

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 13

Date: 2026 01 15
File No.: KBG-SA-00512-2025
Judicial Centre: Saskatoon

BETWEEN:

TMI CERTIFIED INC.

PLAINTIFF

- and -

TODD DIXON, TODD TAYLOR, BARB EATOCK,
SASKATCHEWAN 102085428 LTD. and
CANADIAN IMPERIAL BANK OF COMMERCE,
CIBC WOOD GUNDY

DEFENDANTS

Counsel:

Sean P. Watson for the plaintiff
Daniel B. Alcorn for the defendants, Todd Dixon, Todd Taylor,
Barb Eatock and Saskatchewan 102085428 Ltd.
James J. Heelan, K.C. for the defendants, Canadian Imperial Bank
of Commerce and CIBC Wood Gundy

JUDGMENT
January 15, 2026

SINCLAIR J.

[1] There are two mirror applications before the Court from the defendants seeking the following relief:

a. An order pursuant to Rules 7-9(1)(d) and 7-9(2)(e) of *The King's*

Bench Rules and the inherent jurisdiction of the Court, dismissing the claim in its entirety;

- b. In the alternative, an Order pursuant to Rules 7-9(1)(d) and 7-9(2)(e) of *The King's Bench Rules* and the inherent jurisdiction of the Court staying the within proceedings;
- c. In the further alternative, an Order pursuant to Rules 7-9(1)(a) and 7-9(2)(e) of *The King's Bench Rules* and the inherent jurisdiction of the Court striking the plaintiff's claim in its entirety; and
- d. The costs of the applications on a solicitor-client basis.

[2] For the reasons that follow, I am not prepared to grant the relief sought by the defendants. The plaintiff's actions (as discussed below) that led to the applications are reprehensible, but the proper remedy is to award costs against the plaintiff, rather than staying or dismissing the action.

FACTS

[3] The statement of claim was issued on May 8, 2025 [Claim] raising the following causes of action:

- a. fraud;
- b. fraudulent misrepresentation;
- c. breach of contract;
- d. interference with economic relations; and
- e. defamation.

[4] Canadian Imperial Bank of Commerce and CIBC Wood Gundy [CIBC Defendants] filed a statement of defence on July 3, 2025.

[5] Todd Dixon, Todd Taylor, Barb Eatock and Saskatchewan 102085428 Ltd. [Individual Defendants] filed a Request for Particulars on July 25, 2025.

[6] On August 5, 2025, former counsel for the plaintiff [Former Counsel], who practices law in another province, sent an email to counsel for the Individual Defendants [Threat] indicating:

- a. Since issuing the claim, the plaintiff had identified conduct and evidence that raised more significant concerns than those pled in the civil matter;
- b. The additional concerns raise issues of alleged “**fraudulent and deceptive conduct**” that could warrant additional legal consequences, including “**regulatory and criminal complaints**” [bold in original];
- c. The plaintiff was prepared to offer the opportunity to engage in a “**private and confidential resolution**” [bold in original];
- d. Should the plaintiff not receive an offer or communication by August 5, 2025 at 4:00 PM, the plaintiff would:
 - i. Initiate regulatory complaints with all relevant oversight bodies;
 - ii. File a formal criminal complaint with law enforcement;
 - iii. Engage in lawful public disclosure of the relevant facts which would lead to reputational fallout.

- e. As a baseline, the offer should be commensurate with the “**financial impact caused**”, with the impression left that the offer needed to be at least \$900,000 [bold in original].

[7] On August 6, 2025, the Individual Defendants brought this application seeking to dismiss or stay the action because of the Threat. The Individual Defendants swore affidavits on August 6, 2025 indicating, among other things:

- a. They wish to dispute the plaintiff’s claim. However, they fear that, if they defend themselves in this action, the plaintiff will act in accordance with the Threat.
- b. They take the Threat to commence criminal and/or regulatory proceedings seriously because, although the Threat is frivolous, it could lead to significant lost time, expense, and harm to their personal and professional reputations, particularly if the plaintiff publicizes its one-sided complaint as threatened.

[8] On August 15, 2025, the CIBC Defendants filed their application to dismiss or stay the action because of the Threat. An affidavit was filed indicating that Todd Dixon, one of the Individual Defendants, is an employee of Canadian Imperial Bank of Commerce [CIBC]. To the extent that complaints were lodged against Mr. Dixon as set out in the Threat, this could have professional regulatory implications for CIBC. There may also be reputational damage. Thus, the CIBC Defendants indicate that the Threat affects their ability to mount a defence.

