

KING’S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 85**

Date: **2025 06 19**
File No.: QBG-RG-02705-2019
Judicial Centre: Regina

BETWEEN:

ALICIA YASHCHESHEN

PLAINTIFF

- and -

SASKATCHEWAN GOVERNMENT INSURANCE

DEFENDANT

Appearing:

Alicia Yashcheshen self-represented plaintiff
Reginald A. Watson, K.C., Sean Watson and Craig Savoie for the defendant

JUDGMENT
June 19, 2025

ROBERTSON J.

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INTRODUCTION

[1] This decision records reasons given in dismissing an action under Rule 9-13(2) of *The King's Bench Rules* after the plaintiff failed to appear for trial.

[2] This decision should be read along with my earlier fiats of April 24, 2025, reported at 2025 SKKB 58 [*April 24 Fiat*] and *Yashcheshen v Saskatchewan Government Insurance* (11 June 2025) Regina, QBG-RG-02705 (Sask KB) [*June 11 Fiat*].

BACKGROUND

The Automobile Accident Insurance Act

[3] *The Automobile Accident Insurance Act*, RSS 1978, c A-35 [*Act*] is a comprehensive and exclusive scheme for automobile insurance and claims arising from accidents, as defined in ss. 2(1)(a) of the *Act*, and adjudication of appeals against denial of benefits. The *Act* in s. 191 provides a right of appeal against a decision of

the insurer to this Court or the Automobile Injury Appeal Commission:

Right to appeal

191(1) A claimant may appeal a decision of the insurer pursuant to this Part to either the Court of King’s Bench or the appeal commission within the later of:

(a) 90 days after the date of insurer’s written decision;
and

(b) if a claimant has requested mediation pursuant to section 190, 90 days after the date of the mediator’s written statement pursuant to subsection 190(8) declaring that the mediation is completed.

(2) If a claimant appeals a decision of the insurer to:

(a) the Court of King’s Bench, no proceeding respecting the matter may be taken before the appeal commission; or

(b) the appeal commission, no action or proceeding respecting the matter may be taken before the Court of King’s Bench.

[4] Section 196 of the *Act* provides that an appeal “respecting a benefit does not stay or affect the validity of the insurer’s decision respecting the payment of a benefit.”

Plaintiff’s appeal to King’s Bench

Pleadings

[5] From my reading of the Amended Statement of Claim and Amended Statement of Defence, the plaintiff was involved in motor vehicle collisions on September 9, 1997, April 8, 2000, October 13, 2003, June 21, 2004, September 19, 2005, and February 20, 2011. The plaintiff made claims to the defendant for benefits for injuries resulting from those motor vehicle collisions.

[6] The defendant denied some of those claims in letters dated July 12, 2006, July 12, 2013, November 18, 2015 and May 16, 2016. (The last two decision letters are the subject of the appeal.)

[7] On July 11, 2016, the plaintiff filed her original Statement of Claim, appealing the denial of rehabilitation and income replacement benefits under s. 191 of the *Act*.

[8] The defendant, in its Amended Statement of Defence filed November 27, 2024 pled limitation periods as a defence. The defendant pled the six months limitation period in s. 191 of the *Act* with respect to appeal of decisions denying benefits. The defendant also pled *The Limitations Act*, SS 2004, c L-16.1 with respect to the bad faith claim, saying alleged acts and omissions before July 11, 2014 are statute barred as the limitation period for bad faith is two years before the date of issuance of the statement of claim. The defendant pled as defence to the appeal of decisions not barred that the illnesses or injuries were not caused by the accidents.

History of litigation

[9] The history of this litigation is summarized in my *April 24 Fiat* and *June 11 Fiat*. Since then, the following events occurred relevant to the litigation.

[10] On June 11, 2025 at 5:39 p.m. the plaintiff emailed the Local Registrar asking for the policy that requires an application to appear by telephone.

[11] On June 12, 2025 at 4:13 p.m., the Registrar of the Court of Appeal emailed a letter to me attaching the plaintiff's Notice of Appeal of my *June 11 Fiat* and Notice of Application to Impose Stay Pending Appeal [Stay Application], both filed June 12, 2025. The Stay Application, in para. 1(b) seeks an order to adjourn the "Trial scheduled for June 16, 2025 to June 25, 2025". The Stay Application is scheduled to be heard in Court of Appeal chambers on June 25, 2025.

