

CANADA / JUDGMENT

Narejko v. Li

2025 BCCA 398

COURT

British Columbia Court of Appeal

DECIDED

19 November 2025

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2025 BCCA 398 Narejko v. Li

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Narejko v. Li,

2025 BCCA 398

Date: 20251119

Docket: CA50147

Between:

Malgorzata Julia Narejko

Appellant

(Respondent)

And

Simon Li

Respondent

(Claimant)

Before:

The Honourable Justice Griffin

The Honourable Justice Winteringham

The Honourable Justice Gomery

On an application to vary: An order of the Court of Appeal for British Columbia,

dated March 26, 2025 (Narejko v. Li, Vancouver Docket CA50147).

The Appellant, appearing in person:

M.J. Narejko

Counsel for the Respondent:

A.S. Boucher

C.L. Formosa

Counsel for the Proposed Intervener, Supriya Joshi:

A. Lei

M. Phyper

Place and Date of Hearing:

Vancouver, British Columbia

October 28, 2025

Place and Date of Judgment with Written Reasons to Follow:

Vancouver, British Columbia

October 28, 2025

Place and Date of Written Reasons:

Vancouver, British Columbia

November 19, 2025

Written Reasons of the Court

Summary:

Ms. Narejko seeks to vary the order of a judge in chambers that dismissed her appeal as abandoned and ordered special costs against her. She also seeks other orders. Held: Applications dismissed. The judge accepted Ms. Narejko's decision to abandon the appeal, and so did not err in that aspect of his order. Whether Ms. Narejko's decision was based on ineffective legal advice is not an issue for us to determine. The judge found that Ms. Narejko's reason for seeking to appeal the divorce order, to obtain a statutory stay and qualify for spousal benefits under Mr. Li's military benefits plan, was an abuse of process and on that basis ordered special costs against her. This finding is supported by the record, and the award of costs was within the judge's discretion. There is no basis for other orders sought by Ms. Narejko, and it is unnecessary for her former counsel to intervene.

Reasons for Judgment of the Court:

Orders Made

- [1] The appellant, Ms. Malgorzata Julia Narejko, brought an application before us to vary or set aside the order made by Justice Groberman in chambers on March 26, 2025. Justice Groberman's order dismissed Ms. Narejko's appeal as abandoned and awarded special costs of the appeal against her.
- [2] Ms. Narejko also sought other orders before us. In response to some of her submissions and evidence, her former counsel, Ms. Supriya Joshi, sought to intervene and to adduce responsive evidence.
- [3] At the conclusion of the hearing, we made the following orders, with reasons to follow:
1. Ms. Narejko's application to adduce fresh evidence is dismissed;
 2. Ms. Narejko's application for a sealing order is dismissed;
 3. Ms. Narejko's application to vary the order of Groberman J.A. is dismissed;
 4. Ms. Narejko's application to stay the order of Groberman J.A. is dismissed;
 5. Ms. Narejko's application to strike affidavit #3 of Ms. Jayda Mangat is dismissed;
 6. It is unnecessary to hear the applications brought on behalf of Ms. Joshi to intervene and to adduce responsive evidence. No costs will flow from those applications;
 7. Ms. Narejko's application for an order to reinstate the appeal or for leave to bring an application to reinstate the appeal is dismissed. This appeal proceeding is at an end, and Ms. Narejko is not permitted to file materials in this proceeding seeking an application for reinstatement of the appeal; and
 8. Costs of Ms. Narejko's applications heard by us will be ordinary costs in favour of the respondent, Mr. Simon Li. This will subsume the costs order made by Justice Riley on October 15, 2025.

Background

- [4] For context, we will set out the background facts. In doing so, we rely on the reasons for judgment in the trial court, as well as the history of these proceedings.
- [5] We understand Ms. Narejko may still dispute some of the trial judge's findings of fact relating to the property and spousal support negotiations and settlement between her and Mr. Li. It is not necessary to resolve any dispute over these background facts to address the matter before us.
- [6] This appeal arises from a family law dispute between Ms. Narejko and Mr. Li. Mr. Li filed a notice of family claim on January 18, 2022, seeking a divorce order and an order confirming terms of a settlement between the parties. At the time he commenced his claim, Mr. Li was 30 years old. Ms. Narejko was 36 years old. They had debts, owned no real estate, and

according to their positions in the litigation, had some relatively minor financial assets. Mr. Li had some benefits as a result of his employment in the Canadian Armed Forces ("CAF"). Ms. Narejko had a pension in Ireland.

