

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Morton v. Cherkaoui*,  
2026 BCCA 179

Date: 20260501  
Docket: CA50974

Between:

**Stuart John Morton, SJM Agency Ltd., and Fino Vino Beverages Inc.**

Appellants  
(Respondents)

And

**Sami Mohammed Cherkaoui**

Respondent  
(Petitioner)

Before: The Honourable Justice Dickson  
The Honourable Justice Mayer  
The Honourable Justice Francis

Supplementary Reasons to *Morton v. Cherkaoui*, 2026 BCCA 156,  
Vancouver Docket CA50974.

The Appellant, appearing in person:

S.J. Morton

Counsel for the Respondent:

A. Crabtree  
P.R. Senkpiel, K.C.  
M.E. Abdelkader

Place and Date of Hearing:

Vancouver, British Columbia  
March 10, 2026

Place and Date of Judgment:

Vancouver, British Columbia  
March 16, 2026

Written Submissions Received:

March 31 and April 7, 2026

Place and Date of Supplementary  
Judgment:

Vancouver, British Columbia  
May 1, 2026

**Supplementary Reasons of the Court**

**Summary:**

*These are supplementary reasons on costs. Held: Respondent is entitled to ordinary costs from the appellant. The appellant's conduct on appeal does not meet the test for awarding special costs.*

**Supplementary Reasons for Judgment of the Court:**

[1] The appellant, Stuart John Morton, appealed an order granting leave to Sami Mohammed Cherkaoui to commence a derivative action against Mr. Morton and his related company, SJM Agency Ltd. (“SJM”) on behalf of Fino Vino Beverages Inc. (“Fino Vino”). Mr. Morton’s appeal was dismissed by this Court in reasons indexed at 2026 BCCA 156.

[2] At the respondent’s request, the parties filed written submissions on costs. The respondent submits that costs should be payable by Mr. Morton, assessed as special costs. Mr. Morton submits that the parties should bear their own costs.

[3] Section 44 of the *Court of Appeal Act*, S.B.C. 2021, c. 6 [Act], provides that, unless otherwise ordered, a party who is successful on an appeal is entitled to costs of the appeal. Mr. Morton did not articulate any principled basis for why the Court should depart from the regular costs rule in this case, and we see no reason to do so.

[4] Mr. Morton argues that if costs are payable by the losing party, they should be payable by Fino Vino because in this appeal, Fino Vino, not Mr. Morton, was the losing party. He submits that he appeared at the appeal as a representative of Fino Vino and not in his personal capacity. With respect, this submission misconstrues the roles of Fino Vino, Mr. Cherkaoui, and Mr. Morton in the court below and on appeal. Mr. Cherkaoui brought a petition for leave to commence a derivative action against Mr. Morton and SJM on behalf of Fino Vino. He was granted leave to bring that action, and Mr. Morton and SJM appealed. Mr. Morton could not have been acting for Fino Vino because his interests are directly in conflict with the interests of Fino Vino on this appeal.

[5] As the successful party, Mr. Cherkaoui is entitled to be paid his costs by the losing party, Mr. Morton. The more controversial question is the scale of costs and particularly whether Mr. Morton should be required to pay special costs.

[6] Special costs are punitive and exist to “express the court’s disapproval of litigation misconduct”: *Morriss v. British Columbia*, 2021 BCCA 451 at para. 22; *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 56.

[7] The single standard for the awarding of special costs is that the conduct in question properly be categorized as “reprehensible”: *Garcia v. Crestbrook Forest Industries Ltd.*, 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.) at para. 17.

[8] Special costs in this Court are generally reserved for situations where a party has engaged in reprehensible conduct during the appeal that is deserving of rebuke, rather than poor conduct in the court below: *Sampley v. Burns*, 2018 BCCA 178 at para. 70. Although the conduct of a party at trial or in other proceedings may shed light on the egregiousness of conduct on appeal, it is unlikely to be an independent basis for departing from the ordinary order as to costs: *Lower v. Stasiuk*, 2015 BCCA 296 at para. 9.

[9] This Court has awarded special costs where an appellant made specious allegations of improper and criminal acts on the part of the respondents and their counsel, both in the trial court and before the Court of Appeal: *Moon Development Corporation v. Pirooz*, 2015 BCCA 213 at paras.14–17 [*Moon*]. Special costs have also been ordered where the appellant engaged in fraudulent conduct in the court below and before the Court of Appeal: *Zant v. Hovey*, 2023 BCCA 311 at para. 42 (Chambers).

[10] Special costs of an appeal have been awarded where a party has behaved in a menacing and threatening way towards opposing counsel: *Richmond Savings Credit Union v. Fraser*, 16 B.C.L.R. (3d) 361, 1995 CanLII 1275 (C.A.); and when counsel has made scandalous allegations against counsel and the judiciary: *Njoroge*

*v. Canadian Union of Public Employees, Local 15*, 2021 BCCA 435; *Gong v. Zhang*, 2023 BCCA 424 at paras. 11–12.

