KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 173**

Date: **2026 09 29**
File No.: QBG-RG-00710-2022
Judicial Centre: Regina

BETWEEN:

CARPERE DEVELOPMENT CORP.

PLAINTIFF

- and -

AARON KEVIN DONKERS AND 488 FARM CORP.

DEFENDANTS

Counsel:

Jonathan Milani and Eryn Stewart	for the plaintiff
No one appearing	for the defendants

FIAT — DAVIS J.
September 29, 2026

INTRODUCTION

[1] This matter concerns a dispute over a contract related to a farming operation. The plaintiff applies pursuant to s. 7-1(10) of *The King's Bench Act*, SS 2023, c 28 [*Act*] to strike the Statement of Defence due to the defendants' failure to participate in mandatory mediation.

[2] The parties had been in a joint venture which they agreed to terminate in the spring of 2020, on terms which the parties set out in a settlement agreement. The plaintiff alleges that by the spring of 2021, the defendants had defaulted on their

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obligations under the agreement.

[3] The Statement of Claim was issued in March 2022 and the defendants, who were then represented by counsel, filed a Statement of Defence in September of that year. Roughly two years later, the defendants' counsel withdrew and the defendants have not been represented by a lawyer since that time. The plaintiff's evidence states that up to this time, the parties had "extensive" resolution discussions.

[4] In 2025, Aaron Donkers (now unrepresented) and the plaintiff's counsel arranged to proceed to mediation, which the parties agreed could take place virtually. A mediation date was scheduled for April 4, 2025; it was rescheduled for April 28, 2025. That date was cancelled at Mr. Donkers' request; he had recently been involved in a car accident. The parties agreed to reschedule the mediation to take place on October 1, 2025.

[5] Late on September 30, 2025, Mr. Donkers left a message for the mediator stating that he would not attend the October 1 mediation. As I understand it, he gave no reason, did not request for mediation to be rescheduled, and since that time he has not participated in the court process. The mediator filed a certificate of non-compliance with the Court.

[6] The defendants did not attend court in response to this application; neither did they seek to file any materials despite being properly served with the application.

[7] The defendants' failure to participate in mediation has left the plaintiff temporarily unable to proceed with its claim given that a mandatory step has not been completed. It applies to strike the Statement of Defence to allow it to proceed as if this were an undefended action. Alternatively, it seeks an order adjourning the present application *sine die*, requiring the defendants to attend mediation, and awarding it elevated costs.

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[8] I am not presently inclined to strike the defence, but I am adjourning the strike application and allowing most of the plaintiff's application for alternative relief.

MANDATORY MEDIATION

[9] Mediation is a mandatory stage in most civil litigation, subject to limited, codified exceptions: the *Act* at s 7-1, *Corey v Friesen*, 2025 SKCA 124 at para 32. The legislature and the Courts have sought to improve access to justice and the just resolution of claims by implementing processes to divert matters from court where possible, or to promote more focussed litigation where matters do proceed in court. Mediation forms a core plank in fulfilling these objectives: *Mainprize v Mainprize*, 2026 SKKB 54 at para 22, *Tamarak Energy Inc. v IPSCO Inc.*, 1999 SKQB 125 at para 14 [*Tamarak*].

[10] When parties enter mediation with openness to a resolution, they are able to exert control over the outcome of their case. The exercise of personal agency and the assumption of personal responsibility in achieving a mutually agreeable outcome is nearly always preferable to a top-down court order, enforceable through the coercive power of the state.

[11] For those reasons, the *Act* provides for consequences for parties who disregard the statutory obligations that are imposed on them. Subsection 7-1(10) of the *Act* reads as follows:

> 7-1(10) If a certificate of non-compliance is filed, a judge, on application:
>
> (a) may:
>
> (i) order the party who did not attend the mediation session to attend, and adjourn the application; or
>
> (ii) strike out the pleadings or other documents of the party who did not attend unless the party satisfies the judge that:

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> (A) the party has a reasonable excuse for not attending; and
>
> (B) it would be inequitable to strike out the party's pleadings or documents; and
>
> (b) may order the party who did not attend the mediation session to pay the costs of any other party.

[12] This provision, which grants a judge discretion to order the non-compliant party to attend mediation or to strike the pleadings entirely, has not been widely invoked in case authorities. These are discretionary remedies available on application once a certificate of non-compliance has been filed with the Court.

[13] Where there has been non-attendance at mediation, I have discretion to order the non-attending party to attend mediation.

[14] I have further discretion to strike pleadings where the non-attending party fails to satisfy me that it has a reasonable excuse for non-attendance and fails to satisfy me that it would be inequitable to strike those pleadings. I understand the criteria listed in ss. 7-1(10)(ii)(A) and (B) as simply setting out the pre-requisites for the exercise of this further discretion to strike.