- [7] According to Mr. Li's notice of family claim, the parties began living together in a marriage-like relationship on April 1, 2018, and were married on January 29, 2019. They separated on November 1, 2020.
- [8] Ms. Narejko's response pleading asserted they had entered into a marriage like relationship on January 11, 2017, and that there was a prospect of reconciliation. However, by February 1, 2024, in an amended counterclaim, she did not dispute that they had separated on November 1, 2020. She sought spousal support, property orders, and an order that Mr. Li be required to keep her as a beneficiary under his extended medical insurance policy until December 31, 2023.
- [9] The family law action was originally set for trial on February 20, 2024.
- [10] The parties exchanged settlement offers prior to trial. In the offers exchanged, the parties narrowed their dispute to the amount, if any, of lump sum spousal support Mr. Li should pay to Ms. Narejko. Subject to that dispute, they appeared to agree on the proposed property division terms, including equalizing Mr. Li's CAF pension for the period from January 11, 2017 to November 1, 2020, and not dividing Ms. Narejko's Irish pension plan. Also, they appeared to agree to a proposed term that Mr. Li was to obtain an uncontested divorce order.
- [11] On February 15, 2024, Mr. Karan Banipal, Ms. Narejko's counsel at the time, sent a formal settlement offer to Mr. Li with no date of expiry. The offer repeated the earlier offer terms regarding property division and an uncontested divorce. However, in addition this offer required Mr. Li to make a \$6,000 lump sum spousal support payment to Ms. Narejko.
- [12] Mr. Li did not accept the offer before the date set for trial, February 20, 2024.
- [13] When the parties appeared for the February 20, 2024 trial, they were told there was no judge available to hear the matter. While at the courthouse, Mr. Banipal and Mr. Li agreed to attempt a settlement. Discussions ensued between Mr. Banipal and each of the parties. As well, there was a brief discussion between Mr. Li and Ms. Narejko. Mr. Li's evidence was that ultimately he told Mr. Banipal that he agreed to the terms of the formal offer, with the addition of a clause recognizing Mr. Li's previous spousal support payments, which Mr. Banipal accepted on behalf of Ms. Narejko (the "settlement agreement").
- [14] Later that day, Mr. Banipal sent an email saying that he was no longer retained by Ms. Narejko.

- [15] Mr. Li drafted the final order with the terms of the settlement agreement, which he sent to Ms. Narejko. Ms. Narejko stated that her formal offer had been revoked prior to Mr. Li's acceptance, and she made a revised final order that increased the amount of lump sum spousal support payable by Mr. Li from \$6,000 to \$12,000. Otherwise, the terms of the proposed settlement remained the same.
- [16] On April 12, 2024, Mr. Li filed an application to enforce the terms of the settlement agreement. Justice Francis dismissed the application but granted leave for Mr. Li to file a fresh application scheduled for a one-day hearing, including cross-examination. Mr. Li filed his new application on June 25, 2024.

Procedural History

2024 BCSC 1815

- [17] After one adjournment, the hearing of Mr. Li's application to enforce the terms of the settlement agreement came before Justice Giaschi on July 16 and August 26, 2024. Justice Giaschi granted Mr. Li's application with reasons delivered on August 30, 2024, indexed as 2024 BCSC 1815 (the "Trial Court Reasons").
- [18] At the hearing of the application, Giaschi J. permitted each party to cross-examine the other on their affidavits. Further, Ms. Narejko had served on her former counsel, Mr. Banipal, a notice of intention to call an adverse party as a witness. Mr. Banipal therefore attended at the hearing, and Ms. Narejko advised that she wished to cross-examine him. The judge allowed both parties to cross-examine Mr. Banipal.
- [19] The Trial Court Reasons addressed the issue of whether the parties had an enforceable settlement agreement. The judge held that the parties had reached a full and final settlement of their family law matter on February 20, 2024, and that Mr. Li had properly recorded the terms of the settlement agreement in his draft final order.
- [20] The judge accepted Mr. Li's evidence that he and Mr. Banipal had communicated and accepted terms of settlement. He found that this evidence was consistent with emails exchanged, as well as with the evidence of Mr. Banipal.
- [21] The judge rejected Ms. Narejko's submission that the formal offer was incapable of acceptance because it had expired or been withdrawn. He found that the parties had agreed to a modified version of the formal offer on February 20, 2024 that included the clause recognizing Mr. Li's previous spousal support payments.