[12] On June 12, 2025 at 6:44 p.m., the plaintiff emailed to the Local Registrar's office a letter from the plaintiff attaching a medical note from Dr. Dag L. Lawale dated June 12, 2025. The text of the letter is reproduced below:

TO WHOM IT MAY CONCERN

RE: ALICIA YASHCHESHEN

I have attended the above named patient and recommend her to be off duty

Date of illness/injury: Jun-12-2025

Estimated date of return to duty: Jun-19-2025

Thank you

(signature)

Dr Dag Lawale

[13] On June 13, 2025 at 8:59 a.m., the Local Registrar replied to the plaintiff's June 11, 2025 inquiry about telephone appearances. The text of the Local Registrar's email is reproduced below:

Good morning,

All court appearances before the Court of King's Bench for Saskatchewan are presumptively in person. If parties wish to appear remotely, the request must be made in writing to the registry office and considered by the presiding judge in advance.

The Administrative Notice entitled "Dealings with the Registry Office" provides at paragraph 6 that "requests to appear remotely for any scheduled appearance must be made as early as possible to ensure that the registry offices have sufficient time to make appropriate arrangements." This was issued on February 7th, 2024, though the presumptive mode of appearance as being in person has always been the Court's standard practice.

The Court of Appeal and Court of King's Bench are separate courts, governing by separate court processes. I cannot speak to the modes of appearance before the Court of Appeal.

Thank you,

[name]

[14] No request to appear remotely was received.

[15] On June 13, 2025 at 9:38 a.m., the defendant wrote by email to the plaintiff warning that should she fail to appear at trial, the defendant would be applying to dismiss the action. The plaintiff's only reply by email sent on June 13 at 5:37 p.m. was a laughing emoji symbol.

[16] On June 16, 2025, the trial opened at 10:00 a.m. The defendant appeared by counsel and confirmed they were ready to proceed. The plaintiff did not appear. Defendant's lawyers said they intended to make application to dismiss the action if the plaintiff did not appear. I adjourned for fifteen minutes, in case the plaintiff was delayed.

[17] When court resumed around 10:20 a.m., the plaintiff had not appeared. I adjourned for another 15 minutes, asking the clerk to check that the trial name was properly posted on the public notices boards in the courthouse showing the courtroom in which the trial was being held.

[18] When court resumed around 10:40 a.m., the plaintiff had not appeared. The clerk confirmed that the trial was properly posted on the public notice boards. The defendant's lawyers said they had walked through the courthouse and confirmed that the plaintiff was not to be found. I asked defendant's counsel whether they had received the plaintiff's witness list, as directed in my *April 24 Fiat* at para 70. They said they had not received any witness list. (Neither did the Court.) I adjourned for another 15 minutes.

[19] When court resumed at 11:00 a.m., the plaintiff had not appeared. In answer to my inquiries, the defendant's lawyers confirmed receipt of the Stay Application and doctor's note sent by the plaintiff on June 12 and 13, 2025. I adjourned to 2:00 p.m., asking the clerk to send an email to the plaintiff to inform her

of the adjournment and of the defendant's application to dismiss her action for failure to attend.

[20] On June 16, 2025 at 11:20 a.m., the clerk emailed the following message to the plaintiff:

Good morning Alicia,

This matter had been adjourned to **2:00pm today** in hopes that you are able to make it to your trial.

Can you please advise if you plan on attending? If you do not attend, the defendants are seeking leave for dismissal, which may be considered in your absence.

Thank you,

[Clerk's name]

[21] When court resumed at 2:00 p.m., the plaintiff had not appeared. The defendant's lawyers confirmed their continued intent to make application to dismiss the action, citing Rule 9-13 of *The King's Bench Rules*. The defendant's lawyers filed an affidavit of Joan Kozak sworn June 16, 2025. After some discussion, I invited the defendant to make argument on the following day, June 17, 2025 at 10:00 a.m. They said they would serve and file a written application to that effect.

[22] The defendant filed its application on the afternoon of June 16, 2025, with Affidavit of Service on the plaintiff by email, for hearing on June 17, 2025 at 10:00 a.m.

[23] On June 16, 2025 at 4:20 p.m., the plaintiff replied to the clerk's morning email with the following message, attaching her earlier doctor's note and covering letter:

Hello,

I faxed this letter to the Court on June 12, 2025, does this mean nothing?

[24] On June 17, 2025, court resumed at 10:00 a.m. The plaintiff did not appear. The defendant's lawyers made oral argument in support of its application, filing additional documents with leave of the Court. I then adjourned to June 18, 2025 at 10:00 a.m. for decision, recognizing that the defendant had witnesses scheduled for the next week.

[25] On June 18, 2025, court resumed at 10:00 a.m. The plaintiff did not appear. I delivered an oral decision on the basis that the official decision would be the written version which would issue later.