[15] Except for the gravity of the remedy, I do not consider an application to strike under this section as being closely analogous to an application to strike pursuant to Rule 7-9(2) of *The King's Bench Rules*. In the latter case, some or all of the pleadings may be struck because it would be pointless and a waste of resources to allow the action or defence, or a portion thereof, to proceed. Courts are understandably reluctant to strike claims where the pleadings may give rise to an arguable case and will only do so when it is "plain and obvious" that the claim cannot succeed: *GHC Swift Current Realty Inc. v BACZ Engineering (2004) Ltd.*, 2022 SKCA 38.

[16] When considering whether to strike for non-attendance at mandatory mediation, the Court is faced with a situation where a litigant may have an arguable

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claim or defence but has withdrawn from the litigation, is unable to participate in the litigation, or is frustrating the other party's ability to proceed with it.

[17] Such situations bear a closer resemblance to striking for want of prosecution, because both concern striking pleadings for reasons related to a party's conduct and fairness to the other side, rather than to the merits of the claim. The Court may dismiss a claim for want of prosecution where there has been inordinate and inexcusable delay and where it is not in the interests of justice that the claim proceed.

[18] In considering whether it is in the interests of justice to permit a claim to proceed despite inordinate and inexcusable delay, the Court will consider such things as prejudice to the non-offending party, the context in which the delay occurred including the reasons for the delay, the stage of litigation, the length of delay, the history of both parties' conduct, and any larger public interest in seeing the matter adjudicated on its merits: Rule 4-44 of *The King's Bench Rules*, *International Capital Corporation v Robinson Twigg & Ketilson*, 2010 SKCA 48 at paras 45-47 [*ICC*], *Taylor v Moose Jaw Downtown and Soccer/Field House Facilities Inc. (Mosaic Place)*, 2021 SKCA 123 at para 73.

[19] In my view, a similar approach is warranted when considering whether to strike a claim due to one party's non-attendance at mandatory mediation.

[20] When pleadings are struck, the action is brought to an end or the action, or a portion thereof, is left undefended. A potentially meritorious claim is not permitted to proceed or a potentially weak claim proceeds as if there were no defence to it. Striking pleadings can be very consequential for the litigants; striking them in error produces an injustice.

INTERESTS OF JUSTICE STANDARD APPLIED

[21] For those reasons, I am satisfied that I should not exercise my discretion

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to strike the defence where it is in the interests of justice that a party be permitted to proceed with its claim or defence notwithstanding its failure to participate in a mandatory stage of the litigation process. Determining whether it is in the interests of justice for the claim to proceed is different from the test indicated in s. 7-1(10)(ii)(B) of the *Act* which considers whether it would be inequitable to strike.

[22] If it would be inequitable to strike the claim, it would be an unreasonable and injudicious exercise of discretion to strike the claim regardless of those inequities. Only where I find it would not be inequitable to strike the claim can I go on to consider whether it is in the interests of justice that the claim or defence be permitted to proceed notwithstanding one party's laches. I consider the factors outlined in *ICC* to be instructive in determining how to exercise my discretion.

Do I have Discretion to Strike the Statement of Defence?

[23] In this case, there is no evidence from Mr. Donkers as to why he failed to attend mandatory mediation. He did not give the mediator a reason. He has not engaged in trying to reschedule a date for mediation to take place. I cannot conclude that he has a reasonable excuse for his non-attendance because none has been provided.

[24] It is somewhat more difficult for me to confidently assess whether it would be inequitable to strike the defence. The defendants alleged in their Statement of Defence that the contract was unconscionable and that certain terms were unenforceable because performance was impossible. The defendants denied breaching the contract and indicated their willingness to fulfil the contract's terms. If the defendants established the facts that they have pleaded, they would have a valid defence to some or all of the claim.

[25] While the defendants may have a valid defence, there is an obligation on both parties to a litigation to fulfil the mandatory requirements of that litigation. I do not know why the defendants failed to meet their obligations, and without further

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evidence I cannot say that fairness requires further accommodation of the defendants or their personal circumstances. I cannot say that it is unjust or inequitable for litigation to conclude in a manner unfavourable to a particular litigant where that litigant has failed or refused to take the steps that might have allowed for a different and more favourable outcome.

[26] Moreover, s. 7-1(10)(ii)(B) of the *Act* places the onus on the non-attending party to satisfy me that it would be inequitable to strike pleadings or documents. The defendants have made no effort to meet that onus, and I conclude that it is open to me to strike the Statement of Defence under s. 7-1(10)(ii).