[9] A notice of change of representation for the plaintiff was filed on October 7, 2025.

[10] An affidavit of Maxwell Tufts was filed by the plaintiff on November 14,

2025. In that affidavit, Mr. Tufts indicates, among other things:

- a. Former Counsel sent the Threat without Mr. Tufts having reviewed it;
- b. Mr. Tufts was initially unaware that the Threat was made;
- c. The plaintiff's desired method of proceeding is the civil litigation, not criminal or regulatory complaints;
- d. It was not his intention in explaining the case to Former Counsel that she taint the litigation and risk having it thrown out;
- e. Current legal counsel for the plaintiff has explained the ethical and other issues with the Threat;
- f. Mr. Tufts has not had any contact with police, filed any criminal or regulatory complaints or engaged in any other behaviours described in the Threat. He does not plan on doing so. He wishes to continue with the litigation in the normal course; and
- g. Mr. Tufts has been explained the implied undertaking rule by current counsel.

[11] A reply affidavit was filed by Todd Dixon on December 10, 2025. It largely addressed certain discussions between counsel to refute information provided in Mr. Tufts' affidavit.

ISSUES

[12] There are two procedural issues raised by the Individual Defendants:

- a. Does settlement privilege prevent the admission of the Threat as evidence?

- b. Can the application proceed in advance of mandatory mediation given s. 7-1 of *The King's Bench Act*, SS 2023, c 28?

[13] The substantive issues on this application are:

- a. Is the Threat an abuse of process?
- b. If the Threat is an abuse of process, what is the appropriate remedy?

ANALYSIS

1. The procedural issues

a. Does settlement privilege prevent the admission of the Threat as evidence?

[14] The Individual Defendants raised the issue of whether the Threat could be admitted as evidence on this application given the issue of settlement privilege. The plaintiff did not take a position on this issue in its written or oral argument.

[15] I agree with the Individual Defendants that the Threat is properly before the Court. There are exceptions to settlement privilege. To come within those exceptions, the party proffering settlement communication as evidence must establish that there is a competing public interest that outweighs the public interest in encouraging settlement. Settlement privilege may be overcome where there has been misrepresentation, fraud or undue influence: *Sable Offshore Energy Inc. v Ameron International Corp.*, 2013 SCC 37. Further, it has been held that settlement privilege does not prevent disclosure of settlement communication if the exclusion of the evidence “would act as a cloak for perjury, blackmail or other unambiguous impropriety, but such an exception should only be applied in the clearest of cases of abuse”: *Meyers v Dunphy*, 2007 NLCA 1 at para 20 [*Meyers*].

[16] At paragraph 19 of *Meyers*, the Court quoted from the United Kingdom Court of Appeal decision in *Unilever plc v The Procter & Gamble Co.*, [2001] 1 All ER 783, where the Court indicated when discussing settlement privilege:

[19] ...

... Likewise, a without prejudice letter containing a threat is admissible to prove that the threat was made.

...

[17] In *Abt Estate v Cold Lake Industrial Park GP Ltd.*, 2019 ABCA 16 [*Abt Estate*], the Court noted at paragraph 42 that threats to allege fraud to regulatory authorities or to distribute defamatory material can defeat settlement privilege.

[18] The Threat indicates that the plaintiff will initiate criminal and regulatory complaints alleging, among other things, fraud. The Threat is egregious and improper. As a result, settlement privilege is overcome. The Threat is properly tendered in evidence on this application.

b. Can the application proceed in advance of mandatory mediation given s. 7-1 of *The King's Bench Act*?

[19] Again, the Individual Defendants raised the issue of whether the application could proceed prior to mandatory mediation given s. 7-1 of *The King's Bench Act*. The plaintiff did not raise concerns with the application being brought prior to mandatory mediation.

[20] The recent decision of *Corey v Friesen*, 2025 SKCA 124, is a full answer to the issue. As noted by the Court of Appeal, s. 7-1 of *The King's Bench Act* only applies after the close of pleadings. Before pleadings are closed, there is no prohibition from parties taking steps in the action. In this case, the pleadings are not closed, as no defence has been filed by the Individual Defendants. As a result, *The King's Bench Act*

does not bar the applications.

[21] In any event, I would have been prepared to grant a temporary exemption from mandatory mediation until after these applications were decided. Requiring the parties to mediate with the Threat hanging over the action would have been fruitless. The defendants could not expect to engage in settlement discussions without an adjudication of the plaintiff's conduct.

2. The substantive issues

a. Is the Threat an abuse of process?