ISSUE

[26] The application raises the following issues:

1. Should the action be dismissed for failure to appear at trial?
2. If so, what award of costs, if any, should be made?

ANALYSIS

[27] I will first explain my reasons for proceeding with the trial after the plaintiff failed to appear. I will then review relevant provisions of *The King's Bench Rules* and case law before explaining my reasons for dismissing the action.

Decision to proceed with the trial

[28] Although I had previously dismissed the plaintiff's application to adjourn the trial, there were two developments after my *June 11 Fiat* that required reconsideration of that decision. These were the filing of the Stay Application and the submission of the doctor's note.

Stay Application

[29] I considered whether the trial should be adjourned out of respect for the Court of Appeal, given the filing of an appeal and Stay Application. In the normal course, I would adjourn a matter if the Court of Appeal was engaged. I decided not to do so for a few reasons.

[30] First, my *June 11 Fiat* expressly provided that the trial would proceed unless stayed by the Court of Appeal. This distinction from an application to stay was deliberate.

[31] Second, the defendant argued that the plaintiff is not a typical self-represented person. She is an experienced litigant, familiar with the process of both the Court of King’s Bench and the Court of Appeal. The plaintiff, in her email correspondence, has a standard signature line which identifies her legal training:

Ms. Alicia G. Yashcheshen, B.A. Justice Studies, Minor in
Sociology, Certificate of Continuing Legal Education in Law,
Notary Public (Assigned Female at Birth)

(Affidavit of Joan Kozak, Exhibit “E”)

[32] The defendant pointed to the number of actions brought by the plaintiff in this Court and the number of reported cases in which she is a party. I confirmed that on CanLII which shows 23 reported decisions in her name since 2018:

Yashcheshen v Saskatchewan Government Insurance, 2024 SKCA 47

Yashcheshen v Saskatchewan Government Insurance, 2024 SKKB 69

Yashcheshen v Canada (Attorney General), 2024 SKKB 63

Yashcheshen v Janssen Inc., 2022 SKCA 140

Yashcheshen v Teva Canada Ltd., 2022 SKCA 121, [2022] 12 WWR 189

Yashcheshen v Saskatchewan (Ministry of Health), 2022 SKCA 68, 2 Admin LR (7th) 169

Yashcheshen v Teva Canada Ltd., 2022 SKCA 49, [2022] 8 WWR 60

Yashcheshen v Government of Saskatchewan and Ehealth Saskatchewan, 2022 SKQB 1

Yashcheshen v Law School Admission Council Inc., 2021 SKCA 149, 75 CCEL (4th) 1

Yashcheshen v Canada (Attorney General), 2021 SKCA 116

Yashcheshen v Teva Canada Ltd., 2021 SKCA 135

Yashcheshen v Law Society of Saskatchewan, 2021 SKQB 110

Yashcheshen v Allergan Inc., 2021 SKQB 33

Alicia Yashcheshen v University of Saskatchewan, 2020 CanLII 97854 (SCC)

Yashcheshen v R, 2020 SKQB 259

Yashcheshen v Law School Admission Council Inc., 2020 SKQB 209

Yashcheshen v Canada (Attorney General), 2020 SKQB 188

Yashcheshen v Canada (Attorney General), 2020 SKQB 185

Saskatchewan v Yashcheshen, 2020 SKQB 160, 3 CCLI (6th) 56

Yashcheshen v Saskatchewan (Health), 2020 SKQB 4, 69 Admin LR (6th) 146

Yashcheshen v University of Saskatchewan, 2019 SKCA 67, 62 Admin LR (6th) 15

Yashcheshen v College of Physicians and Surgeons of Saskatchewan, 2019 SKQB 43

Yashcheshen v University of Saskatchewan, 2018 SKQB 57

[33] The point made by the defendant's counsel is that the plaintiff would likely know how to apply for an urgent interim stay. Instead, she unilaterally set the return date of the Stay Application for hearing near the end of the two-week trial.

[34] Third, I considered that if I delayed the trial to await the hearing of the Stay Application, the trial could not proceed because the time available would run out. In that case, I would effectively be granting the adjournment, which appeared to me was the plaintiff's intent. The Stay Application would then become moot. If the appeal is successful and a new trial ordered, that trial would likely be scheduled for around the same time as it would be if this trial was adjourned.

[35] Fourth, I considered the interests of the defendant who appeared for trial, were ready to proceed and would be prejudiced by further delay.

Doctor's note

[36] The Court will usually adjourn when a necessary participant becomes ill. I did not do so here because I was not persuaded that her claim of being unable to appear for trial was genuine. I think it more likely the doctor's note was an improper attempt to manipulate the Court and its process.

[37] The question of medical evidence was raised in the *April 24 Fiat* at paras 10 and 29 - 30 and in my *June 11 Fiat* at para 15. Yet the plaintiff waited until after court was closed on June 12, 2025 to provide the doctor's note. The timing and content of the doctor's note do not provide clear evidence she was unable to attend for medical reasons.

