

CANADA / JUDGMENT

Chang v. Chang

2021 BCSC 247

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Supreme Court of British Columbia

DECIDED

23 February 2021

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2021 BCSC 247 Chang v. Chang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chang v. Chang,

2021 BCSC 247

Date: 20210223

Docket: E132209

Registry: Vancouver

Between:

Lawrence Bradley Sea Ming Chang

Claimant

And

Jacqueline Roberta Chang also known

as Jacqueline Roberta McRae

Respondent

Before: The Honourable Madam Justice E. McDonald

(In Chambers)

Reasons for Judgment

Counsel for the Claimant:

V.S. Park

Counsel for the Respondent:

K. Mohr

Place and Date of Hearing:

Vancouver, B.C.

November 6, 19, 2020

December 10, 2020

Place and Date of Judgment:

Vancouver, B.C.

February 23, 2021

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OVERVIEW

- [1] In 2016, Mr. Chang was ordered to pay Ms. Chang interim spousal and child support of \$4,570 per month. Mr. Chang failed to pay the support required and since 2016, he has accumulated support arrears in excess of \$230,000.
- [2] On October 26, 2020, Mr. Chang filed an application to address the support arrears. The principal goal of his application is to eliminate the support arrears and to reduce the support payable on a go-forward basis.

- [3] Mr. Chang submits that following the parties' separation, his income decreased dramatically and since that time, he has never earned an income large enough to justify the order that he pay interim monthly support of \$4,570. Mr. Chang submits that the court should retroactively vary and reduce the child support payable so that it reflects the amount of income that he has reported earning since 2016.
- [4] For the reasons that follow, I am dismissing this application.

BACKGROUND

- [5] The parties began living together in approximately 1999 and they married on February 22, 2003. The parties separated in February 2012. The parties have two children together, K.S.Y.W.C., born in 2001, and J.K.Y.M.C., born in 2002.
- [6] During the parties' relationship, Ms. Chang worked as a homemaker caring for the parties' two children, in addition to her three children from a previous relationship. Mr. Chang worked as a licensed securities broker and after he lost his license, he worked as a business consultant, stock promoter and venture capitalist.
- [7] In July 2013, Mr. Chang commenced this family law litigation when he filed a notice of family claim. In August of 2013, Ms. Chang filed a response and counterclaim. In the counterclaim, Ms. Chang sought child support and spousal support. The counterclaim stated that Ms. Chang's annual income was zero, while Mr. Chang's gross annual income was \$423,497 based on line 150 of his 2011 T1 income tax return. The counterclaim further stated that Ms. Chang had no particulars of Mr. Chang's 2012 income.
- [8] On January 21, 2016, Ms. Chang filed an application seeking, among other things, an order imputing income to Mr. Chang of \$322,921.50 based on the average of his 2010 and 2011 income for the purposes of determining child and spousal support (the "Support Application"). The Support Application specifically sought interim child and spousal support of \$4,282 and \$7,211, respectively.
- [9] On February 4, 2016, following a hearing of the Support Application, the Master made an interim order (the "Interim Order"). Some provisions of the Interim Order were by consent, and others were not, such as the following term:
3. Commencing February 1, 2016, and on the 1st day of each month thereafter, the Claimant shall pay the Respondent the total amount of \$4,570 as child and spousal support until further agreement or court order.

(the "Support Term")

- [10] In the Support Application, Ms. Chang also sought information and documents from Mr. Chang related to his finances and business activities, including financial records and tax returns from 2012 to 2015. By consent, the Interim Order required Mr. Chang to produce his financial records and tax returns.

- [11] According to various Provincial Court orders, the Director of the Family Maintenance Enforcement Program (the "FMEP") has also sought disclosure of Mr. Chang's financial information. Mr. Chang submitted that he provided all of the information that he was ordered to produce.
- [12] The FMEP has also been attempting, with limited success, to collect the support arrears. In October 2019, following a default hearing, the Provincial Court ordered Mr. Chang imprisoned for 30 days. Mr. Chang described that imprisonment experience as traumatic.
- [13] Mr. Chang claimed that beginning in 2013, his income began to steadily decline due to the downturn in the oil and gas industry. He claims that since the Interim Order, he has never earned an income sufficient to justify the Support Term.

