KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 7**

Date: **2026 01 12**
Docket: KBG-BF-00064-2025
Judicial Centre: Battleford

BETWEEN:

PAMELA MICHAELS

Plaintiff

- and -

JESSICA LYNN RAYCRAFT

Defendant

Appearances:

Pamela Michaels	on her own behalf
Daniel S. Katzman and Julia M. Conlon	for the defendant, Jessica Lynn Raycraft

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JUDGMENT KEENE J.
January 12, 2026

I. Introduction

[1] The plaintiff, Pamela Michaels, sued the defendant, Jessica Lynn Raycraft, for general damages in the amount of $75,000.00 for defamation and reputational injury, and $25,000.00 for aggravated damages. The defendant filed a statement of defence denying the plaintiff's allegations and putting matters into contest. The parties attended a mandatory mediation session as required under s. 7-1(2) of *The King's Bench Act*, SS 2023, c 28, on September 10, 2025. It is to be noted that Duane

Westgard had also sued Ms. Raycraft for similar complaints asking for similar relief in KBG-BF-00063-2025. The parties quite sensibly agreed that there was to be a joint mediation session (see: *Westgard v Raycraft*, 2026 SKKB 6). Unfortunately, Ms. Michaels and Mr. Westgard recorded the entire mediation (including the time Ms. Raycraft was in private caucus with her lawyers and the mediator) by surreptitiously placing Mr. Westgard's cell phone set to record in Ms. Michael's purse that was left in the meeting room. This is set out in Ms. Michaels' affidavit sworn November 13, 2025 (paragraph 3) and was further elaborated upon by Ms. Michaels during her oral submissions in court on November 27, 2025. At the conclusion of the session, the parties executed minutes of settlement, resolving Ms. Michaels' and Mr. Westgard's lawsuits.

[2] As it turns out, Mr. Westgard filed an application in his action to set aside the Minutes of Settlement signed September 10, 2025, which seems to have prompted Ms. Raycraft to pre-emptively file an application on October 1, 2025, in the within action to have the Minutes of Settlement enforced by this Court, which was supported by her affidavit sworn September 24, 2025. In due course, Ms. Michaels filed her own application on November 13, 2025, requesting that the Minutes of Settlement be set aside and for an order "reinstating the Plaintiff's action as though the Minutes of Settlement had never been executed". Ms. Michaels filed in support of her application two separate affidavits, both sworn on November 13, 2025. This resulted in Ms. Raycraft's lawyers filing two notices of objection to the affidavit evidence contained in Ms. Michaels' two affidavits. This, in turn, begot a further affidavit from Ms. Michaels sworn November 24, 2025.

[3] I will go through the notices of objection first and then move on to Ms. Michaels' substantive application to set aside the Minutes of Settlement, followed by my decision on Ms. Raycraft's substantive application to enforce the Minutes of Settlement.

II. Ms. Raycraft's notice of objection to affidavit evidence

a. Ms. Michaels' six-page affidavit sworn November 13, 2025

[4] For brevity, I will refer only to the paragraph numbers containing the highlighted impugned portions:

- **Paragraph 1:** This is not objectionable. Facts within the knowledge of the deponent.
- **Paragraph 3:** This is not objectionable. It is permissible hearsay (Rule 13-30(2) of *The King's Bench Rules*).
- **Paragraph 4:** This is argument and not permissible. (See *Cowessess First Nation No. 73 v Phillips Legal Professional Corporation*, 2018 SKQB 156 at paras 17-18, aff'd 2020 SKCA 16. This is the authority for any other striking.) The paragraph is struck.
- **Paragraphs 5, 6, 7, 8, 9, 10, 11 and 13:** All of these paragraphs are not objectionable. These contain facts within the knowledge of the deponent.

b. Ms. Michaels' 47-page affidavit sworn November 13, 2025

[5] For brevity, I will refer only to the paragraph numbers containing the highlighted impugned portions:

- **Paragraph 5:** This is opinion and argument. The entire paragraph is struck.
- **Paragraph 6:** This is speculation, opinion and argument. The entire paragraph is struck.
- **Paragraph 7:** The first sentence is acceptable as being fact within the

knowledge of the deponent. The balance of the paragraph is struck for being argument.

