusable?**

[16] Where the applicant establishes inordinate delay, the onus shifts to the respondent to excuse that delay. Mr. Arnold, in his affidavit and argument, did not provide any real explanation for the lengthy delay, including the specific delays stated by SCIC and summarized above.

[17] I find that the delay was inexcusable.

**(c) Notwithstanding the delay, is it in the interests of justice to allow the claim to proceed?**

[18] Where the Court concludes that the delay is both inordinate and inexcusable, the Court must still consider whether it is in the interests of justice that the case proceed to trial notwithstanding the delay. The onus remains on the respondent to convince the Court that it is in the interests of justice to let the claim proceed. See *LNY Holdings Ltd. v Royal Bank of Canada*, 2012 SKQB 107 at para 11.

[19] In *McVeigh* at para 92, Schwann J.A. for the Court of Appeal referred to prior decisions of that Court where this step was described as a “failsafe”. In considering this question, the court should step back and consider potentially competing factors relevant to determining the interests of justice.

[92] As Richards J.A. (as he then was) said in *ICC*, the question at this stage of the analysis is whether it is in the interests of justice for the case to proceed to trial

notwithstanding undue and inexcusable delay (para 45). This requires the first-instance judge to step back and ask whether, in spite of the inexcusable delay, there is a compelling “interests of justice” reason for the case to proceed on its merits. In a word, Caldwell J.A in *Harding v Harding*, 2014 SKCA 74, 442 Sask R 8, described it as a “failsafe”.

[20] I will address each of the factors.

(i) *Prejudice to the other party if it proceeds*

[21] There is a general presumption that delay causes prejudice.

[22] In *McKee v Melfort (City)*, 2011 SKQB 462 at para 10, Rothery J. wrote:

[10] A plaintiff’s delay in proceeding to trial in a timely fashion, by definition, causes some prejudice to the defendant. Memories fail over time. ...

[23] In *Huard v The Winning Combination Inc.*, 2022 SKCA 130, aff’g 2021 SKQB 65, the Court of Appeal upheld the striking of a class action for delay. Writing for the Court at para. 1, Leurer J.A. (as he then was) commented on the harm caused by delay in civil proceedings:

[1] Delay in civil proceedings is apt to cause prejudice to the parties. Unnecessary delay inevitably saps public confidence in the judicial process. ...

[24] Here the events at issue occurred in 2002 and 2003 or over 20 years ago. SCIC has filed evidence that witnesses to those events are either no longer available or have no memory (Evans Affidavit at para 76). I accept that SCIC has established real prejudice in defending the claim, in particular the causes of action added by amendment in 2020.

[25] The same prejudice may apply to Mr. Arnold (Evans Affidavit at paras 34-35 on the death of Robert Howorth).

[26] This factor weighs in favour of striking the claim.

(ii) *Length of the inexcusable delay*

[27] The delay has been 20 ½ years since filing of the Statement of Claim. While not all of that time is inexcusable delay, I am satisfied that there have been years of inexcusable delay.

[28] This factor weighs in favour of striking the claim.

(iii) *Stage of the litigation*

[29] The parties dispute the stage of litigation. On its face, the litigation is well advanced, given that it was scheduled for trial in early 2020. However, SCIC argues that the action should be considered at an early stage, in view of the amendment of the claim in 2020, adding new causes of action, and the fact that SCIC has not yet filed an amended statement of defence.

[30] SCIC seems to want to have it both ways, arguing a 20-year delay on the one hand and asserting that the 2020 amendments set back the clock for other purposes. Even if that is so, I must respect the decision allowing the amended claim.

[31] The *Hildebrandt Fiat* of February 24, 2020 dismissed SCIC's application to strike the claim as failing to disclose a reasonable cause of action and granted leave to Mr. Arnold to amend his claim. In doing so, Justice Hildebrandt found SCIC would not suffer any injustice by such amendment.

[56] Further, SCIC cannot be considered to have moved promptly nor at the earliest possible opportunity as contemplated by such cases as *Forster v Gross* (1999), 182 Sask R 294 (QB). The timing of the application, particularly given the disclosure and questioning that has occurred since 2005 belies the suggestion that SCIC does not know or understand the case it has to meet.

...

[58] For the reasons discussed previously, I am not of the view that the statement of claim should be struck pursuant to Rule 7-9(2). Accordingly, the plaintiff's request for leave to amend the statement of claim to address any deficiencies regarding the allegations of tortious conduct is granted. Given the considerable time since the claim was launched, and the degree of disclosure and questioning which has occurred, the defendant has had ample opportunity to gain understanding of the particulars of the plaintiff's claim. As such, SCIC will not suffer any injustice by such a permitted amendment.

[32] The Court of Appeal denied SCIC's leave to appeal against that decision.

[33] I find that the litigation is well advanced. It is also being actively managed by Justice Brown, which will assist the parties to bring the action to trial.

[34] This factor weighs against striking the claim.