THE APPLICATION

- [14] On October 26, 2020, counsel for Mr. Chang filed a notice of application (the "Variation Application") seeking the following orders:
- i. A declaration that K.S.Y.W.C., born [date omitted], 2001, ceased to be a child of the marriage as defined by the Divorce Act (Canada) on [date omitted], 2020.
 - ii. Pursuant to s. 152 of the Family Law Act and section 17 of the Divorce Act, an order that paragraph 3 of Order of Master MacNaughton, made on February 4, 2016, with respect to the child support payable by the Claimant, Lawrence Bradley Sea Ming Chang, to the Respondent, Jacqueline Roberta Chang also known as Jacqueline Roberta McRae, shall be varied such that the amount of child support payable is as follows:
 - (a) From February 1, 2016 to December 31, 2016, the amount of child support payable is \$365 per month based on the Claimant's gross annual income of \$23,282;
 - (b) From January 1, 2017 to December 31, 2017, the amount of child support payable is \$0 per month based on the Claimant's gross annual income of \$11,392;
 - (c) From January 1, 2018, to December 31, 2018, the amount of child support payable is \$757 per month based on the Claimant's gross annual income of \$48,375;
 - (d) From January 1, 2019 to December 31, 2019, the amount of child support payable is \$640 per month based on the Claimant's gross annual income of \$40,403;
 - (e) From January 1, 2020 to July 1, 2020, the amount of child support payable is \$536 per month, and from August 1, 2020 to November 30, 2020, the amount of child support payable is \$312 per month based on the Claimant's 2019 gross annual income of \$33,385; and
 - (f) Starting on December 1, 2020 and continuing on each month thereafter for so long as J.K.Y.M.C., born [date omitted], is a child of the marriage as defined by the Divorce Act (Canada), the amount of child support payable is \$312 per month based on the Claimant's 2020 gross annual income of \$33,385.

- iii. A declaration that there are no arrears of child support owing as at November 1, 2020 under any existing order or written agreement.
- iv. In the alternative to paragraphs (ii) and (iii) above, pursuant to s. 174 of the Family Law Act, an order:
- (a) cancelling any amount of child support arrears owed by the Claimant, Lawrence Bradley Sea Ming Chang, to the Respondent, Jacqueline Roberta Chang also known as Jacqueline Roberta McRae, for the period February 2016 to November 2020; and
 - (b) Cancelling the interest that has accrued on any cancelled child support arrears pursuant to section 11.1 of the Family Maintenance Enforcement Act.
- v. Pursuant to section 167 of the Family Law Act, an order that paragraph 3 of the Order of Master McNaughton, made on February 4, 2016, with respect to the spousal support payable by the Claimant, Lawrence Bradley Sea Ming Chang, to the Respondent, Jacqueline Roberta Chang also known as Jacqueline Roberta McRae, shall be suspended until the parties otherwise agree or further court order.
- vi. An order that the enforcement proceedings by the Family Maintenance Enforcement Program, Provincial Court File No. 16-29095, Robson Square Registry, FMEP Case No. 123482, shall be stayed pending further court order.
- vii. Costs payable by the Respondent to the Claimant.
- [15] The Variation Application initially came on for hearing before me on November 6, 2020. I adjourned the Variation Application to provide Ms. Chang with an opportunity to retain counsel. On November 19, 2020 the Variation Application was reset before me; however, after I learned that Ms. Chang had not yet retained counsel and Mr. Chang had not forthwith paid costs previously assessed against him by a Master of this Court after an earlier, unsuccessful, attempt to vary the Interim Order, I adjourned the Variation Application generally.
- [16] After Mr. Chang paid the costs outstanding, he reset the Variation Application before me on December 10, 2020, by which time Ms. Chang had retained counsel. During the hearing, the parties made submissions regarding the material that was available to the court at the time of the Support Application, especially as it related to Mr. Chang's income.
- [17] Following the hearing on December 10, 2020, the court file for this family law litigation was retrieved and I provided the parties with an opportunity to review the court file and to make additional written submissions regarding the material in the court file. Both parties took up the opportunity to make additional written submissions.