- **Paragraph 8:** This is speculation, opinion and argument. The paragraph is struck with the exception of the words "Okay, let's go." – this is acceptable.
- **Paragraph 9:** This is hearsay but permissible.
- **Paragraph 11:** This is opinion and argument. The entire paragraph is struck.
- **Paragraph 11(b):** This is acceptable as being fact within the knowledge of the deponent.
- **Paragraph 12(b):** The first sentence is acceptable, being fact within the knowledge of the deponent. However, the balance of the paragraph is struck for being opinion or argument.
- **Paragraph 12(c):** This entire paragraph is struck for being opinion and argument.
- **Paragraph 17:** These are facts within the knowledge of the deponent.

[6] I wish to comment about the making and use of a surreptitious recording made during the confidential mandatory mediation session that was prescribed by *The King's Bench Act*. This should not have been done and should never be done. The Court has gone through the above exercise to answer the notices of objection. However, my findings should not be construed by either Mr. Westgard or Ms. Michaels to be court approval of the surreptitious recording. Accordingly, while the recording and subsequent transcription may be "real evidence" as argued by Ms. Michaels, nevertheless I find that the "evidence" was obtained in a manner which offends the legislated confidentiality of the mediation process, and for public policy reasons and to

maintain the integrity of the mediation process, I will strike from any affidavit offered by Ms. Michaels or Mr. Westgard any references to the recording or transcript of the unauthorized recording made by Ms. Michaels or Mr. Westgard. For clarity, this means that while some of these impugned portions of the affidavits may have survived the above exercise, nevertheless, I will not consider such "evidence". However, I am prepared to consider any proper averment made by a deponent as to his or her recollection of what happened during the mediation session for the reasons set out below.

III. Ms. Michaels' substantive application

[7] Generally, what is said at a mandatory mediation session convened under s. 7-1(2) of *The King's Bench Act* is confidential. Section 7-2 of *The King's Bench Act* states:

> **7-2** Except with the written consent of the mediator and all parties to the proceeding in which the mediator acted, the following types of evidence are not admissible in any civil, administrative, regulatory or summary conviction proceeding:
>
> (a) evidence directly arising from anything said in the course of mediation;
>
> (b) evidence of anything said in the course of mediation;
>
> (c) evidence of an admission or communication made in the course of mediation.

[8] However, while this Court is guided by the obvious need for confidentiality in a mediation session, nevertheless when a party wishes to set aside the written minutes of settlement reached at the mandatory mediation session based on alleged concerns about undue pressure, intimidation, bias of the mediator or unconscionability, then the event itself has to be unfortunately opened up for scrutiny. However, before I get into that, I wish to discuss the written Minutes of Settlement and

what that document represents.

[9] Minutes of settlement arising out of a mediation are a form of contract. If there is an agreement between the parties (*consensus ad idem*) and settlement is reached, then it is common (and advisable) for the parties to put their agreement into writing and sign the document. The document must be clear enough to understand. There should also be some bargain, a *quid pro quo* or, in legal terminology, consideration, for agreeing. Obviously, if one party is unable to comprehend what he or she is agreeing to, then there is no enforceable bargain despite signing the minutes of settlement. Equally, each party must sign under their own volition, free from duress and undue influence or threat. In a mediation, a mediator must remain impartial. However, that does not mean a mediator must remain on the sidelines and not interact with the parties. That is the whole purpose of having a mediator at a mediation: to help the parties come to a resolution. The party wanting out of the written contract or agreement bears the onus of proving the contract should not be enforceable. This means that Ms. Michaels must prove on the balance of probabilities that the contract is unenforceable.