[38] The defendant argued that the doctor's note was insufficient to justify adjourning the trial. The defendant filed a policy issued by the College of Physicians and Surgeons of Saskatchewan [College], titled *Physician Certification of Work Absence or Accommodation due to Illness or Injury and Completion of Third Party Forms*, <online: www.cps.sk.ca> (19 June 2025) which counsel said is currently posted on the College's website. The policy at page 1 states "Issuing a Sick Slip is a very important matter." The defendant argued that the doctor's note provided in this case does not meet the standards set by the College. Even putting the policy aside, the doctor's note is obviously inadequate. It does not provide evidence to justify adjourning the trial.

[39] The defendant pointed out that the plaintiff's letter accompanying the doctor's note stated "... my current medical condition, which requires rest and limited stress to avoid further health complications. I am following Dr. Lawale's advice and am unable to attend to any court-related duties or appearances ...". This claim is flatly contradicted by the 25 page Brief of Law dated June 13, 2025 which was served on the defendant's lawyers in support of her appeal of the *June 11 Fiat*. If she was able to prepare this brief in that limited time, this suggests her claim to require rest is false.

[40] I agree, also having regard to the decisions referenced below where adjournments were refused on claims of ill health, including requests supported by doctor's letters.

Fairness and the Public Interest

[41] Finally, I consider fairness and the public interest.

[42] In *J.L. v T.T.*, 2024 SKCA 38 at para 58, 100 RFL (8th) 1, cited and quoted in my *April 24 Fiat* at para 16, Kalmakoff J.A. for the Court of Appeal wrote:

[58] A judge who presides over a trial has a duty to ensure that it is fair to all participants. ... Where one or more of the litigants in a civil proceeding is self-represented, properly discharging this duty may require a trial judge to provide some level of assistance or accommodation so as to ensure that a self-represented party has a fair opportunity to present a case to the best of their ability ...

[43] The plaintiff was entitled to her day in court. The Court assisted her to achieve that goal. For reasons known to her, she has declined that opportunity.

[44] The defendant is also entitled to finality in litigation. This action began in 2016. It has taken time and effort to bring it to trial. The defendant and its lawyers have done everything required of them and were ready for trial. Delaying adjudication further would be prejudicial to the defendant.

[45] But there is another interest beyond that of the private parties and that is the public interest. The public interest is served by timely justice.

[46] In my *June 11 Fiat* at para 19, I referred to the Supreme Court of Canada's call for a culture shift "to create an environment promoting timely and affordable access to the civil justice system" (*Hryniak v Mauldin*, 2014 SCC 7 at para 2, [2014] 1SCR 87). The Court of Appeal recognized this public interest in *Taylor v Moose Jaw Downtown and Soccer/Field House Facilities Inc. (Mosaic Place)*, 2021 SKCA 123 at para 8 and *Huard v The Winning Combination*, 2022 SKCA 130 at para 1, where Leurer J.A. (as he then was) wrote:

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

[47] The Court of King's Bench is a trial court. It exists to serve the public by deciding disputes the parties cannot resolve themselves. There is a backlog of actions waiting for trial. Two weeks were set aside for this trial. That trial time is a limited and valuable public resource. The plaintiff has unilaterally removed the possibility of using that time for this or any other trial. That wastes scarce court time and resources.

[48] I turn next to the application to dismiss the plaintiff's action.

The King's Bench Rules

[49] *The King's Bench Rules* are devised by the justices of the Court and approved at *en banc* meetings of the entire Court. The Rules represent the collective wisdom of the Court, drawing on the practical experience of its justices and judicial consideration of the Rules. In some cases, the Rules codify generally accepted practices of the Court.

[50] The following provisions of *The King's Bench Rules* may be relevant to the application to dismiss the action:

Purpose and intention of these rules

1-3(1) The purpose of these rules is to provide a means by which claims can be justly resolved in or by a court process in a timely and cost effective way.

...

(3) To achieve the purpose and intention of these rules, the parties shall, jointly and individually during an action:

(a) identify or make an application to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense;

(b) periodically evaluate dispute resolution process alternatives to a full trial, with or without assistance from the Court;

(c) refrain from filing applications or taking proceedings that do not further the purpose and intention of these rules; and

(d) when using publicly funded Court resources, use them effectively.

...

General authority of the Court to provide remedies

1-4(1) The Court may do either or both of the following:

(a) give any relief or remedy described or referred to in *The King's Bench Act*;

(b) give any relief or remedy described or referred to in or under these rules or any enactment.