SHOULD THE INTERIM ORDER BE VARIED?

- [18] I begin by considering a preliminary matter regarding whether the Interim Order was made pursuant to the Family Law Act, SBC 2011, c. 25 ("FLA") or the Divorce Act, RSC 1985 (2nd Supp.) c. 3 ("DA"). The Interim Order does not explicitly state the statutory basis for the interim child and spousal support that Mr. Chang was ordered to pay.
- [19] In *Khangura v. Rogalski*, 2017 BCSC 1753 at para. 26, Fleming J. stated as follows regarding the issue of identifying the statutory basis of a previous order:
- [26] Although the test for variation of a final order is materially the same under both statutes, the question remains: which provision applies to the respondent's application to vary the terms of the 2013 Order regarding his parenting time, communication, and family dispute resolution? The meaning of a court order, including its statutory foundation, is determined by the objective indicia found in the pleadings, the wording of the order, and the circumstances in which it was made. In the absence of objective indicia, the doctrine of paramountcy will apply and the order will be "founded" in the federal legislation: *Yu v. Jordan*, 2012 BCCA 367, at para. 1.
- [20] From a review of the pleadings, it appears that Ms. Chang's notice of application filed on January 21, 2016 for the Support Application relied on both the FLA and the DA to request interim child and spousal support. Likewise, in Ms. Chang's August 27, 2013 counterclaim, she relied on both of these statutes to request child and spousal support.
- [21] After considering the objective indicia, including the pleadings and the wording of the Interim Order itself, I see no indication that the Interim Order was made pursuant to the FLA. Therefore, based on *Yu* and the doctrine of paramountcy, I have concluded that the Interim Order is founded in the DA.
- [22] It follows that s. 17(1)(a) of the DA is not available to a party seeking to vary an interim order founded in the DA. Rather, an interim order made pursuant to the DA may only be varied pursuant to the court's inherent jurisdiction: *Janmohamed v. Janmohamed*, 2014 BCSC 107 (B.C. S.C.) at paras. 33 and 38.
- [23] Generally, the court will only exercise its inherent jurisdiction to vary an interim order for child and spousal support in exceptional, urgent circumstances that cannot wait for determination at trial: *Chicoine v. Chicoine*, 2007 BCSC 735 at para. 29; *Vargas v. Berryman*, 2009 BCCA 588 (B.C. C.A.) at para. 3; *Janmohamed*, at paras. 33 and 40; *Santelli v. Trinetti*, 2019 BCCA 319 (B.C.C.A.), at para 123.
- [24] Where the court's inherent jurisdiction is invoked to vary an interim order founded in the DA, the court has articulated the applicable test as follows:
- [34] the test for establishing a change in circumstances for purposes of varying an interim order is no lesser than the material change in circumstances threshold. The change threshold is the material change threshold but, in the case of an interim order, the consequence of leaving the change to be addressed at trial is a further consideration.

Young v. Young, 2019 BCSC 1953 (Tucker J.), at para. 34

The Law

- [25] While keeping in mind that the test to vary the Interim Order is not less than the material change threshold, I will briefly review what the courts have said is generally necessary to establish a material change of circumstances.
- [26] In *G.M.W. v. D.P.W.*, 2014 BCCA 282, the Court of Appeal summarized the test for deciding if a material change in circumstances has occurred:
- [32] This Court has stated that the test of materiality for a change in circumstances under s. 17(4) of the Divorce Act, as expressed in *Willick v. Willick*, 1994 CanLII 28 (SCC), [1994] 3 S.C.R. 670, has not been displaced by s. 14 of the Guidelines: *Wang v. Wang* (1998), 1998 CanLII 6374 (BCCA), 58 B.C.L.R. (3d) 159 (C.A.); *Baker v. Baker*, 1999 BCCA 433; *Bockhold v. Bockhold*, 2006 BCCA 472; and *C.L.B. v. A.H.B.*, 2013 BCCA 472. See also: *Brown v. Brown*, 2010 NBCA 5 at para. 16. The threshold requirement for variation of an existing order was described in *Willick* at 688:

In deciding whether the conditions for variation exist, it is common ground that the change must be a material change of circumstances. This means a change, such that, if known at the time, would likely have resulted in different terms. The corollary to this is that if the matter which is relied on as constituting a change was known at the relevant time it cannot be relied on as the basis for variation.