[11] The respondent submits that Mr. Morton engaged in conduct worthy of rebuke by the court. He has made misrepresentations to this Court about the evidence that was before the judge in the court below, he has made baseless allegations of criminal activity against Mr. Cherkaoui, and he has lodged professional complaints against Mr. Cherkaoui’s lawyers. The respondent also notes that Mr. Morton used A.I. to produce his written submissions, and in doing so, placed a number of hallucinated, fictitious cases before the court.

[12] Much of the behaviour that the respondent points to is either behaviour that took place in the Supreme Court, such as Mr. Morton’s misrepresentation that an adjournment of the petition was medically necessary or consists of erroneous assertions of fact about what happened in the court below. For example, Mr. Morton submitted on appeal that Justice Ramsay ordered that Mr. Morton’s conflict of interest application must be heard as a condition precedent to the petition. This is not an accurate statement of what Justice Ramsay ordered. Mr. Morton frequently mischaracterized events that happened in the court below when he described those events in his factum and oral submissions.

[13] While we agree with the respondent that Mr. Morton’s description of orders made and things said in the proceeding below was often inaccurate, we do not find that these inaccuracies, individually or cumulatively, amount to conduct worthy of rebuke. Mr. Morton can be criticized for being an unreliable historian who can be careless with his words, but we do not necessarily think his behaviour was intended to mislead the Court.

[14] With respect to his use of A.I. generated cases, Mr. Morton corrected his error by filing a supplementary factum correcting the erroneous case citations in his original factum. We are satisfied that Mr. Morton’s reliance on A.I. “hallucinated” authorities was a serious mistake, but one that was corrected immediately when it was brought to his attention.

[15] There is a significant difference between this case and cases such as *Moon* and *Zant*, in which this Court awarded special costs against an unsuccessful appellant. In those cases, the court below had found that the appellant had engaged in conduct deserving of rebuke by the court and ordered special costs of the proceeding below. In this case, the judge ordered that costs of the petition for leave should be payable in the cause of the derivative action. A Supreme Court judge is best placed to assess the evidence of reprehensible conduct in a proceeding. When a Supreme Court judge finds special costs are warranted, and the reprehensible conduct continues in the Court of Appeal, it is appropriate for this Court to consider special costs of the appeal as a further sanction. Where a Supreme Court judge has not yet undertaken such an assessment, it will be more challenging for a party to argue that special costs of the appeal are warranted.

[16] This is particularly true in a case such as this one, in which the bulk of the allegations made against Mr. Morton relate to his conduct in the court below, and his maintaining of positions he took in the court below in his appeal. Mr. Morton's behaviour in the court below has not yet been the subject of any analysis about whether such behaviour warrants sanction and it is not clear what factual findings the lower court would have made about the reprehensibility of Mr. Morton's conduct had the judge engaged with the scale of costs of the petition. By ordering that costs would follow the event, those issues were left for another day.

[17] While it may be the case that the appellant's behaviour in the petition will justify an award of special costs when the costs of the derivative action are considered, that is not the issue before this Court when considering costs of the appeal. As this Court noted in *567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc.*, 2020 BCCA 69 at para. 151, leave to appeal ref'd 2020 CanLII 71307 (SCC): "[c]osts of the appeal are determined by the conduct of the appeal". It is therefore important to look specifically to Mr. Morton's conduct in the appeal in considering the scale of costs.

[18] In his factum, Mr. Morton asserted a number of grounds of appeal, including that the judge erred in not allowing an adjournment of the petition, erred in dismissing Mr. Morton’s application to disqualify Mr. Cherkaoui’s counsel on the basis of a conflict of interest, and misapplied the test for leave to commence a derivative action. While some of his grounds of appeal had very little merit, and he was not successful on any of them, the low merits of an appeal are not alone a basis for awarding special costs: *Graham v. Moore Estate*, 2003 BCCA 601 at para. 6.

[19] In any case, we do not agree with the respondent that the appeal was entirely baseless. It was not unreasonable for Mr. Morton to seek to overturn the judge’s determination that the proceeding was brought in good faith by arguing that both Mr. Morton and Mr. Cherkaoui were potentially indebted to the company, nor was it unreasonable for him to argue that litigation was not in the best interests of the company, given the cost of litigation and the company’s modest financial circumstances. We have found that the judge committed no error in his application of the test for leave to bring a derivative action, but this does not mean that Mr. Morton’s appeal was frivolous and devoid of merit.

[20] The division acknowledges that Mr. Morton had a *bona fide* belief that this appeal stood some chance of success. Further, we cannot say that the appeal was frivolous or brought for an improper purpose. Therefore, we order that Mr. Morton be liable for Mr. Cherkaoui’s costs, but decline to order that the costs be assessed as special costs.

“The Honourable Justice Dickson”

“The Honourable Justice Mayer”

“The Honourable Justice Francis”