- [22] The judge also rejected Ms. Narejko's submission that Mr. Banipal lacked the authority to settle the matter on her behalf and did so contrary to her instructions, finding this submission wholly without merit. The judge found as a fact that Ms. Narejko had not instructed Mr. Banipal to refuse less than \$12,000 in spousal support. He accepted Mr. Banipal's evidence of his express authority to settle the matter with Mr. Li on Ms. Narejko's behalf.
- [23] The judge lastly rejected Ms. Narejko's argument that the settlement was invalidated by duress or undue influence exerted by Mr. Li and her argument that the settlement terms were unfair or unconscionable. On the latter point, the judge noted that the terms of the settlement agreed to on February 20 were virtually identical to terms offered by Ms. Narejko on February 15, 2024, and that the only difference between the accepted offer and her latest position was that she sought an additional \$6,000 in lump sum spousal support. The judge noted that this was not a significant amount, even for the parties.
- [24] In the result, the judge ordered that the settlement agreement be enforced. This of course included the terms agreeing to the uncontested divorce and equalizing Mr. Li's CAF pension for the period from January 11, 2017 to November 1, 2020.
- [25] The parties were unable to agree on the form of order made by Giaschi J. Ms. Narejko sought to reopen the matter to make further submissions about terms affecting Mr. Li's military pension and health benefits.
- [26] On November 12, 2024, Giaschi J. ruled that he would permit further submissions, as there was not yet an entered order. He then delivered supplementary oral reasons that settled the final order (the "Supplementary Reasons").
- [27] The result was that a final divorce order was made as of August 30, 2024 (the "Divorce Order"); and the other terms of agreement were enforced in a court order made as of November 12, 2024, dividing property and addressing spousal support (the "Support Order"). The latter order entitled Ms. Narejko to half of Mr. Li's CAF pension accrued between January 11, 2017 and November 1, 2020, but extinguished all other claims in relation that pension. The terms confirmed that Mr. Li gave up all claims to Ms. Narejko's Irish pension.

Court of Appeal Proceeding

- [28] On September 19, 2024, Ms. Narejko filed a notice of appeal seeking to set aside Giaschi J.'s orders. We note that this was after the Trial Court Reasons, but before the parties returned to reopen, and so was before the Supplementary Reasons were delivered. However, Ms. Narejko's notice of appeal and conduct indicate she understood that the judge ordered both a final divorce and enforcement of the settlement agreement terms as to property division and spousal support.

[29] On the same date, September 19, 2024, Ms. Narejko also filed in this Court an application for a stay of the Divorce Order. Her argument, plus her correspondence to the Court, highlighted her concern that the divorce would disentitle her to spousal benefits arising from Mr. Li's employment with the CAF.

[30] In her application book in support of her application for a stay of the Divorce Order, Ms. Narejko attempted to include evidence regarding Mr. Li's military benefits and potential deployment. She argued that he could be deployed to a high-risk area, leading to potential loss of life. She wrote:

13. As a legal spouse Ms. Narejko is eligible for survival benefits under the Canadian Forces Superannuation Act which protects her provisions for corollary relief such as spousal support. If the husband dies before the appeal, she will have nothing by way of survivor benefits.

14. According to the Canadian Forces Superannuation Act (CFSA) RSC 1970, c 53.

a military spouse is eligible for Survival Benefits as long as the parties are married in the unfortunate event of the CAF member's death. However, once the divorce is finalized, the spouse is no longer eligible to receive these benefits.

[31] Ms. Narejko also wrote in support of her intended application for a stay of the Divorce Order that as a legal spouse to a CAF member she would be entitled to "countless" benefits and would be eligible for the Public Service Health Care Plan.

[32] The potential disentitlement to benefits available to spouses of CAF members was the sole reason Ms. Narejko put forward for her application for a stay of the Divorce Order.

[33] Ms. Narejko formed this motive for the appeal of the Divorce Order when she was representing herself. She maintained that position throughout this appeal proceeding, repeating it several times. Leaving aside her dispute with the Support Order, she did not attempt to justify the appeal of the Divorce Order itself on the merits as arising from an error of law or fact. It was uncontested that the parties were separated for four years and had no prospect of reconciliation. The Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) permits a divorce after one year's separation.