[22] The Supreme Court in *Saskatchewan (Environment) v Metis Nation – Saskatchewan*, 2025 SCC 4 [MN-S], recently addressed the doctrine of abuse of process. Some of the principles stemming from MN-S are:

- a. The abuse of process doctrine is concerned with the administration of justice and fairness: paragraph 33;
- b. The doctrine engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would in some way bring the administration of justice into disrepute: paragraph 33;
- c. Abuse of process is a broad and flexible concept: paragraph 34.

[23] Courts have held that a party using threats of criminal or regulatory complaints as a means of obtaining a collateral advantage in other proceedings is an abuse of process.

[24] In *Scherf v Nesbitt*, 2009 ABQB 658 [Scherf], the husband in a family law proceeding sent emails to the wife in which he threatened to publicize private

information about the wife unless the wife resiled from her position on dividing the value of a jointly acquired residence. The wife was not deterred by the threats and the matter proceeded to trial. After the trial, on an application to determine costs, the wife sought full indemnity for her legal fees, given the husband's extortionate emails. In granting an award of double-costs against the husband, the Court indicated at paragraph 34:

- a. There are certain lines that a litigant cannot cross;
- b. A party cannot extort another party;
- c. Extortion can involve the threat of institution of legal proceedings or the threat of harm;
- d. The fact that the illegitimate pressure has not been successful in achieving its aim is irrelevant.

[25] In *R v Janvier*, 1985 CanLII 2817, [1985] 5 WWR 59 (SKQB), an employee of a local municipality allegedly stole money from the municipality. An arrangement was made between the municipality and Ms. Janvier to return the funds. The agreement further stipulated that, if Ms. Janvier failed to return the money, the matter would be taken to the police. A resolution to this effect was passed by the municipality. The Court found that the council of the municipality used the threat of criminal proceedings to induce Ms. Janvier to repay the funds and to enforce the payment. The Court concluded that these actions constituted an abuse of process. The Court indicated that:

[10] ... The courts have consistently frowned upon such conduct as being an abuse of the court process. To discourage same, the courts have often exercised their inherent authority to stay such abusive proceedings.

[26] In *R v Leclair*, 1956 CanLII 526, 115 CCC 297 at p 302 (ONCA), the Court made similar comments indicating:

... It is, I think, clear from the evidence of the complainant that he tried to collect the money and that when he was unable he advised the accused that if he did not pay the money he would institute criminal proceedings. It is a reasonable assumption that the complainant, by threatening prosecution, endeavoured to obtain payment of the debt. There is no doubt that this amounted to an abuse of the process of the Court. The criminal law was not enacted for the assistance of persons seeking to collect civil debts. ...

[27] I agree with the comments made in all of the aforementioned decisions. Threats of criminal and regulatory complaints, or other illegitimate pressure, taints the proper conduct of litigation. Left unsanctioned, a party making such threats could obtain an unfair advantage in legal proceedings which would bring the administration of justice into disrepute. As noted in *Lindstrom v Paju*, 2023 ONSC 5640 [*Lindstrom*]:

[18] Litigation cannot effectively be conducted in an environment in which parties, counsel, and third-party witnesses are subjected to threats of criminal, quasi-criminal, or professional responsibility proceedings when they are doing nothing other than advancing a position contrary to the opposing party to the litigation. ...

[28] While making threats of criminal or regulatory proceedings to gain an advantage in a civil proceeding is not the usual circumstance where the doctrine of abuse of process is engaged, the doctrine is, as noted by the Supreme Court in *MN-S*, broad and flexible.

[29] Further, extortionate or quasi-extortionate communications are not the only circumstance where the doctrine abuse of process is engaged when the court proceeding itself is not an abuse of process.

[30] In *National Bank Financial Ltd. v Potter*, 2005 NSSC 113 [*Potter*], the

Court found that lawyers for the plaintiff breached the solicitor-client privilege of certain defendants when the plaintiff lawyers came into possession of a server containing emails between lawyers for some of the defendants and their clients. The Court determined that it has an inherent jurisdiction to prevent an abuse of its processes, which included the lawyers accessing privileged documents. The lawyers who accessed the privileged materials were disqualified from continuing as counsel for the plaintiff in the action.

[31] It should be noted that not all correspondence demanding compensation and warning of potential ramifications if such demand is not met is inappropriate.

[32] In *Abt Estate*, the Court noted that it is not inappropriate for a party to advise another person of the likelihood of litigation if a settlement is not achieved. A demand letter indicating that a civil action will be brought if a party's claim is not paid is not an inappropriate threat or "extortion". A statement that legal proceedings will be commenced is a legitimate engagement of legally mandated dispute resolution mechanisms.