(iv) *Impact of the inexcusable delay on the other party*

[35] As discussed above under the first factor of prejudice, I find that delay has created prejudice to SCIC in its defence, in particular for the causes of action added by amendment in 2020. At the same time, SCIC said in argument that it could defend the original contract claims, given the existence of admissible records to establish its defence and counter-claim. I also take note of the finding of Justice Hildebrandt that the new claims were more of a clearer re-statement of the tortious claims made in the original Statement of Claim and, through discovery, were well-known to SCIC.

[36] This factor weighs in favour of striking the claim, but only to a limited extent.

(v) *Context in which the delay occurred*

[37] While this action has moved far too slowly, the chronology summarized

above show that there have been continuous proceedings. The action had moved to scheduling of trial for January 2020.

[38] On March 7, 2017, the parties filed a Joint Request for Pre-Trial Conference. In that request, the parties certify that they are ready for trial. Yet SCIC continued to file pre-trial applications and later asked to delay scheduling of trial.

[39] While SCIC was certainly entitled to bring its 2019 application to strike the claim, it cannot be overlooked that had SCIC not applied to strike the claim in 2019, the trial would or could have proceeded in January 2020. SCIC recognized its application might preclude trial, since it wrote the Court on September 27, 2018, coincident with the filing of its application to strike, requesting postponement of the setting of a trial date until after a decision on that application. Justice Brown declined SCIC's request to delay scheduling of the trial.

[40] Mr. Arnold filed his Amended Statement of Claim in March 2020, a month after the *Hildebrandt Fiat* granted him leave to amend. SCIC has yet to file a statement of defence to that amended claim. Until pleadings are closed, the matter cannot proceed to trial.

[41] SCIC argued that it requires a proper answer to its Request for Particulars of the defamation claim before it can file its defence. I agree that the defamation claim lacks sufficient particularity. A properly pled defamation claim must state when and who said (or wrote) what words and, unless it is so obvious to be beyond doubt, why the words used are defamatory. The amended claim alleges that Danny Dunn and Guy Shepherd said to Robert Howorth and Don Gillen that Mr. Arnold was a "crook" with "dishonest dealings" and was "the subject of a police fraud investigation" (at para. 19). No date or place is given for these alleged statements. While this provides some specificity about the defamation claims, the Amended Statement of Claim also says that unnamed people made other slanderous allegations about Mr. Arnold to unnamed

people. For example, in para. 19: “the Defendant, its employees, agents and representatives intentionally made slanderous allegations about the Plaintiff during its investigation into the Plaintiff’s insurance claims.” Again, one must ask who, when and what was said to whom?

[42] Although SCIC served a Demand for Particulars in October 2020 and filed an application for better response to its demand in November 2022, it has since agreed to an adjournment of that application. While SCIC may have tactical reasons for not pursuing its Demand for Particulars, it cannot then lay the entire blame for delay on Mr. Arnold.

[43] The ongoing involvement of Justice Brown is significant and weighs against striking the claim.

[44] This factor weighs against striking the claim.

(vi) *Reasons offered for the delay*

[45] The Arnold Affidavit provides explanation for some, but not all, of the delay. While I accept some of the explanations, the explanations offered do not excuse the lengthy delay.

[46] This factor weighs in favour of striking the claim.

(vii) *Role of counsel in causing the delay*

[47] Although Mr. Arnold has been represented by the same law firm throughout, there have been at least three changes in the lawyer handling the file. The first lawyer left the law firm. The second lawyer was appointed a judge. The third and current lawyer only took over recently. SCIC also changed counsel once. Changes in counsel will inevitably cause some delay, while the new lawyer becomes acquainted with the file.

[48] The changes in counsel in this case are not attributable to Mr. Arnold. This is not a case where the client causes delay by hiring and firing lawyers or lawyers withdraw because the client fails to cooperate or pay. In those cases, resulting delay may be attributable to the client.

[49] This factor is neutral.

*(viii) The public interest*

[50] The public interest is not engaged, except for recognizing that there is a public interest in timely adjudication of disputes.

[51] This factor is neutral.

**Conclusion**

[52] Although, in this case, more factors weigh in favour of striking the claim, not all factors have equal weight. The weight given to any factor will depend upon the individual circumstances of the case.

[53] In considering these factors, I find that the stage of litigation and context in which the delay occurred weigh in favour of allowing the action to continue. The stage of litigation is advanced. Trial was set for January 2020. That trial date was vacated because the parties were awaiting a decision on SCIC's application to strike the claim. SCIC's application was dismissed and Mr. Arnold was given leave to amend his claim. That occasioned further necessary delay.

[54] From 2020 until present, the action has been actively managed by Justice Brown. It is not apparent to me that the Mr. Arnold is any more responsible than SCIC for the delay since then. While the overall delay will likely be to the detriment of evidence, that affects both parties. Considering all of the circumstances, I am not convinced that the action should be dismissed for delay. I therefore dismiss the

application to strike for delay.

[55] I encourage the parties to move to trial and a final resolution of the claims.

**Costs**

[56] Costs of this application is reserved to the trial judge.

**DECISION**

[57] The application to strike the claim is dismissed. Costs of this application are reserved to the trial judge.

[58] I thank both counsel for their able argument and assistance.

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J.  
D.N. ROBERTSON