

In the Court of Appeal of Alberta

Citation: Zastezhko v Nagar, 2026 ABCA 328

Date: 20261019

Docket: 2601-0058AC

Registry: Calgary

Between:

Olha Zastezhko

Applicant

- and -

Kunal Nagar, Gohar Khemchyan and Angel Nagar

Respondents

**Reasons for Decision of
The Honourable Justice Michelle Crighton**

Application to rescind Case Management Officer's administrative direction not to schedule an
appeal

Application for access restriction

**Reasons for Decision of
The Honourable Justice Michelle Crighton**

[1] The applicant appellant challenges the decision of the Court's case management officer (CMO) refusing to schedule a perfected appeal because the issue will be moot before the appeal can be scheduled.

[2] The applicant also seeks an order restricting access to certain evidence filed by the respondent in their Extracts of Key Evidence ("EKE") in this appeal.

[3] It was directed that both applications proceed in writing. To that end, submissions were received on September 14th and October 8th, 2026.

The direction to refuse to schedule the appeal is rescinded

[4] Section 14 of the *Court of Appeal Act*, RSA 2000, c C-30 establishes the CMO's jurisdiction to assist the Court with respect to the management of matters before the Court and the business of the Court. The list of the CMO's powers is not exhaustive, but it does not include allowing or dismissing appeals.

[5] Rules 14.33 - 14.35 of the *Alberta Rules of Court*, Alta Reg 124/2010 set out the process for scheduling an appeal. Once the factum is filed, the parties must contact the Registrar to schedule the oral hearing (which can be and has been delegated to the CMO), and the Registrar must do so after consulting the parties. Notwithstanding r 14.35(2) permits a CMO to set down or reschedule an appeal or place or remove an appeal from the Civil Appeal List or the Unscheduled Civil Appeal List, the mandatory nature of r 14.33(1)(b) precludes the Registrar's or the CMO's jurisdiction from effectively dismissing an appeal by refusing to schedule it.

[6] Pursuant to r 14.36(3), the applicant can apply to a single appeal judge to have the administrative direction of a CMO "rescinded, confirmed, amended or enforced." The applicant applies under this rule.

[7] Rule 14.37 establishes the jurisdiction of a single judge and r 14.38 confirms that a panel can also hear matters incidental to an appeal that could have been decided by a single judge. Rule 14.38(2) sets out what matters a panel must decide. This list includes "allowing or dismissing an appeal on the merits".

[8] A CMO has the jurisdiction to refer a matter to a single judge, where appropriate, or to a panel: r 14.36(2).

[9] The appeal in this matter involves a no contact order that expired on August 20, 2026. That means there is nothing left to appeal. That does not in and of itself mean the appeal is moot, but a panel may choose to decide the appeal on that ground. The Court's jurisprudence suggests that is

the likely outcome. It is understandable the CMO would want to protect against an unnecessary use of the Court's limited resources. It is also understandable for the CMO to advise the applicant that she is likely to be unsuccessful on appeal and further that she might be subject to cost consequences in that event. However, while the parties can choose to ignore that advice at their peril, the *Rules* do not permit the CMO to do more than schedule the appeal or refer the matter of mootness to a panel.

[10] The application is allowed. In the event the applicant chooses not to abandon her appeal, I leave it to the CMO to decide whether to schedule it on the merits or refer it to a panel on the question of mootness.

The application for a restricted access order is denied

[11] As to the application for an order restricting access to certain evidence filed in the respondent's EKE, such applications are governed by the framework established by the Supreme Court of Canada in *Sherman Estate v Donovan*, 2021 SCC 25, [2021] 2 SCR 75 [*Sherman*] that clarified and refined the principles in *Dagenais v Cadian Broadcasting Corp*, 1994 CanLII 39 (SCC), [1994] 3 SCR 835, *R v Mentuck*, 2001 SCC 76, [2001] 3 SCR 442, and *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522. At paragraph 104 of *Sherman*, restrictions on the open court principle require an applicant to show that:

- a. openness poses a serious risk to an important public interest in privacy;
- b. the requested order is necessary because reasonably alternative measures will not prevent that risk; and
- c. as a matter of proportionality, the benefits of the requested restriction outweighs its negative effects.

[12] I am not satisfied this test has been met.

[13] As the court stated in *Sherman* at paragraph 85:

To summarize, the important public interest in privacy, as understood in the context of the limits on court openness, is aimed at allowing individuals to preserve control over their core identity in the public sphere to the extent necessary to preserve their dignity. The public has a stake in openness, to be sure, but it also has an interest in the preservation of dignity: the administration of justice requires that where dignity is threatened in this way, measures be taken to accommodate this privacy concern. Although measured by reference to the facts of each case, the risk to this interest will be serious only where the information that would be disseminated as a result of court openness is sufficiently sensitive such that openness can be shown to meaningfully strike at the individual's biographical core in a manner that threatens their integrity. Recognizing this interest is consistent with this Court's emphasis on

the importance of privacy and the underlying value of individual dignity, but is also tailored to preserve the strong presumption of openness.

[14] It is not enough that the information is “disadvantageous, embarrassing or distressing”. Embarrassment or shame is not a sufficient reason to restrict access: *Sherman* at para 63.

[15] More significantly, this matter is a private dispute between two individuals that has garnered no public interest. The respondent says the evidence the applicant is concerned about was before the judge who granted the order under appeal. The dispute has remained obscure in so far as the public is concerned and there is little concern the evidence the applicant is focused on will go beyond the parties to the dispute.

[16] The application for a restricted access order is therefore refused.

Conclusion

[17] The CMO’s direction not to schedule the appeal is rescinded, and the appeal is returned to the CMO for scheduling before a panel. The appellant’s application for a restricted access order is denied.

[18] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order or judgment.

Written submissions received on September 14, and October 8, 2026 respectively.

Reasons filed at Calgary, Alberta
this 19th day of October, 2026

Crighton J.A.

Submissions:

Applicant O. Zastezhko

Respondent K. Nagar

Respondent G. Khemchyan

Respondent A. Nagar (no submissions)