[33] In this case, the Threat went beyond a mere demand letter setting out the potential of a civil claim being advanced if settlement could not be achieved. The plaintiff's counsel, in the midst of a civil proceeding, sent correspondence threatening criminal or regulatory complaints if her client's settlement demands were not met. I find that this conduct is an abuse of process given the extortionate nature of the correspondence.

b. If the Threat is an abuse of process, what is the appropriate remedy?

[34] The remedy sought by the defendants is to dismiss or stay the action pursuant to Rules 7-9(1)(a), 7-9(1)(d) and 7-9(2)(e) of *The King's Bench Rules* and the

common law.

[35] In this case, I do not find that the provisions cited by the defendants from *The King's Bench Rules* allow me to strike a pleading or stay or dismiss the action for abuse of process. Rule 7-9 allows the Court to strike a pleading or other document, or stay or dismiss a proceeding, where the pleading or other document is an abuse of process. In this case, it is not a pleading or document (as contemplated by Rule 7-9) that is an abuse of process. Rather, the Threat was made in correspondence in non-court documents.

[36] The Court's inherent ability to control its own process though is broader than *The King's Bench Rules*. The cases referenced above where courts have granted remedies for abuse of process in the face of illegitimate pressure by a litigant were granted pursuant to the Court's ability to control its own process, not specific statutory authority. I find that the Court's ability to control its own process provides the Court with jurisdiction to ensure that litigation is conducted in accordance with *The King's Bench Rules* and not subject to extrajudicial, illegitimate threats. The question is the appropriate remedy in this case having found that the plaintiff has committed an abuse of process.

[37] In determining an appropriate remedy for abuse of process, some considerations are:

- a. The Court has jurisdiction to direct a stay of proceedings if a judge considers it appropriate: s. 6-13(1) of *The King's Bench Act*;
- b. Striking pleadings is a severe remedy and the power to apply it should be measured and proportionate: *Grewal v Nijjer*, 2011 BCCA 505;
- c. Proceedings can be stayed for abuse of process even if the abuse does

not create procedural unfairness. In these cases, a stay is aimed at vindicating the Court's integrity and the public's confidence in the legal process in the face of improper conduct: *United States of America v Khadr*, 2011 ONCA 358;

- d. A stay of proceedings is the only remedy to address abuse of process where the abusive conduct has changed the entire landscape of the litigation: *CHU de Québec-Université Laval v Tree of Knowledge International Corp.*, 2022 ONCA 467 at para 55;
- e. The Court's power to grant a stay of proceedings is discretionary: *Onion Lake Cree Nation v Stick*, 2018 SKCA 20;
- f. The Court should consider not only the prejudice to the respondent whose action is sought to be stayed, but whether an applicant would suffer an injustice or prejudice if an action is not stayed given the abusive conduct: *Herold v Wassermann*, 2022 SKCA 103 at para 51 [*Herold*];
- g. Courts should consider alternatives to a stay of proceeding and how those alternatives would balance the competing interests of the applicant and respondent: *Herold* at para 62;
- h. Striking pleadings for abuse of process is a drastic remedy that should be granted only in the clearest of cases: *MN-S* at para 60.

[38] As noted, the abuse of process doctrine is flexible. This extends to the remedies that might be ordered. The goal in fashioning a remedy is to protect the integrity of the Court process and see that justice be done, while addressing the harmful conduct.

[39] The defendants argue that the appropriate remedy in this case is to dismiss or stay the proceeding. They argue that the landscape of the litigation has been irretrievably changed by the Threat. The Individual Defendants no longer feel secure in defending the action because they fear the repercussions threatened by the plaintiff. The CIBC Defendants argue that, if the Individual Defendants are released from the litigation on their application, the CIBC Defendants would be faced with defending the plaintiff's allegations alone, which fundamentally alters the litigation.

[40] The Individual Defendants further argue that the plaintiff's recent change of position, that it does not plan to institute criminal or regulatory complaints, does not provide sufficient comfort. The Individual Defendants indicate that other individuals, outside of Maxwell Tufts, might bring these types of complaints. They also note that Maxwell Tufts does not expressly retract the Threat in his affidavit.