Is it in the Interests of Justice to Permit the Statement of Defence to Stand?

[27] However, I am not yet satisfied that I should exercise my discretion by striking the defence. Relatively few decisions in this jurisdiction address a judge's exercise of the discretion conferred by s. 7-1(10).

[28] In *Tamarak*, Justice Allbright addressed applications to strike under the precursors to Rule 7-9 of *The King's Bench Rules* and s. 7-1(10) of the *Act*. He did not strike the application in question because, given its nature, it was reasonable for the defendants to proceed with it before mediation took place.

[29] In *Schaeffer v Wilkinson*, 1997 CanLII 11397, 76 ACWS (3d) 503 (SKQB), Justice Gunn was not satisfied the defendants had notice of the mediation date. She declined to strike the Statement of Defence in the absence of further evidence that the defendants' conduct actually warranted the remedy sought. I take this decision, not simply as highlighting the importance of notice, but of raising the importance of a litigant's conduct more generally in considering an application to strike under this section.

[30] I have considered authorities from out of province where one party to a

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litigation has successfully applied to strike the other's pleadings due at least in part to non-compliance with requirements including attendance at mandatory mediation.

[31] This was the case, for instance, in *Kohlsmith v Sterling Mutuals Inc*., 2014 ONSC 4696. In that case, however, the non-attendance of one party and the "farcical" participation of another were simply one, and by no means the most serious, example of the defendants' repeated non-compliance with the rules of court and with previous court orders.

[32] There is no such history in the present case; it involves unexplained nonattendance on one occasion followed by unexplained non-engagement during the subsequent months. The defendants' failure to respond to the present application has also left the Court in a challenging situation.

[33] Nonetheless, I note that neither party has been aggressively trying to advance this litigation and there have been lengthy periods where neither one was doing much to move it along. The litigation remains at an early stage despite the fact the claim was issued four years ago. Yet the defendants do not bear sole responsibility for the delayed prosecution of the matter; the plaintiff too has gone through periods of apparent inertia.

[34] I also note that Mr. Donkers was previously engaged in his defence, there were "extensive" resolution discussions, and Mr. Donkers fully participated in scheduling dates for mediation. He had a good reason for rescheduling the April mediation date; he provided no reason for failing to attend mediation in October. I do not know whether Mr. Donkers continues to suffer the effects of the accident in which he was involved in April 2025. However that may be, I conclude that Mr. Donkers is disengaged at present, but that he appeared to show reasonable diligence in responding to the claim up to October 2025.

[35] There is no evidence the plaintiff will be prejudiced if I decline to strike

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the Statement of Defence but instead permit the litigation to proceed in the usual course. There is also no evidence that the plaintiff has been seriously attempting to engage with Mr. Donkers to reschedule that missed October mediation date, or to otherwise move this matter along. It appears that the plaintiff has been largely content to permit this matter to sit for the better part of a year and then to bring this application.

[36] I note that it may take an order of the Court to wake a litigant up to the gravity of its situation, and to the consequences of its non-participation in the process. Where the need to participate is impressed upon a previously disengaged litigant, the matter may proceed to a resolution on the merits.

[37] I also consider that there are remedies short of striking the claim. In some cases, it may be open for a party to apply for an exemption to or postponement of mediation under s. 7-1(3) of the *Act*. Here, however, I am satisfied that I should adjourn the strike application *sine die* and order the defendants to participate in mandatory mediation pursuant to s. 7-1(10)(i).

[38] This may ultimately prove to be an appropriate case in which to strike the Statement of Defence. That will have to be determined at the future hearing of the application, should it be returned to Court. In the interim, I order as follows:

(a) This order is to be personally served on Aaron Donkers, on his own behalf, and on that of the defendant company.

(b) The parties are to proceed to mandatory mediation.

(c) The defendants are to contact the mediation office within 30 days following service of this order, and they are to participate in scheduling a mutually agreeable date for mandatory mediation to take place.

(d) Mediation is to proceed on that date or within a reasonable time

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thereafter should the parties be unable to proceed on the date selected.

(e) The plaintiff may return this strike application to Court on 14 days' notice if the defendants fail to comply with this order.

(f) I am satisfied the defendants must bear some of the costs of their actions. However, I am not yet satisfied that an award of elevated costs is justified.

(g) For the failure to attend mediation, I award the plaintiff $1,000 for preparation and planned attendance at mediation.

(h) I leave the issue of the costs of this application to be addressed if and when this application is returned to Court. If the application is not returned to Court, costs will be in the cause.

[39] I thank counsel for their helpful submissions.

J.
A.S. DAVIS

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