[10] Further along these lines, in *Stubbings v Holizki*, 2024 SKKB 117 [*Stubbings*], Justice Layh had occasion to consider the issue of the effect of minutes of settlement arising from a mandatory mediation session under s. 7-1(2) of *The King's Bench Act*, when he wrote:

> [20] In *Neigum v Van Seggelen*, 2022 SKCA 108, 474 DLR (4th) 673 [*Neigum*], Justice Kalmakoff described the court's approach to enforcing minutes of settlement. He wrote (at para. 54) that "minutes of settlement arising from a legal proceeding are to be interpreted in the same manner as contracts." In *Neigum* the court found that no settlement had been reached because the parties had not reached a meeting of the minds, a *consensus ad idem.*
>
> [21] Justice Kalmakoff referred to *Kreway v Kreway,* 2016

> SKQB 115 where Justice Tholl (as he then was) offered an explanation of the court's approach to rendering a judgment based on a settlement agreement. He wrote:
>
> > [22] As a general proposition, Minutes of Settlement that arise out of a settlement at the conclusion of a pre-trial conference are enforceable contracts. Public policy and the effective operation of the court demands that parties be held to the bargain they negotiate in good faith at a pre-trial conference. ….
> >
> > [23] In this matter, there are no circumstances in the conduct of the pre-trial conference or any deficiencies found on the face of the Minutes that would result in the Minutes not being enforceable unless Mr. Kreway establishes that one of the three issues he has raised, an implied term of financing, frustration or mutual mistake, is found by the court to raise a valid bar to the enforcement of the Minutes.
>
> [22] Applying Justice Tholl's comments to the circumstances of the Minutes between Dorothy and Debora, I must ask these three questions:
>
> 1. Were there circumstances in the conduct of the mediation meeting that would result in the Minutes being unenforceable?
>
> 2. Was there anything on the face of the Minutes that would result in the Minutes being unenforceable?
>
> 3. Has Debora raised a valid bar to the enforcement of the Minutes?

[11] Mr. Westgard, in his case, argued that because of limited literacy, he had difficulty in understanding legal matters so he had Ms. Michaels assist him as his representative and, as I concluded, his advisor. Clearly, Ms. Michaels felt up to the task, and I believe it is safe to say she possesses a sound intellect with some skill at drafting documents and presenting her point of view as displayed during her oral argument in court. Therefore, she cannot rely on the same complaints as did Mr. Westgard. I find that she is quite capable.

[12] In her affidavit evidence, Ms. Michaels complains that the intensity of the session and the personalities of the mediator and Mr. Katzman overcame her to such an extent that she was unable to comprehend what was going on or was put to some sort of disadvantage. I find this difficult to accept. I will firstly turn to Ms. Raycraft's affidavit sworn September 24, 2025. I reproduce from her affidavit the following:

> 4. The mediation that took place on September 10, 2025, was in relation to both matters, KBG-BF-00063-2025 and KBG-BF-00064-2025. This was done with the consent of all parties. I am advised by my counsel and verily believe to be true that his office coordinated between the Dispute Resolution Office ("**DRO**"), Pamela and Duane to have the mediations dealt with together. Attached hereto and marked as **Exhibit "A"** is a copy of the correspondence coordinating the mediation sessions, and a confirmation letter from the DRO.
>
> 5. The mediation taking place on September 10, 2025, resulted in Minutes of Settlement being entered into and signed by all the parties (the "**Minutes of Settlement**"). Attached hereto and marked as **Exhibit "B"** is a copy of those executed Minutes of Settlement.
>
> …
>
> 7. In reply to paragraphs 2 and 3, Duane mentioned that he relied on Pamela to assist him, and during times when review of written documents was needed, Pamela read the document to Duane aloud. When the Minutes of Settlement were reviewed, Pamela read them out loud to Duane, who appeared to understand and agree to their content.
>
> 8. There were multiple occasions when Duane or Pamela requested clarifications regarding the terms of the Minutes of Settlement. These clarifications surrounded the details of:
>
> (a) Paragraph 2, regarding the exact content and intent behind the post. Both Pamela and Duane asked why the proposed wording of the apology was worded as it was. My counsel explained that the intent behind the exact wording was to preclude further questions or concerns regarding exactly who the post was in

relation to, so issues surrounding the Facebook post of March 22, 2025, would not continue;