(2) The Court may grant a remedy whether or not it is claimed or sought in an action on providing the parties with:

(a) a notice of its intention to grant a remedy; and

(b) an opportunity to respond.

(3) Nothing in these rules prevents or is to be interpreted as preventing the Court, as a superior court, from exercising its inherent jurisdiction.

...

Rule contravention, non-compliance and irregularities

1-6 . . .

(4) The Court may cure any contravention, non-compliance or irregularity but only if:

(a) to do so will cause no irreparable harm to any party;

(b) in doing so the Court imposes terms or conditions that will:

(i) eliminate or ameliorate any reparable harm;
and

(ii) prevent the recurrence of the contravention, non-compliance or irregularity;

(c) in doing so the Court imposes a suitable sanction, if any, for the contravention, non-compliance or irregularity; and

(d) it is in the overall interests of justice to cure the contravention, non-compliance or irregularity.

...

Proceeding failing by non-attendance of party

6-20 If a proceeding in chambers fails by reason of the non-attendance of any party and the Court does not think it expedient to proceed without that party, the Court may order that an amount for any costs that the Court considers reasonable is to be paid to the party attending by:

- (a) the absent party; or
- (b) the absent party's lawyer personally.

...

Party not appearing

9-13(1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove the plaintiff's claim, so far as the burden of proof lies on the plaintiff.

(2) If, when a trial is called, the defendant appears and the plaintiff does not appear, the defendant:

- (a) if the defendant has no counterclaim, is entitled to judgment dismissing the action; and
- (b) if the defendant has a counterclaim, the defendant may prove the counterclaim so far as the burden of proof lies on the defendant.

(3) Any verdict or judgment obtained if one party does not appear at the trial may be set aside by the Court on those terms that the Court considers just, on an application made within 15 days after the trial.

Postponement or adjournment of trial

9-14(1) If the Court considers it expedient in the interest of justice, the Court may postpone or adjourn a trial for that time, to that place and on those terms, if any, that it considers fit.

(2) No trial must be postponed on the ground of the absence of a material witness, unless the affidavit on which the application to postpone is made states:

- (a) that the deponent is advised and believes that the party on whose behalf the application is made has a just cause of action or defence on the merits; and

(b) that the application is not made for the purpose of improperly delaying the trial.

Application of Rule 9-13(2)

[51] The Saskatchewan cases I found applying Rule 9-13 pertain to applications under Rule 9-13(3) to set aside default judgments. These are not relevant to the facts of this case, which involve application of Rule 9-13(2).

[52] Rule 9-13(2)(a), as written, is straightforward: “If, when a trial is called, the defendant appears and the plaintiff does not appear, the defendant ... is entitled to judgment dismissing the action”. This Rule allows summary dismissal of an action where the plaintiff fails to appear at trial.

[53] The defendant was unable to locate a Saskatchewan case where Rule 9-13(2) was applied in the manner sought on this application. I was able to locate only one case under the predecessor former Rule 270 of *The Queen’s Bench Rules*.

[54] In *Jacobsen v Hainstock*, 2012 SKQB 192, 397 Sask R 32, Sandomirsky J. applied former Rule 270 of *The Queen’s Bench Rules* in dismissing an action when the self-represented petitioner failed to appear in person for trial, but telephoned asking that the trial be adjourned. Sandomirsky J. held that the Rule required personal appearance:

[44] The Court of Appeal considered Rule 270 in the century old decision *Burke v. Nolin* (1908), 8 W.L.R. 830, 1 Sask.LR. 185 (C.A.). This century old decision appears in Neva R. McKeague, *The Queen’s Bench Rules of Court: Annotated*, 3rd ed. (Regina: Law Society of Saskatchewan Libraries, 2001) under Rule 270. *Burke v. Nolin* is noted up as follows:

“The rule applies where plaintiff does not appear either by himself, or by his counsel for the purpose of going on with the trial”.

[45] *Burke v. Nolin* is still good law. In that case the plaintiff failed to appear when the trial was called on. Plaintiff's counsel appeared and gave oral reasons why the adjournment was necessary. The plaintiff and his counsel did not file any evidence in affidavit form upon which the application for an adjournment was based. That was fatal. The trial judge dismissed the plaintiff's claim. Likewise, in this matter, Mr. Jacobsen makes a last minute phone call from New York but filed no affidavit to the effect that he was barred from entry into Canada, or to the effect that he was in the process of seeking permission to gain entry into the country. Mr. Jacobsen has had since last November, 2011 to ensure that he had clearance to enter the country to proceed with this trial. This is the second instance, the last being in October, 2011, when the petitioner has failed to appear for his trial.