[Emphasis added]

In deciding whether the conditions for variation exist, it is common ground that the change must be a material change of circumstances. This means a change, such that, if known at the time, would likely have resulted in different terms. The corollary to this is that if the matter which is relied on as constituting a change was known at the relevant time it cannot be relied on as the basis for variation

- [33] *Willick* also held: (i) the onus is on the applicant to establish a material change of circumstances (at 689); (ii) the existing order is presumed to have accurately assessed the needs of the children and therefore the correctness of that order must not be reviewed in the variation proceeding (at 687); (iii) the actual circumstances of the parties will determine if there has been a material change of circumstances during the relevant period (at 688); and (iv) the approach to the making of child support orders is child-centered and requires consideration of the children's needs, the relative ability of the spouses to pay and the joint obligation of the parents toward their children (at 689-90). The objectives of the Guidelines appear to echo this last statement in s. 1(a):

1. The objectives of these Guidelines are

- (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- [27] To constitute a material change, the change "must have some degree of continuity, and not merely be a temporary set of circumstances": *Droit de la famille - 091889*, (Sub nom. L.M.P. v. L.S.), 2011 SCC 64 (S.C.C.), para. 35 citing *Marinangeli v. Marinangeli* (2003), 66 O.R. (3d) 40 (Ont. C.A.), at para. 49.

Analysis

- [28] In arguing that it was appropriate to vary the Support Term in the Interim Order, Mr. Chang's counsel emphasized that the Master who heard the Support Application lacked information regarding Mr. Chang's income. Mr. Chang submitted that there was insufficient evidence for the court to impute income to him.
- [29] Mr. Chang also stated that he did not properly respond to Ms. Chang's Support Application and he was "not able to participate in the hearing". However, I note the Interim Order stated in the introductory paragraph "on hearing Danielle L. Garand on behalf of the Applicant and Lawrence Bradley Sea Ming Chang on his own behalf; and upon reading the materials filed".
- [30] In my view, Mr. Chang's submissions regarding the sufficiency of the information before the court at the time of the Support Application fail to recognize that interim applications are often made in circumstances where the evidence concerning family finances, such the income and assets of the spouses, have not been fully developed.
- [31] Applications for interim support will generally focus on the needs of the party and the ability to pay, and the main factors usually considered on an interim application for child support are the means or ability to pay support and the needs of the children: *Loesch v. Walji*, 2008 BCCA 214, at paras. 17-20.
- [32] An interim order is generally regarded as a way to temporarily bridge the gap until the final determination of merits of the case; therefore, the principles applicable to interim proceedings reflect their temporary nature: *X.(R.L.) v. X.(J.F.)*, 2002 BCSC 1222, at paras. 60-61.
- [33] Our Court of Appeal has recognized the principle that interlocutory applications are summary in nature and not intended to resolve the merits of the case ahead of trial: *Newson v. Newson*, 1998 CanLII 6440 (BCCA), at para. 11, citing *B.(R.) v. B.(M.)*, 1989 CanLII 4347 (ONSC).
- [34] From my review of the evidence, it appears that Ms. Chang has long raised issues about Mr. Chang's lack of financial disclosure, the accuracy of his income and his ability to earn income. She also alleged that "Mr. Chang may be diverting income to his spouse's bank account, in an effort to affect his current income for child support purposes" because his "lifestyle does not align with his declared income". Ms. Chang further explained that she was

never privy to Mr. Chang's income circumstances nor was she interested in the details because " his declared financial circumstances have never been indicative of how the claimant has been able to access money".