(b) Paragraph 4, both Pamela and Duane discussed with my counsel how we would provide proof of my Facebook post being taken down. During this discussion it was agreed that I would send proof of the post being taken down to my counsel, and he would forward it to Pamela, as she was the person with whom my counsel had contact;

(c) Paragraph 5, Pamela and Duane discussed with my counsel that the apology would not be posted publicly, unless I failed to live up to my obligations pursuant to the Minutes of Settlement;

(d) Paragraphs 6 and 7, my counsel confirmed with Duane and Pamela that each of them would need to withdraw both of their claims before my obligations pursuant to paragraphs 2, 3, 4, and 9 of the Minutes of Settlement would be triggered. My counsel explained that the intent behind this paragraph was to ensure that both claims were withdrawn before my apology and payment were due, and to ensure that the obligations of the parties flowed logically;

(e) Paragraph 8, Pamela and Duane discussed with my counsel how this paragraph would be triggered. It was discussed in detail that I had to post my apology, and take down my post of March 22, 2025, as agreed to, my counsel explained that Pamela could then post in her publication, the RedfordGate Gazette, the apology I agreed to, and attribute the quote to me;

(f) Paragraph 9, initially it was agreed that I would have 60 days to pay Pamela $2,000.00, however when writing the Minutes of Settlement, it was agreed to that I would be given 90 days; and

(g) Paragraph 10, both Pamela and Duane discussed with my counsel the nature and effect of the confidentiality clause. It was discussed that none of the parties could post or talk about any part of the proceedings, and that it was binding upon me, Duane and Pamela equally.

9. After the Minutes of Settlement were signed, and because everyone had indicated they knew and understood the

> nature and effect of the Minutes of Settlement, I removed my post March 22, 2025, at the end of mediation on September 10, 2025. Attached hereto and marked as **Exhibit "C"** is a copy of my Facebook profile, that shows the post of March 22, 2025, has been removed.
>
> …
>
> 15. Upon returning to the room, Pamela and Duane provided a counter proposal, which was substantially similar to the original offer I made, but requesting a payment of $6,000.00. The payment of the $6,000.00 would be divided, such that $3,000.00 would be paid to Duane, and $3,000 would be paid to Pamela.
>
> …
>
> 23. Once we understood that the terms of the Minutes of Settlement were agreed to, my counsel immediately started writing them down. It was at this time that talk between the mediator, Pamela, Duane, and myself started. This conversation was lighthearted, and not in relation to the matters that brought us to mediation.
>
> …
>
> 25. As my counsel wrote out the Minutes of Settlement, he provided the draft pages to Pamela and Duane to review while he completed writing them. When he provided Pamela and Duane the partially completed Minutes of Settlement, he stated that they should start reviewing the same while he wrote them. Pamela read the Minutes of Settlement to Duane and talked to him regarding the same as they were reviewed.
>
> …
>
> 36. In response to paragraph 3, Duane was not blocked or inhibited by anyone when he attempted to leave. Everyone in the room remained seated, and Pamela asked Duane to return to his seat, which he did voluntarily.
>
> 37. Duane only had one outburst, near the end of the mediation.
>
> [Emphasis in original]

[13] Ms. Michaels' affidavit evidence seems to suggest she was overwhelmed.

However, for the most part, she made no mention of what Ms. Raycraft deposed to. I find Ms. Raycraft's evidence supports that this was a productive mediation that resulted in the Minutes of Settlement. I note that the Minutes of Settlement, which I will discuss below, show considerable concessions were made by Ms. Raycraft (i.e., apology, retraction and payment of money). In my view, Ms. Raycraft's affidavit provides the most accurate and dependable version of what happened at the mediation session. I am not satisfied that there were circumstances in the conducting of the mediation meeting that should result in the Minutes of Settlement being unenforceable (*Stubbings*, at para 22). I will add that the consideration offered by Ms. Raycraft and accepted by Ms. Michaels appear in line with similar claims for defamation (see *McLean v Stewart*, 2025 SKKB 81). Finally, I do not find Ms. Michaels has proven that she acted under duress (*Tarasoff v Tarasoff*, 2023 SKKB 102 at paras 86-91).