[34] Ms. Narejko understood that s. 12(3) of the Divorce Act might grant her a statutory stay of the Divorce Order by operation of law, based on the mere filing of the appeal from the Divorce Order, but the language of that section is somewhat convoluted. It was because of this uncertainty that she initially wanted the additional assurance of an order of this Court staying the Divorce Order.

[35] Section 12 of the Divorce Act provides:

12 (1) Subject to this section, a divorce takes effect on the thirty-first day after the day on which the judgment granting the divorce is rendered.

- (2) Where, on or after rendering a judgment granting a divorce,
- (a) the court is of the opinion that by reason of special circumstances the divorce should take effect earlier than the thirty-first day after the day on which the judgment is rendered, and
- (b) the spouses agree and undertake that no appeal from the judgment will be taken, or any appeal from the judgment that was taken has been abandoned,

the court may order that the divorce takes effect at such earlier time as it considers appropriate.

- (3) A divorce in respect of which an appeal is pending at the end of the period referred to in subsection (1), unless voided on appeal, takes effect on the expiration of the time fixed by law for instituting an appeal from the decision on that appeal or any subsequent appeal, if no appeal has been instituted within that time.

[Emphasis added.]

- [36] On October 11, 2024, Ms. Narejko appeared in chambers on her application for a stay of the Divorce Order. However, ultimately Ms. Narejko did not proceed with her application and appeared to accept that s. 12(3) of the Divorce Act was effective to stay the effect of the Divorce Order, and so her own application was adjourned.
- [37] Ms. Narejko retained counsel in late November 2024, who assisted her in bringing an application for an extension of time to file her appeal materials. The application was filed on December 9, 2024.
- [38] On January 9, 2025, Justice Winteringham in chambers granted the extension application, subject to several conditions. Among other things, Ms. Narejko's position in support of the extension was that the Supplementary Reasons were issued on November 12, 2024, only six days before her missed filing deadline, and that she did not receive transcripts for those reasons until November 21, 2024. However, Winteringham J.A. noted that Ms. Narejko had not ordered transcripts for the July and August 2024 hearings until December 3, 2024. Justice Winteringham observed:
- [16] It is clear that the applicant is capable of preparing, filing, and abiding by court processes, as she managed to prepare and file several documents. She filed her notice of appeal within the time limit imposed by the Rules and applied for an urgent hearing on a stay application. She also demonstrated an ability to prepare and file materials within a strict time limit, given she filed lengthy amendments to her argument the day before her October 10 hearing in hopes that the material would be considered at that hearing. With respect to matters that have the potential to delay the proceedings, the applicant has prepared and filed materials within the timelines. However, these actions could indicate or demonstrate an intention to extend the proceedings, and not necessarily with respect to an intention to proceed with the appeal.

- [39] In her oral reasons made January 9, 2025, Winteringham J.A. noted that Ms. Narejko had an interest in delaying the proceedings and had repeatedly made references to Mr. Li's potential death before the outcome of an appeal: at para. 23. Nevertheless, the judge found that the delay had not been inordinate and that the materials were ready to be filed. In granting the extension, the judge imposed a condition that Ms. Narejko file her factum by January 28, 2025.
- [40] Subsequently, Ms. Narejko replaced counsel acting for her. She retained new counsel to act for her on the appeal, Ms. Joshi.
- [41] Ms. Narejko did not file her factum by the January 28, 2025 deadline. There is a dispute between Ms. Narejko and Ms. Joshi as to the circumstances surrounding that missed deadline and what happened in their communications subsequently. Ms. Joshi provided a draft appeal factum on Ms. Narejko's behalf on March 21, 2025, nearly two months after the extended deadline.
- [42] On February 11, 2025, Mr. Li filed an application to have the appeal dismissed as abandoned. He also sought special costs of the appeal against Ms. Narejko.
- [43] On March 17, 2025, Ms. Narejko filed a new notice of family claim in the Supreme Court of British Columbia against Mr. Li (the "New Family Claim") seeking to set aside the February 20, 2024 settlement agreement enforced by Giaschi J. In the same proceeding on the same day, she also filed her affidavit #2 in support of an application to: (1) stay Giaschi J.'s Support Order; (2) stay the Divorce Order; and (3) obtain an order requiring Mr. Li to reinstate and maintain her on his military benefits plan.
- [44] In her affidavit #2 in the New Family Claim, Ms. Narejko stated that she no longer wished to proceed with the appeal. However, she also said that she understood that the Divorce Order was stayed during the appeal, by operation of s. 12(3) of the Divorce Act. She pointed out that if she was no longer a spouse, she would "lose survival benefits" if Mr. Li died and would lose access to his health benefits. The thrust of her affidavit was that she needed an urgent stay of the Divorce Order in the trial court before the hearing of the application to dismiss her appeal in this Court.
- [45] On March 26, 2025, Groberman J.A. heard the application to dismiss the appeal as abandoned. He dismissed the appeal after making the following findings:
- a) Ms. Narejko had neither complied with the Court of Appeal Rules nor adhered to Winteringham J.A.'s conditions to the extension of time;
 - b) Ms. Narejko had no intention of pursuing the appeal; and
 - c) the purpose of the appeal was to delay the finalization of the divorce.
- [46] Justice Groberman also awarded special costs of the appeal against Ms. Narejko. He held:

[11] In my view, the improper use of the appeal to delay the effective date of the divorce is manifestly an abuse of process that cannot be countenanced. The appellant has intentionally acted so as to delay these proceedings for several months (whether or not that was her ultimate goal). This Court should not allow such a strategy to continue.

[12] In my view, the abuse of the process of this Court is significant and justifies an order for special costs against the appellant. I am not going to assess those costs; that is a matter for the Registrar.

[Emphasis added.]

[47] On April 2, 2025, Ms. Narejko filed an application seeking to vary or set aside Groberman J.A.'s decision (the "Review Application"). This was the primary application which came before us.

[48] On May 5, 2025, Ms. Joshi notified Mr. Li's counsel that she had been discharged by Ms. Narejko and she withdrew from representation on May 6, 2025.

[49] Ms. Narejko failed to meet the 14-day filing deadline for her application book on the Review Application and sought an extension of time on June 19, 2025.

[50] On July 17, 2025, she requested a one-month adjournment of her extension application hearing scheduled for July 22, 2025, due to issues with her laptop.

[51] On August 20, 2025, Riley J.A. heard Ms. Narejko's application for an extension of time to file her materials in support of her Review Application. In his oral reasons for judgment at para. 24, Riley J.A. gave weight to Ms. Narejko's concession that Groberman J.A. had made no reviewable error in dismissing the appeal as abandoned and her decision to narrow the focus of the Review Application to the special costs order. Justice Riley found that these were important factors in weighing prejudice, and on balance granted an order extending the time for Ms. Narejko to file her application book to September 3, 2025. This order was granted on the condition that it was a final extension. Justice Riley permitted the parties to file additional submissions on costs of the application before him.

[52] On September 3, 2025, Ms. Narejko filed her application book in support of her Review Application. In her application book, she included an argument in support of adducing new evidence. She alleged the new evidence would: (1) demonstrate her good faith in pursuing the appeal; (2) contradict Mr. Li's assertions about his limited Internet access while deployed; and (3) show how alleged errors by Ms. Joshi contributed to delays and decisions she made in the conduct of her proceedings, including her decision to commence another proceeding in the trial court rather than pursue an appeal. She also sought an order reassigning the special costs against her to Ms. Joshi.

- [53] We pause here to note that the question of Mr. Li's limited Internet access seems related to an attempt by Ms. Narejko to blame Mr. Li or his counsel for some of her own delay. Her attempt to lead evidence on this was misguided and entirely irrelevant. We will say no more about it.
- [54] On September 4, 2025, Ms. Narejko filed an application seeking leave to adduce new evidence, listing several affidavits.
- [55] On September 23, 2025, Ms. Narejko wrote to this Court and requested an adjournment of the Review Application hearing, scheduled for today. She claimed that: (1) there was insufficient time allotted to hear both the Review Application and the application to adduce fresh evidence; and (2) she needed more time to procure evidence. The division denied her request.
- [56] On October 8, 2025, Ms. Joshi filed an application seeking leave to intervene in the Review Application to respond to Ms. Narejko's allegations of ineffective legal assistance. She has also filed an application seeking to adduce evidence on the same topic.
- [57] On October 16, 2025, Ms. Narejko made a renewed request to adjourn today's hearing, which was denied.