- [35] I find Mr. Chang's submission that the court lacked sufficient information about his finances to make the Interim Order to be disingenuous. Mr. Chang agreed that he had not filed tax returns for several years prior to the Support Application.
- [36] The Interim Order actually required Mr. Chang, by consent, to disclose financial information to Ms. Chang; however, it appears that Mr. Chang did not do so because on January 29, 2018, he was ordered by Judge L. Smith of the Provincial Court to disclose financial information, including the information previously required by the Interim Order.
- [37] Mr. Chang's counsel also submitted that I should take into account the fact that Ms. Chang lacked - and she continues to lack - information about Mr. Chang's finances capable of contradicting Mr. Chang's position that his income has steadily declined. In essence, Mr. Chang is critical of Ms. Chang for failing to present evidence about his income.
- [38] In *Michel v. Graydon*, 2020 SCC 24, the Supreme Court of Canada recently discussed the position of women, such as Ms. Chang, and the informational and analytical gaps that may exist for them as they try to evaluate the finances of a co-parent:
- [96] Given these circumstances, women will often face financial, occupational, temporal, and emotional disadvantages. Moreover, access to justice in family law is not always possible due to the high costs of litigation. In this larger social context, women who obtain custody are often badly placed to evaluate their co-parent's financial situation and to take action against it. [Emphasis added]
- [39] In light of the evidence before me and all of the circumstances, it is not surprising that Ms. Chang is able to offer little specific evidence about Mr. Chang's finances. The reality is that this family law litigation has languished since 2013 when Mr. Chang commenced it. Neither party informed me that there had been any discoveries or other pre-trial steps completed. However, Mr. Chang has mounted two applications, including the present one, to vary the Interim Order.
- [40] Mr. Chang's most recent Form 8 financial statement was made October 26, 2020. It attached some notices of assessment and tax returns from 2016 to 2019. In a separate affidavit, Mr. Chang also provided his 2014 and 2015 notices of assessment. In the years where he reported business income, there are no attached financial statements for his business.
- [41] In February of 2020, Mr. Chang said that he obtained a consulting job with "Copus Concepts doing consulting/marketing and administrative work for \$4,000 per month." There are no documents that confirm the terms of his consulting contract with Copus Concepts.

- [42] According to his October 26, 2020 affidavit, Mr. Chang has a long history of consulting in a variety of businesses. He has extensive local and international business contacts, including with individuals he identified as "friends". Since the parties separated, Mr. Chang's evidence is that he has devoted considerable time and effort to numerous business activities and, if his evidence is to be believed, these activities have paid him very little or nothing at all.
- [43] In my view, Mr. Chang's evidence regarding his many years of business activities raises substantial unanswered questions about his income and his capacity to earn income in the future. Overall, I found his evidence regarding his business activities and his income to be vague and incomplete.
- [44] Mr. Chang stated that he entered into contracts and he received finder's fees and shares for his consulting work. However, he provided no supporting documentation, other than his tax returns and assessments. For example, there are no financial statements, no contracts, no letters of engagement, no emails and notes, no records of stock transactions, and no record of any payments received.
- [45] Recently, Mr. Chang has been paying \$790 per month to FMEP about every two weeks. He stated in his affidavit that he is having difficulty maintaining this level of payment and that he has been "unable to pay for regular expenses such as rent, full utility bills, and clothing for the children, etc. My parents and friends no longer loan me money. I just go without."
- [46] Mr. Chang supplied one month of bank statements for mid-August to mid-September 2020. They confirm no debits for things like rent, utilities or clothing. However, the statements confirm that Mr. Chang spent approximately \$1,150 on food and dining-out, including with the home delivery service "DoorDash". He also made purchases at Whole Foods and Urban Fare; he loaded money onto Starbucks cards; he paid recurring subscriptions through "apple.com"; and, he paid a monthly gym membership. In my view, the spending shown is inconsistent with Mr. Chang's statement that after deduction of the FEMP payments, he simply goes without.
- [47] Mr. Chang submitted that his actual income for 2016 onwards fell well below the amount of income that must have been imputed to him by the court in the Interim Order. According to Mr. Chang's filed July 15, 2014 and January 28, 2016 Form 8 Financial Statements, he earned respective total incomes of \$32,000 and \$50,000. Mr. Chang's tax returns for his taxation years 2014 to 2019 reported total income as follows:

2014 - \$84,017

2015 - \$61,918

2016 - \$23,282

2017 - \$11,392

2018 - \$48,375

2019 - \$40,403

- [48] Based on Mr. Chang's own evidence, his consulting work is varied, and it often involves international contacts or individuals, some of whom he knows personally. In my view, given the nature of his work, the information he provided about his income and earning capacity is insufficient and it would not be appropriate to resolve the questions raised by his evidence on an incomplete factual record ahead of trial.
- [49] In my view, there is insufficient information to find a change in circumstances required to vary an interim order under the DA and to assess whether Mr. Chang is capable of earning income at higher levels in the future. I appreciate that these parties each claim that they lack financial means and for many years they have not pursued a final order. However, after considering all of the circumstances, I do not see any exceptional or urgent circumstances that would warrant the exercise of my inherent jurisdiction to decide the matters raised in the Variation Application ahead of trial.
- [50] In reaching this conclusion, I have also considered the consequences of leaving the question for trial. I have considered Mr. Chang's submission that he is currently paying over one-half of his after tax income to FMEP. However, even after considering the potential consequences, I remain convinced that the issues should be left for determination by a trial judge.

IS IT APPROPRIATE TO CANCEL CHILD SUPPORT ARREARS & INTEREST?

- [51] In the alternative to his request to vary the Support Term, Mr. Chang relies on s. 174 of the FLA and s. 11.1 of the Family Maintenance Enforcement Act to ask the court to cancel child support arrears and any interest owing from February 2016 to the current date.
- [52] I have already determined that the Interim Order is founded in the DA and it follows that the DA governs Mr. Chang's request to cancel support arrears. The court has recognized similarities in the tests that apply to applications to cancel support arrears, whether framed under the FLA or the DA: *Lu v. Yao*, 2020 BCSC 24, at para. 39.

The Law

- [53] In *P.L. v. J.D.L.*, 2013 BCSC 1492, at paras. 22-24, Fleming J. summarized the legal principles for cancelling or reducing arrears of child support as follows:
- [21] The legal principles applicable to any application regarding child support and cancellation or reduction of child support arrears were discussed by Madam Justice Martinson in *Earle* With respect to child support generally, those principles are: parents have a joint and ongoing legal obligation to support their children; it is the child, not the parent, who has the right to support; and the payment of child support is based on the ability of the parent to pay, not only what the parent earns. The result of this last principle is that parents have a legal obligation to earn as much as they are reasonably capable of earning to meet their obligation to support their children (*Earle and G.(S.) v. W.(G.)*, 2006 BCSC 991 (CanLII).

- [22] With respect to variation applications, the applicant must establish a material change of circumstances since the original order was made. The change must be significant and long lasting. A change to the Guidelines amount is not automatic: Earle.
- [23] The cancellation or reduction of arrears is a form of variation. Madam Justice Martinson in Earle found the test under the Family Relations Act, R.S.B.C. 1996, c. 128 [which was the legislation in effect at the time this order was made] which required that arrears not be reduced or cancelled unless it would be grossly unfair not to do so, is similar to the one to be applied under the Divorce Act. The "grossly unfair" test has been found appropriate for consideration on a variation application under the Divorce Act. [in certain cases].
- [24] In Earle, Madam Justice Martinson clarified there is a heavy onus on those arguing they cannot pay because their financial circumstances have changed. Arrears will only be cancelled or reduced where detailed and full financial disclosure under oath is presented that shows:
- i. The change was significant and long lasting;
 - ii. The change was real and not one of choice; and
 - iii. Every effort was made to earn money (or more money) during the time in question, and those efforts were not successful.
- [54] The cases in which support arrears have been cancelled are rare and our Court of Appeal has consistently held the "bar of 'gross unfairness' at a high level": Luney v. Luney, 2007 BCCA 567 at para. 43, leave ref'd [2008] S.C.C.A. No. 90.
- [55] Bankruptcy is one of the financial circumstances to be considered, but bankruptcy on its own may be an insufficient basis for cancelling support arrears: Chant v. Chant (1990), 30 R.F.L. (3d) 271 (B.C.C.A.) ("Chant").

Analysis

- [56] To decide whether to cancel the child support arrears and whether the high bar of gross unfairness has been met, I must consider whether Mr. Chang has fully and adequately disclosed his finances and whether the evidence shows circumstances of the kind described in Earle.
- [57] Mr. Chang's affidavit evidence stated that he has never earned an income large enough to justify the amount of interim support that he was ordered to pay. To support his evidence, he has provided copies of his tax returns, some notices of assessment, a bankruptcy statement of affairs and one month's worth of bank statements. I have discussed the quality of Mr. Chang's evidence in detail earlier in these reasons. Mr. Chang submits that he has no ability to pay the arrears given that his income is presently \$4,000 per month and his family and friends will no longer loan him money.