[41] I am not persuaded that a dismissal or stay of proceeding is the appropriate remedy. I make such determination because:

- a. Dismissing or staying the proceedings is, like striking pleadings, a drastic remedy. Given the plaintiff's assurances that it does not plan to act upon the Threat, I am not convinced justice would be served in ending the plaintiff's action. I note, parenthetically, that I do not accept the defendants' argument that the affidavit of Maxwell Tufts is an insufficient answer to the application by reason that others may bring complaints on behalf of the plaintiff. The evidence is that Mr. Tufts is the sole shareholder and director of the plaintiff. He is the only reasonable person to speak to the plaintiff's plans;
- b. I am not convinced that the landscape of the litigation has been irretrievably changed by reason of the Threat. The defendants have

already demonstrated through these applications that they are able to resist the plaintiff's Threat and advocate for themselves. I am not satisfied that the defendants, with the assistance of their very able counsel, are so paralyzed that they are unable to fully answer the claim;

- c. The prejudice to the plaintiff in dismissing or staying the action is high. The plaintiff would be denied access to the Court to adjudicate its dispute;
- d. As noted, I am not satisfied that the prejudice to the defendants in allowing the action to proceed is nearly as significant as suggested by the defendants;
- e. There are alternatives to ordering a stay of proceedings. In other cases, courts have ordered or suggested the following remedies for an abuse of process:
 - i. Case management to ensure that the Court actively manages issues in the litigation: *MN-S*;
 - ii. Costs against the transgressing party: *Scherf*;
 - iii. A court order preventing further threats: *Lindstrom*;
 - iv. Removing counsel who participated in the abuse of process: *Potter*.

[42] In this case, I find that an award of costs is the most effective remedy to address the plaintiff's conduct. The administration of justice would be served by the public knowing that a party engaging in extortionate conduct risks a financial penalty.

It would also presumably have a deterrent effect on the plaintiff in that the plaintiff knows that this conduct will be censured by the Court. The question is whether solicitor-client costs are appropriate.

[43] The principles associated with solicitor-client costs are set out in *Siemens v Bawolin*, 2002 SKCA 84 [*Siemens*], where Jackson J.A., indicated:

[118] These are the principles, relevant to this appeal, which I take from my review of the above authorities:

1. solicitor and client costs are awarded in rare and exceptional cases only;
2. solicitor and client costs are awarded in cases where the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible;
3. solicitor and client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone;
4. notwithstanding point 3, solicitor and client costs may be awarded in exceptional cases to provide the other party complete indemnification for costs reasonably incurred.

[44] Thankfully, this is an exceptional and rare case. There are few reported decisions where counsel risks the dismissal or staying of their client's case to issue a threat of criminal or regulatory complaints. The conduct by Former Counsel is egregious. Sending the Threat is, using the language of *Siemens*, scandalous, outrageous or reprehensible. It may go so far as to be contrary to professional standards for lawyers. The Threat was issued in the context of the litigation. It is no answer for the plaintiff to say that the Threat was issued by Former Counsel without its input. Former Counsel was the agent for the plaintiff and the plaintiff bears responsibility for the actions of its agent.

[45] I note that current counsel for the plaintiff takes the appropriate approach. Mr. Tufts' affidavit indicates that current counsel for the plaintiff told Mr. Tufts that he would immediately withdraw from acting for the plaintiff if instructed to write a letter similar to the Threat or conduct negotiations in such a manner.

[46] In the circumstances, I find that solicitor-client costs are properly payable by the plaintiff to the Individual Defendants. An award of solicitor-client costs properly denounces the plaintiff's conduct, while being a measured and proportionate response to the plaintiff's serious transgression.

[47] I find that the CIBC Defendants are on a different footing. The Threat was not expressly directed to the CIBC Defendants. The CIBC Defendants' application is a reaction to the Individual Defendants' application and rests significantly on the positions advanced by the Individual Defendants. As a result, I find that solicitor-client costs are not appropriate for the CIBC Defendants. However, the CIBC Defendants were still indirectly affected by the Threat. The CIBC Defendants were left in the position that they had to bring their application because it would not be reasonable to leave only the CIBC Defendants in the action, if the Individual Defendants were successful in their application. In the circumstances, I find that column 3 costs of the application are properly payable by the plaintiff to the CIBC Defendants.

CONCLUSION

[48] In summary, I find that:

- a. The plaintiff has abused the Court's processes by issuing the Threat;
- b. The plaintiff shall pay solicitor-client costs of this application to the Individual Defendants. The parties may contact the Local Registrar's office to fix a date and time before me for a hearing to quantify those

costs and to determine any orders incidental to those costs;

- c. The plaintiff shall pay column 3 costs of this application to the CIBC Defendants. Those costs are payable forthwith. To the extent that the CIBC Defendants seek any orders incidental to those costs, the CIBC Defendants can schedule a hearing at the same time as the Individual Defendants' hearing regarding solicitor-client costs.

J.
S.M. SINCLAIR