Ms. Narejko's Adjournment Requests

- [58] Before we address the applications before us, we will first comment on our refusal to grant an adjournment prior to the hearing of the Review Application.
- [59] We determined that an adjournment is not warranted in this case because it would impede the expeditious resolution of the matter on its merits. On the basis of the written materials and Riley J.A.'s oral reasons, the Review Application raised a single issue: whether Groberman J.A. erred in ordering special costs against Ms. Narejko. Ms. Narejko has had more than one extension of time already in this appeal proceeding, and further delays are not warranted. This is especially so given that delay will accomplish the collateral purpose identified by Groberman J.A. of keeping the appeal of the Divorce Order alive to benefit from the automatic statutory stay. The stay of the Divorce Order inherently prejudices Mr. Li's ability to get on with his life and form a new permanent relationship.

Leave Should Not Be Granted to Adduce Fresh Evidence

Summary of the Fresh Evidence

- [60] We next address Ms. Narejko's application to adduce what she describes as fresh evidence. In summary, she wishes to file evidence that would support her allegations that Ms. Joshi was negligent as her counsel in two respects: (1) in failing to meet the deadline for filing the appellant's factum; and (2) in advising that she could or should seek relief in the trial court by bringing a new action to set aside the settlement agreement, rather than continuing her appeal.
- [61] Indeed, Ms. Narejko today takes the position that the reason she commenced the New Family Claim was Ms. Joshi's advice that it was the best strategy to challenge the settlement agreement. She contends that she has only recently learned that it might be a flawed strategy and could be met with a defence of *res judicata*, so she no longer accepts that the appeal should be dismissed as abandoned. She submits that she should be entitled to challenge this aspect of Groberman J.A.'s order to dismiss the appeal as abandoned; and in the alternative, she should be entitled to bring an application to reinstate the appeal. Since her submissions turn on her allegation of Ms. Joshi's negligent advice, she wants to introduce evidence of Ms. Joshi's alleged negligence and to cross-examine her.
- [62] Ms. Joshi disputes Ms. Narejko's evidence. Ms. Joshi was not retained until January 15, 2025, and withdrew from representation on May 6, 2025. She seeks leave to respond to the allegations against her and has filed her own affidavit evidence in that regard.
- [63] Mr. Li submits that no fresh evidence from Ms. Narejko is required and that her proposed evidence is not reliable or credible.

Legal Framework

- [64] The test for the admission of fresh evidence on appeal, established in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, 1979 CanLII 8, requires that the evidence:
- 1) could not, by due diligence on the part of the applicant, have been adduced at trial (or prior court hearing);
 - 2) is relevant in the sense that it bears upon a decisive or potentially decisive issue;
 - 3) is credible, meaning reasonably capable of belief; and
 - 4) when considered with the other evidence, could be expected to have affected the result at trial.

Analysis

- [65] It is open to the Court to consider the proposed fresh evidence in deciding whether the Palmer criteria have been satisfied. If Ms. Narejko's fresh evidence is admitted, in fairness so too should be Ms. Joshi's responsive evidence, which documents her communications with Ms. Narejko and contradicts Ms. Narejko's fresh evidence.
- [66] In summary, Ms. Narejko submits that: (1) Ms. Joshi is to blame for the delay; and (2) Ms. Joshi negligently advised her to pursue a new claim in the trial court rather than pursue her appeal, which gave rise to the appearance of an abuse of process in this Court and the order of special costs against her.
- [67] In our view, none of the fresh evidence Ms. Narejko seeks to adduce satisfies the Palmer criteria.
- [68] First, the evidence Ms. Narejko proposes to adduce on her reasons for deciding to abandon the appeal is irrelevant to her Review Application. Ms. Narejko does not dispute that she confirmed before Groberman J.A. her wish to abandon the appeal. For this reason, we are unable to find any error made by Groberman J.A. in dismissing the appeal as abandoned.
- [69] Whether this position taken by Ms. Narejko was due to ineffective or negligent legal advice is not an issue for us to determine. Suffice it to say that some of Ms. Joshi's proposed responsive evidence contradicts Ms. Narejko's position, and she takes issue with the allegations against her.
- [70] The correspondence between Ms. Joshi and Ms. Narejko is voluminous. There are also some serious credibility and reliability concerns related to Ms. Narejko's proposed evidence, raised in proposed responsive evidence. However, we do not consider it necessary to review the various contradictions in the evidence.
- [71] In the context of this Review Application, we do not see it as the proper function of this Court to weigh evidence and make findings of fact, at first instance, in a claim of alleged solicitor's negligence.
- [72] Second, the evidence Ms. Narejko proposes to adduce is irrelevant to the issue of whether Groberman J.A. erred in awarding special costs against her, which is the primary issue in the Review Application. Justice Groberman awarded special costs against Ms. Narejko due to her improper use of the appeal to stay the Divorce Order. Ms. Narejko has acknowledged her purpose in challenging the Divorce Order from the very beginning of the appeal. None of the fresh evidence supports a different conclusion.
- [73] In the circumstances, we are not persuaded that Ms. Narejko's proposed fresh evidence is necessary, relevant, or credible, and we would not admit it.