[46] It is clear that Rule 270 requires Mr. Jacobsen to be physically present before the court. When the rule states "plaintiff does not appear" – a telephone call by the petitioner does not qualify as an appearance. In *Burke v. Nolin*, the plaintiff's counsel was present but not for the purposes of going on with the trial.

[47] While telephone appearances are now part of the practice and procedure before the court, whereas those rules did not exist 104 years ago, the *Burke v. Nolin* case continues to stand as the primary decision interpreting Rule 270. In this instance, Mr. Jacobsen was not appearing for the purposes of going on with the trial. Second, had Mr. Jacobsen sought an adjournment, he was required to file sworn testimony to establish grounds for an adjournment – something that he did not do.

[55] This Court normally makes some allowance for late arrivals. Sometimes there are good reasons for being late and sometimes not. For example, a party may have gone to another courthouse or be in another courtroom. Justices know this and try not to act too hastily.

[56] I am not aware of any case where a claim was dismissed at trial immediately upon the striking of the clock when the plaintiff or petitioner had not yet appeared. Unfairness is avoided by judicious application of Rule 9-13. Just because

the Court can, does not mean it must or should. At the same time, the Court expects parties and lawyers to show up on the date and time scheduled prepared to proceed. Unless that occurs, the Court cannot operate efficiently.

[57] While the Court prefers to decide actions on their merits, Rule 9-13 serves a necessary purpose. While one might fear that strict application of Rule 9-13 could result in injustice, Rule 9-13(3) provides a speedy avenue of relief against that possibility. See: *Sinclair v Webb*, 2011 SKCA 90 at para 4.

Other Saskatchewan decisions to proceed with trial in absence of a party

[58] In the following decisions, this Court proceeded with family trials in the absence of a party. I note, however, that former Rule 270 of *The Queen's Bench Rules* (to 2013) and thereafter Rule 9-13 of *The King's Bench Rules* were not relied upon in these decisions. Where the courts referred to authority, it was to precedent or the court's inherent jurisdiction to control its own process and avoid abuse of process. While the court proceeded to hear evidence, in all cases it was the respondent who had failed to appear.

[59] In *Evanoff v Evanoff* (1991), 97 Sask R 164 (CA), the Court of Appeal upheld the decision of a trial judge to proceed with a custody hearing in the absence of the respondent-mother. While not referring to any Rule, Gerwing J.A., writing for the majority, found the judge's decision to be appropriate:

[3] I am of the view that, in the circumstances, there was ample evidence before the judge on which he could conclude, as he did, that it was appropriate to proceed with the trial in the absence of a litigant who was frustrating or attempting to frustrate the process. I find no error in principle in what he did.

[60] In *Gutenberg v Hunter*, 2004 SKQB 373, Dovell J. proceeded with a family trial where the respondent appeared, but declined to participate because of his medical condition. Two days before trial, the respondent had filed an affidavit stating

“His condition is adversely affected by emotional stress, and it may be to his advantage to appoint someone to act on his behalf in his impending court case.” (para. 6) and attaching as exhibits two letters from doctors. Justice Dovell gave judgment based upon the petitioner’s evidence. The Court of Appeal dismissed an appeal against that judgment in *Gutenberg v Hunter*, 2005 SKCA 127, 275 Sask R 81, [*Gutenberg*]. Sherstobitoff J.A., writing for the Court of Appeal at para. 6, held that the letters from two doctors filed by the appellant at trial were not sufficient to require adjournment of the trial:

[6] We can find no error in the decision of the trial judge. The medical opinions fell far short of justifying anything other than allowing someone else to represent the appellant, but the appellant had already demonstrated an inability to obtain the services of a lawyer acceptable to him and the appellant declined to proceed with Mr. Hawke at his side. The appellant had no suggestions as to how to proceed, but simply declined to participate. While the condition of the appellant must be of concern, the evidence did not indicate any inability to either instruct counsel or to represent himself in court. In the circumstances, the trial judge had little choice but to do exactly what she did.

[61] In *Callaghan v McCaw*, 2010 SKQB 79, 351 Sask R 55, Herauf J. (as he then was) proceeded with a family trial after removal of the respondent for disruptive conduct. The Court gave judgment based upon the petitioner’s evidence with tariff costs in a fixed amount.

[62] In *Solmes v Solmes*, 2013 SKQB 120, 418 Sask R 88, Dufour J. proceeded with a family trial in the absence of the respondent who failed to attend and gave judgment based upon the petitioner’s evidence with an award of solicitor client costs. Dufour J. commented at para. 1:

1) Sometimes justice requires that the court process simply forge ahead to the end and not wait for people who have a stake in the litigation but decline to

participate. This is one of those times and the respondent is one of those people.