- [58] According to Mr. Chang's evidence, he is currently paying over one-half of his after-tax income to FMEP which leaves him unable to pay for basic needs or contribute to the support of his other children.
- [59] Regarding Mr. Chang's new partner, he stated in his October 26, 2020 affidavit that, "in or around December 2017, I separated from my partner at the time, with whom I had had a daughter on August 31, 2014" after which he moved in with his father. However, later he disclosed that he also has a 10-month-old daughter and his counsel advised me that Mr. Chang's daughters share the same mother. In my view, the contradiction in the evidence causes me to doubt the credibility of Mr. Chang's assertion that he separated from his new partner in 2017 and this is yet another issue that must be resolved at trial.
- [60] Regarding Mr. Chang's bankruptcy, he reported debts to unsecured creditors that totalled more than \$2.4M and he reported virtually no assets. However, there is no clear evidence before me to demonstrate how the bankruptcy has impacted Mr. Chang's overall financial situation: Chant.
- [61] Mr. Chang must show that he has made every effort to find alternate employment, or to increase his earnings and his efforts have been unsuccessful. In his affidavit, Mr. Chang described recent job search efforts, although there were no documents attached to verify the places where he had applied and when he had applied.
- [62] Regarding Mr. Chang's ongoing business activities, I have already explained earlier in these reasons why I found his evidence about his business activities to be vague and insufficient.
- [63] I have also taken into consideration the fact that as part of the enforcement proceedings, Mr. Chang was incarcerated for 30 days after he failed to pay a specific amount towards the arrears. I have further considered Mr. Chang's explanation for his failure to pay the amount required. However, based on my assessment of the overall insufficiency of Mr. Chang's evidence and the other circumstances, I am unable to find that the enforcement steps taken against Mr. Chang assist him in meeting the high bar of gross unfairness.
- [64] For all of these reasons, I conclude on the evidentiary record that is before me on this Variation Application, that it is not grossly unfair to refuse to cancel the support arrears and interest that Mr. Chang presently owes.

MISCELLANEOUS RELIEF SOUGHT

- [65] Mr. Chang also seeks an order staying the enforcement proceedings by the Family Maintenance Enforcement Program pending further court order.
- [66] Ms. Chang's evidence is that the enforcement proceedings have been necessary to collect any support from Mr. Chang. Mr. Chang has not complied with his support obligations at any time since the Order was made. The Provincial Court has made nine orders against Mr. Chang in the enforcement proceedings thus far.

- [67] I accept that to date, the enforcement proceedings have been integral to providing Ms. Chang with any amount of support from Mr. Chang. I decline to grant a stay of the enforcement proceedings for this reason, and for the same reasons that I have refused to vary or cancel the support arrears.
- [68] Mr. Chang also seeks some additional miscellaneous relief in his notice of application, such as a declaration regarding K.S.Y.W.C. Mr. Chang provided evidence that FMEP is not intending to collect child support for K.S.Y.W.C. However, as Mr. Chang points out, that has not resulted in any reduction of the interim monthly support because it is expressed as a combined amount in the Interim Order.
- [69] Even if I were to agree that it is appropriate to grant the declaration, in light of my conclusions about the insufficiency of Mr. Chang's evidence, I have concluded that the determination of whether K.S.Y.W.C. remains a child of the marriage - and how that issue might affect the calculation of child support - should be left for determination at trial.
- [70] I have reached the same conclusion with respect to the other miscellaneous requests for relief in the Variation Application, such as the request to suspend Mr. Chang's obligation to pay spousal support. In my view, these remaining miscellaneous issues and requests should await final determination of the parties' income at trial.

DISPOSITION

- [71] I dismiss the claimant's application for the relief sought in sought in paragraphs 1 to 7 of the notice of application filed October 26, 2020.
- [72] Costs to the respondent.

"E. McDonald J."

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