No Basis for a Sealing Order

- [74] Despite the fact that Ms. Narejko has attempted to place in issue her conduct of the appeal, her legal advice, and Mr. Li's conduct in resisting the appeal, she seeks to seal some of the evidence adduced in this regard.
- [75] We do not consider the test for a sealing order to be met, as the public interest in the open court principle takes precedence and Ms. Narejko has not identified a serious risk to an important public interest: *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38.

The Review Application Should be Dismissed

Legal Framework

- [76] Turning to the main application before us, the Review Application, s. 29(1) of the Court of Appeal Act, S.B.C. 2021, c. 6, permits a division of the Court to vary or cancel any order made by a justice sitting in chambers.
- [77] However, the standard of review on such an application is highly deferential. The review division will not interfere with the order of a chambers judge unless the applicant demonstrates that the judge was wrong in law, wrong in principle, or misconceived the facts: *Haldorson v. Coquitlam (City)*, 2000 BCCA 672 at para. 7.
- [78] Added to the challenge facing Ms. Narejko on the Review Application is the fact that she is seeking to overturn an award of costs. Costs decisions are inherently discretionary, and this Court will rarely interfere. A highly deferential standard of review applies on appeal of an award of costs: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 51.

Analysis

- [79] Ms. Narejko submits that Groberman J.A:
- 1) erred in principle by imposing special costs against Ms. Narejko for the entire appeal despite her reasonable reliance on her counsel;
 - 2) erred in law by characterizing Ms. Narejko's conduct as an abuse of process;
 - 3) misconceived the facts by misapprehending the legal implications of spousal status and by failing to question Mr. Li's assertions about limited Internet access during his deployment and his financial eligibility for pro bono legal services.
- [80] Special costs are a punitive sanction. They are generally awarded only where there has been reprehensible, scandalous, or outrageous conduct by one of the parties: *Young v. Young*, [1993] 4 S.C.R. 3 at 134, 1993 CanLII 34. This Court has held that "[c]onduct that is an abuse of process is, by its nature, reprehensible and deserving of rebuke": *Hollander v. Mooney*, 2017 BCCA 238 at para. 79, leave to appeal to SCC ref'd, [2017] S.C.C.A. No. 356.

- [81] In our view, it was open to Groberman J.A. to find that Ms. Narejko's conduct was an abuse of process. Ms. Narejko acknowledged on numerous occasions that the purpose of her appeal of the Divorce Order was to secure a stay of the Divorce Order. She has never identified any argument that the judge erred in granting the Divorce Order. She could not and did not dispute that the couple had met the requirements for divorce. Nevertheless, she pursued this appeal of the Divorce Order for the collateral reason of remaining eligible for CAF benefits.
- [82] Justice Groberman did not misconceive relevant facts or law.
- [83] Nor is it necessary to address Ms. Narejko's complaints against Ms. Joshi. The advice her counsel provided is an issue between her and her counsel, and Ms. Joshi contests Ms. Narejko's version of facts. But again, in any event, Ms. Narejko has never made a secret of her motive to obtain a statutory stay of the Divorce Order, a motive she has held since the beginning of the proceeding when she was unrepresented.
- [84] Finally, not every step in an appeal or an action needs to be reprehensible to justify an award of special costs of the entire proceeding: *Sebok v. Babits*, 2022 BCCA 2 at para. 35; *Equustek Solutions Inc. v Jack*, 2021 BCSC 1180 at para. 15. In other words, if Ms. Narejko had legitimate grounds of appeal from the Support Order, this does not mean that Groberman J.A. erred in finding her motive for prosecuting an appeal of the Divorce Order to be so reprehensible as to justify special costs of the proceeding. It was also not a disproportionate award given that few substantive steps had been taken in the proceeding. For example, Mr. Li has not incurred costs in preparing for and attending a hearing of the appeal proper. His costs mainly ensued from applications arising from Ms. Narejko's delays, delays that served her purpose of extending the stay of the Divorce Order.
- [85] In summary, there is no basis for varying or setting aside Groberman J.A.'s order for special costs. We cannot find any error in Groberman J.A.'s conclusion that Ms. Narejko's motive to keep the appeal alive to benefit from a statutory stay of the Divorce Order under the Divorce Act was an abuse of process justifying an order for special costs.
- [86] For the same reasons, it would be inappropriate to stay Groberman J.A.'s order.