[63] In *C.E.J.K. v H.W.K.*, 2016 SKQB 24, Chow J. proceeded with a family trial in the absence of the respondent, who was removed from the courtroom for his disruptive conduct. The Court proceeded to receive evidence from the petitioner and gave judgment on that basis, with an award of solicitor client costs in a fixed amount.

[64] In *B.B. v C.B.*, 2017 SKQB 286, Chow J. proceeded with a family trial in the absence of the respondent who failed to appear, stating at para. 19:

[19] The record confirms that the respondent was personally present when Schwann J. previously adjourned the trial, at his request, and on a peremptory basis. On the evidence before me, I am satisfied that the respondent herein had notice of these proceedings, but simply declined, yet again, to participate.

Other case law

[65] The following decisions involved application of Rule 6-20 in chambers applications. The same plaintiff was a party in these cases. They illustrate the Court's ability to proceed despite a request to adjourn and to proceed in the absence of a party.

[66] In *Yashcheshen v Canada (Attorney General)*, 2020 SKQB 185 at paras 34-35, Mitchell J. recognized the ability of the Court to proceed with a chambers application in the absence of a party who declined to participate, citing Rule 6-20 (reproduced above):

3. Rationale for Proceeding in Absence of Ms. Yashcheshen

[34] Ironically, Ms. Yashcheshen quit the courtroom before I had an opportunity to rule on her request that I adjourn the hearing. When all was said and done, I may have acceded to her request and adjourned the hearing

with costs thrown away awarded to Saskatchewan and Canada. However, the adjournment discussion was aborted by Ms. Yashcheshen's voluntary exit from the courtroom.

[35] Rule 6-20 of *The Queen's Bench Rules* implicitly contemplates a judge hearing a chambers application in the absence of one of the parties, if it is "expedient to proceed without that party". This Rule dates back to at least 1908. See for example: *Jacobsen v Hainstock*, 2012 SKQB 192, 397 Sask R 32 [*Jacobsen*], and *Burke v Nolin* (1908), 1 Sask LR 185 (Sask CA), referred to in *Jacobsen* at paras 44-50.

[36] Apart from this Rule, this Court's inherent jurisdiction allows a judge to continue with civil proceedings where a party either leaves the courtroom or declines to participate in them. See, for example: *Gutenberg v Hunter*, 2005 SKCA 127 at paras 3-6, 275 Sask R 81, aff'g 2004 SKQB 373. See also: *T.S.D. v S.L.S.*, 2015 BCSC 127; *Zhang v Koks*, 2015 ABPC 73, 57 RFL (7th) 457; and, especially, *Sydorenko v Her Majesty the Queen*, 2012 MBQB 42.

[37] Either of these jurisprudential sources is applicable here. Each authorized me to refuse to adjourn the hearing. Simply put, even though it was the first appearance, I chose to continue with the hearing in Ms. Yashcheshen's absence because, in my opinion, adjourning these applications in the face of her contemptuous behaviour would not only have enabled it, it would have condoned her abuse of this Court's process. Moreover, counsel for the applicants were present and prepared to argue this application. One of them – Mr. Morris – had even travelled from Regina to Saskatoon to participate in the hearing. So we proceeded.

[67] In *Yashcheshen v Canada (Attorney General)*, 2020 SKQB 188, the same self-represented party again walked out of court after requesting an adjournment because she felt too unwell to proceed. Mitchell J. proceeded to hear the application in her absence. Mitchell J. at para. 21 considered the fact that she was self-represented:

1. Ms. Yashcheshen is a Lay Litigant

[21] The concept of access to justice encourages individuals to seek vindication of legal grievances in the courts, and commends some latitude be extended to individuals who for various reasons have chosen to represent themselves. At the same time, lay litigants should not regard this indulgence as a licence to ignore basic rules of civil procedure or legal drafting. The court is obliged to control its own process and procedures. See, for example: *Yashcheshen* [2020 SKQB 185], at para 58; *Wilchuck v Westfield Twins Condominium Corporation*, 2020 SKQB 40 at paras 33-35; *Siemens v Baker*, 2019 SKQB 99 at paras 30-32 [*Siemens*]; and *Yashcheshen v College of Physicians and Surgeons of Saskatchewan*, 2019 SKQB 43 at paras 7-10.

[22] In keeping with this approach, I will accord to Ms. Yashcheshen some latitude when assessing the arguments advanced by Janssen on this application.