[14] I will now turn to the Minutes of Settlement and highlight the following:

> Minutes of Settlement
> September 10, 2025
>
> KBG-BF-00064-2025 – Michaels v Raycraft
>
> KBG-BF-00063-2025 – Westgard v Raycraft
>
> Further to the above noted matters, the parties thereto have agreed to resolve all matters between them in relation to KBG BF 00064 of 2025 and KBG BF 00063 of 2025 (the "Matters") in full and final satisfaction.
>
> 1. These Minutes of Settlement are entered into voluntarily and with full understanding of their nature and affect [*sic*].
>
> …
>
> 6. Both Pamela and Duane will each withdraw their respective matters at King's Bench, and will do so on a without costs basis. Both Pamela and Duane will provide proof by way of filed Notices of Withdrawals filed at king's bench [*sic*].
>
> …
>
> 10. The contents of these minutes of settlement shall be confidential, and not made public at any time and all information in relation to the Matters will remain

> confidential.
>
> 11. The settlement of the Matters is made with the understanding that the same is made without an acknowledgement of harm, damages or liability, but to globally resolve all outstanding matters in relation to the Matters.

[15] The body of the Minutes of Settlement (which, to protect the agreed-upon confidentiality of the terms, I need not reproduce here) clearly shows give and take, and it seems under the circumstances to have been a reasonable compromise made by the parties to resolve an unpleasant situation. The Minutes of Settlement were prepared in layman's language so to speak, and I find the document easy to read. I am sure Ms. Michaels had no difficulty in understanding what was said in the Minutes of Settlement.

IV. Conclusion on Ms. Michaels' application

[16] Ms. Michaels bears the onus of proving her allegations. For the above reasons, I find that Ms. Michaels signed a binding and enforceable contract, and she has not proven that she fell victim to any of the complaints set out in her application. Therefore, I dismiss her application to set aside the Minutes of Settlement. I will address the matter of costs below.

V. Ms. Raycraft's substantive application

[17] I will not repeat the above. I have found that Ms. Michaels' application should be dismissed, and therefore, it stands that the Minutes of Settlement are enforceable as a contract. Accordingly, I declare that the Minutes of Settlement are a contract and are enforceable. This should include Ms. Michaels filing a notice of discontinuance.

VI. Conclusion

[18] For clarity, I order:

1. The Minutes of Settlement dated September 10, 2025, is a binding and enforceable contract between the parties, and the Minutes of Settlement may be entered as a judgment of the within action.

2. The terms of the Minutes of Settlement shall be completed by the parties within 10 days of the service of the issued order upon Ms. Michaels, including the filing and service by Ms. Michaels of her notice of discontinuance.

3. Costs as set out below.

VII. Costs

[19] Ms. Raycraft has been successful in her application. Ms. Michaels has not been successful in her application. The Court has expressed its displeasure with the making of the surreptitious recording. Ms. Raycraft has asked for solicitor-client costs. I have reviewed the authorities (including *Siemens v Bawolin*, 2002 SKCA 84) and while such conduct cannot be condoned, I have decided that the request for significant costs can be adequately addressed by the following. In considering all of this, I will assess costs in a global way and order that Ms. Michaels shall pay to Ms. Raycraft costs fixed at $1,500.00. I further order that Ms. Raycraft may offset any payment she is to make to Ms. Michaels under the Minutes of Settlement by this order of costs.

VIII. Issuing the order

[20] Ms. Raycraft shall issue an order arising from this judgment. Rule 10-4 of *The King's Bench Rules* is waived. I direct that Ms. Raycraft's lawyers shall file a draft with the Local Registrar in Battleford for my review before issuing.

"T.J. Keene" J.

T.J. KEENE