Application to Strike Affidavit #3 of Ms. Mangat is Unnecessary

- [87] Affidavit #3 of Ms. Mangat was prepared in response to Ms. Narejko's application to adduce fresh evidence. As we have not granted Ms. Narejko's application to adduce fresh evidence, we see no reason to refer to its contents. It is not necessary to strike the affidavit.

Application to Intervene Is Unnecessary

- [88] Ms. Joshi has a direct interest in the Review Application. Ms. Narejko seeks to vary Groberman J.A.'s order such that special costs are payable by Ms. Joshi, her former counsel, due to her alleged errors in representing Ms. Narejko.

- [89] However, Ms. Joshi's intervention is not necessary to the disposition of this application. As noted above, there is already sufficient evidence to conclude that Groberman J.A. did not err in finding an abuse of process and awarding special costs against Ms. Narejko. It is not necessary for us to hear from Ms. Joshi, as we would not disturb the order of Groberman J.A.

Application for Reinstatement Is Not Permitted

- [90] In her written argument in support of her Review Application, Ms. Narejko states that she "accepts Justice Groberman's decision to dismiss the appeal as abandoned based on the record presented to him at the time. The Appellant does not challenge the correctness of that specific decision, as it was based on the facts available to the Court at that time" (emphasis added). She then adds that the "proper course" is for her to seek reinstatement, citing *R. v. Morine*, 2023 BCCA 250.
- [91] By the time of the oral hearing of the Review Application, Ms. Narejko submitted that she had only agreed to abandon the appeal based on Ms. Joshi's negligent legal advice that Ms. Narejko would be better placed to seek a remedy by challenging the settlement agreement in the trial court. She submits that she should be given leave to bring an application to reinstate the appeal.
- [92] Ms. Narejko should not be given leave to apply for reinstatement, as she would not be permitted to reinstate the appeal.
- [93] There is no rigid test on applications to reinstate appeals that have been dismissed as abandoned. The ultimate question is whether granting the application would be in the interests of justice: *Booty v. Hutton*, 2009 BCCA 375 at para. 22 (Chambers), reconsideration ref'd 2010 BCCA 185.
- [94] It is not in the interests of justice to reinstate an appeal where the applicant did not have a constant intention to appeal but rather seeks to reinstate the appeal because of an ulterior motive: *Anderson v. Brouwer Canada Claims & Co. Ltd.*, 2005 BCCA 506 at paras. 9-10 (Chambers).
- [95] We return to the point that Ms. Narejko has never demonstrated that there is any merit to the appeal of the Divorce Order. Whether or not there is some merit to an appeal of the Support Order, Ms. Narejko has already agreed before Groberman J.A. that she is prepared to abandon that aspect of her appeal. She has not maintained a constant intention to prosecute that appeal, regardless of whether that was because of poor legal advice or otherwise. For the same reason we would not set aside the order dismissing the appeal as abandoned, we also would not permit her to seek a reinstatement of the appeal.
- [96] In these circumstances, we dismiss any application for reinstatement or for leave to bring an application for reinstatement, and we do not permit Ms. Narejko to file materials seeking an application for reinstatement of the appeal.

Disposition

[97] For these reasons, we made the orders set out above. Costs follow the usual course, meaning ordinary costs are payable to Mr. Li. This will subsume the costs order made by Riley J.A. on October 15, 2025.

"The Honourable Justice Griffin"

"The Honourable Justice Winteringham"

"The Honourable Justice Gomery"

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