[68] In *Yashcheshen v Janssen Inc.*, 2022 SKCA 140 at para 11, the Court of Appeal cited *Gutenberg* in dismissing an appeal against *Yashcheshen v Canada (Attorney General)*, 2020 SKQB 188. The Court went on at paras. 13 - 14 to address the failure to adjourn the application:

[11] From the foregoing excerpts of the *QB Decision* [2020 SKQB 188] and a transcript (which the judge had had prepared and from which he quoted in his decision), we conclude that the Chambers judge did not deny Ms. Yashcheshen's request for an adjournment. She pre-empted his decision-making on that point by abruptly quitting the courtroom. This, as the Chambers judge well appreciated, brought the circumstances under the rubric of the court's inherent jurisdiction to control its process and to prevent abuse of that process by litigants. In answering the allegations of error in this regard, we echo the Court in *Gutenberg v Hunter*, 2005 SKCA 127 at para 6, 275 Sask R 81, affirming 2004 SKQB 373, an appeal from a matter in which a trial had proceeded in similar circumstances, where Sherstobitoff J.A. wrote: "While the condition of the appellant must be of concern, the evidence did not indicate any inability to either instruct counsel or to represent himself in court. In the circumstances, the trial judge had little choice but to do exactly

what she did”.

...

[13] As the Chambers judge understood, procedural fairness was an issue in this context only to the extent that Ms. Yashcheshen might be too unwell to proceed. In that regard, like it was in *Burke* [(1908), 1 Sask LR 185 (CA)], it was fatal to Ms. Yashcheshen’s adjournment request that she had filed no evidence about the state of her health and had made no oral or written submissions to support her bare claim of illness (or otherwise in support of her request). As we read the relevant parts of the transcript of the hearing, she quit the courtroom before the judge could make inquiries of her in that regard, leaving him with no evidence and no argument on her request. In these circumstances, we conclude that Ms. Yashcheshen utterly failed to discharge the onus, which was squarely on her, to establish to the Chambers judge’s satisfaction that it would be procedurally unfair to proceed with the hearing at the time it was scheduled to be heard. Therefore, even if he can be said to have denied Ms. Yashcheshen’s request for an adjournment, the Chambers judge did not err in doing so.

[14] We dismiss the grounds of appeal relating to the Chambers judge’s handling of the adjournment request.

No case to prove or answer

[69] In deciding whether and how to apply Rule 9-13, I considered whether the defendant was required to call evidence on the merits of the claim and defence, apart from the affidavit and filings supporting its application.

[70] Where the plaintiff seeks judgment under Rule 9-13(1) or the defendant by counter-claim seeks judgment under Rule 9-13(2)(b), then the party seeking judgment must adduce evidence to establish their claim. This is clear from the express wording of those provisions.

[71] Where the defendant seeks only dismissal of the claim under Rule 9-13(2)(a), no evidence is required beyond that showing that the plaintiff had notice of the trial and failed to appear. It is similar to a non-suit motion under Rule 9-26. The

defendant is not required to prove its defence because the plaintiff has failed to prove even a *prima facie* case. There is no case to answer.

[72] It is also distinct from default judgment, where no defence is offered. In that case, the plaintiff is entitled to judgment without proving its claim, because no defence was offered. In this case, the defendant filed a Statement of Defence asserting legitimate defences.

Procedural defects

[73] If there are any procedural defects in the form of timing of the application to strike, I apply Rule 1-6 to cure those defects. The application arose because of the failure of the plaintiff to attend the trial she had initiated and sought.

Dismissal of the Action

[74] With this review of the known facts and law in mind, I am satisfied that the defendant is entitled to judgment under Rule 9-13(2). The trial was set by fiat of the case management judge on December 17, 2024, so the parties had six months notice of the trial date. My understanding is that the trial dates were selected to accommodate the plaintiff's school schedule. My *April 24 Fiat* at para 71 and *June 11 Fiat* at para 21 made clear the trial would proceed as scheduled.

[75] In my *April 24 Fiat* at para 70, I directed the plaintiff to serve and file her witness list. This was never done. This omission and other circumstances raised suspicion that the plaintiff did not intend to proceed with her trial long before she sought adjournment. The defendant obviously had the same concern, since its counsel warned her before trial that if she failed to appear they would apply to have the action dismissed.

[76] The plaintiff was aware on June 13, 2025 that the defendant intended to apply to have the action dismissed if she failed to appear. When the plaintiff failed to show on June 16, the trial was repeatedly adjourned with further notice from the registry office to the plaintiff of the adjournment to 2:00 p.m. The plaintiff's reply email to the registry office shows she received the email notice.

[77] These facts satisfy the necessary elements to support the application for dismissal of the action under Rule 9-13(2)(a).

Conclusion

[78] For these reasons, the defendant's application under Rule 9-13 is granted and the action is dismissed.

Costs

[79] Costs may be spoken to anytime after 15 days from the date of this judgment. Arrangements may be made through the Local Registrar.

J.
D.N. ROBERTSON