

Family

Natural justice must be served in foreign divorces, Ontario Court of Appeal affirms

By Christopher Guly

(October 23, 2019, 9:51 AM EDT) -- Determining the legitimacy of a foreign divorce must always consider process as much as jurisdiction, the Ontario Court of Appeal affirmed in a decision released on Oct. 16.

In *Novikova v. Lyzo* 2019 ONCA 821, Justices Peter Lauwers, Katherine van Rensburg and Lois Roberts unanimously upheld the dismissal of appellant Kirill Lyzo's claim that the motion judge, Superior Court Justice Francine Van Melle, erred in declaring a divorce Lyzo obtained in Russia was invalid for lack of notice without first determining whether he and his wife had a real and substantial connection to the Russian Federation, and whether the divorce was valid under Russian law.

In June 2016, Lyzo obtained a divorce from respondent Lidiia Novikova in Russia, where the couple was married in 2008. (They later came to Canada and separated in 2015.)

In July 2018, Lyzo brought a motion for summary judgment seeking to both validate the Russian divorce and terminate Novikova's right to spousal support. She in turn brought her own motion to both have the divorce declared invalid and to receive an increase in temporary spousal and child support, the latter of which will be dealt with when the case goes to trial.

In dismissing Lyzo's request to validate the Russian marriage, Justice Van Melle noted that Lyzo must also continue to pay spousal support.

But it was the motion judge's ruling that Novikova was not given proper notice that caught the appellate court's attention.

Although she was aware of the proceedings in Russia, Novikova did not receive any of the documents or a copy of the divorce decree within the 30-day appeal period in Russia. The divorce documentation was sent to her address on record in Russia, and not to Canada, despite Lyzo knowing "precisely" where she lived in Canada [in Mississauga, Ont.], as Justice Van Melle highlighted in *Novikova v. Lyzo* 2019 ONSC 264.

Insufficient notice amounted to "a denial of natural justice," the Court of Appeal concluded.

"A court may refuse to recognize a foreign divorce that would otherwise be valid, on the grounds of fraud, the denial of natural justice (including the absence of notice) or public policy."



Ruslana Korytko, family lawyer

Mississauga family lawyer Ruslana Korytko, who speaks Russian and represented Novikova at both the Superior Court and the Court of Appeal, said the latter court confirmed that "you cannot simply use a foreign jurisdiction to your advantage and advance the defence of substantial connection through dual citizenship to extinguish a right to spousal support in Canada."

"You need to look at whether there was a denial of natural justice — and in this case, there was."

The Court of Appeal held that Novikova was not served proper notice under Canadian law, according to Korytko, who added that the court also stated that Canadian courts "do not have to inquire into foreign laws as to how a divorce

was obtained," and believes that this was the first time Ontario's high court weighed in on a foreign divorce case.

In its ruling, the Court of Appeal said that Justice Van Melle "need not have been concerned with whether, had the Russian tribunal known about the respondent's residence in Canada, it would have taken further measures to ensure proper service before granting the Russian divorce. It is not typically appropriate or necessary for Canadian courts to inquire into the substantive grounds upon which a foreign divorce decree is granted."

Korytko said that the Court of Appeal's dismissal of Lyzo's challenge of the lower-court ruling has further implications for the appellant.

Lyzo remarried in 2017 and his wife, who lives with him in Mississauga, could have her status in Canada scrutinized.

"He's still considered married to Ms. Novikova and Canadian immigration officials may be involved," said Korytko, who added that she was "surprised" the case went as far as the Court of Appeal since the "law is clear" on the matter of natural justice.

Rupa Murthi, a partner with Toronto firm Kalra Murthi Law Group LLP who represented Lyzo in the appeal, declined to comment on the ruling.



Nicholas Bala, Queen's University law professor

Queen's University law professor Nicholas Bala, who teaches family law, said that with increasing globalization, the legitimacy of foreign divorces is becoming more of an issue in Canada, with both Ontario courts "discouraging forum shopping" in their Novikova rulings.

Lawyers need to know that if their clients try such jurisdictional maneuvering, "they might find Canadian courts are not going to recognize proceedings in another jurisdiction," said Bala.

"The broader issue is that Canada emphasizes gender equality and will protect the interests of dependent spouses in a way that some other jurisdictions won't," he explained. "It's not just Russia. There have been cases where Muslim husbands have gone to Iran and other countries to obtain divorces and deny their wives rights, and the divorces may not be recognized in Canada."

One of the challenges of internationalization, Bala added, is the resurgence of so-called "limping" marriages; marriages recognized in one jurisdiction but not another. In the Novikova-Lyzo case, they would not be regarded in Russia as married, while in Canada they remain wedded.

Marta Siemiarczuk, a partner at Nelligan O'Brien Payne LLP in Ottawa, where she also heads the family law group, believes the appellate court's Novikova decision serves as "a good reminder that the rules of natural justice are of primary consideration for courts."

The case is also familiar to Siemiarczuk. "People forum-shop all the time to defeat spousal-support claims," she said, noting that she represented a Russian-born woman in a similar case last year.

Siemiarczuk believes the Ontario Court of Appeal judges sought to send a message to the bar with its ruling.

"They could have dismissed the appeal with just an endorsement from the bench, but they didn't and wanted to emphasize the natural-justice aspect," she said.

The Ontario Court of Appeal also ordered Lyzo to pay Novikova's costs in the amount of \$10,000.