

CANADA / JUDGMENT

Rana v. Rana

2020 BCSC 1232

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Supreme Court of British Columbia

DECIDED

20 August 2020

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2020 BCSC 1232 Rana v. Rana

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rana v. Rana,

2020 BCSC 1232

Date: 20200820

Docket: E43246

Registry: New Westminster

Between:

Neetu Rana

Claimant

And

Vikrant Singh Rana

Respondent

Before: The Honourable Madam Justice Wilkinson

Reasons for Judgment

Claimant appearing on her own behalf:

Neetu Rana

Counsel for the Respondent:

Michael G. Parent

Counsel for the Director of Family Maintenance Enforcement Program:

Jennifer L. Anderson

(June 29, 2020 only)

Place and Dates of Trial:

New Westminster, B.C.

June 29-30, 2020

July 2-3, 2020

Place and Date of Judgment:

New Westminster, B.C.

August 20, 2020

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Introduction

- [1] The claimant and respondent bring cross-applications which were placed on the trial list for hearing before me.
- [2] Two of the orders initially applied for by the respondent were adjourned generally to be addressed with the Family Maintenance Enforcement Program ("FMEP"). Before me, the respondent seeks the following orders with respect to the claimant and the final order made March 28, 2014 in this matter:
- a) An order that the final order be varied by reducing or cancelling retroactively the amount of spousal support payable to the claimant along with the associated arrears interest and default fees;
 - b) An order that the final order be varied by cancelling, or in the alternative, reducing prospectively the amount of spousal support;
 - c) An order that the final order be varied by reducing, retrospectively and prospectively, the amount of child support payable to the claimant along with cancellation of associated reduced arrears, interest and default fees;
 - d) In the alternative, an order that spousal and child support arrears be paid in monthly installments.
- [3] With respect to the claimant's application, two of the orders applied for by the claimant were adjourned generally. The claimant seeks the remaining following orders with respect to the respondent:
- a) An order for contempt for failure to pay \$25,430 to the claimant pursuant to an order for asset division granted by the court on March 28, 2014;
 - b) An order that the respondent pay the asset division award plus interest forthwith;
 - c) An order for contempt for failure to provide documents to the claimant with respect to his taxi cab driving income as ordered by the court on March 28, 2014;
 - d) An order for contempt for failure to abide by the notice provisions with regard to application for certain documents with respect to the children as ordered by the court on March 28, 2014; and
 - e) An order for contempt due to filing with the court forged documents in relation to a March 2019 hearing in this matter.

Background

- [4] The parties were married in 2001 and separated in 2012. They have two children, sons now aged 16 and 18. The background of the relationship can be found in the March 28, 2014 reasons of Madam Justice Fitzpatrick in *Rana v. Rana* 2014 BCSC 530. As noted by Fitzpatrick J., these family law proceedings have been very litigious. They continue to be so even after the final order was issued in 2014.
- [5] The final order granted the parties a divorce, and provided for custody and access and guardianship of the children. It provided for spousal and child support payable by the respondent to the claimant. It made provision for property division including ordering the respondent to pay the claimant an amount representing compensation for asset division and reapportionment. The respondent was ordered to deliver to the claimant all documentation regarding his 2013 taxicab income within two weeks. Certain safeguard orders were made, including that neither party will make any application for citizenship documents, birth certificates, social insurance cards, any travel document, including but not limited to passports and Nexus cards, for the children unless there is a written agreement between the parties or further court order. The respondent was ordered to surrender his Indian passport to his former counsel (now the court) with the respondent being entitled to apply for release of it after giving written notice to the claimant and the court. At the time of notice, all access time with the children by the respondent would cease and not be reinstated until the passport was re-deposited and notice provided to the claimant.
- [6] The final order was not appealed.
- [7] The respondent remarried and has another child with his second wife. She lives in India and visits the respondent in Canada on visitor visas. The child has Canadian citizenship.
- [8] The respondent has not paid the asset division order. The last voluntary payment the respondent made toward spousal and child support appears to be in early 2016. All other payments have been made pursuant to the garnishment of federal payments received by FMEP. As of June 26, 2020, the respondent owed \$222,493.12 in support payments plus \$27,294.99 in interest and \$2,400 in default fees.

Findings at trial relevant to these applications

- [9] In her Reasons for Judgment of March 28, 2014, Madam Justice Fitzpatrick made the following findings of fact relevant to these applications:
- [136] I conclude that Mr. Rana has been purposely unemployed and underemployed since he left for India in November 2012. This present situation is consistent with his prior actions since even now, he continues his war of attrition on Ms. Rana, which began in the summer of 2012. He alleges that he has been prevented from seeking employment because his passport has been held per the court orders. I do not accept this statement as true. Mr. Rana did not relate any situation where he had to decline a position or was even unable to

attend an interview outside of the country for lack of a passport. He never applied to vary the interim court orders to allow for a release of his passport for that purpose.

- [154] Ms. Rana's income over the last few years has been modest. Her line 150 income has been as follows: 2010 - \$895; 2011 - \$4,235; 2012 - \$10,419. She has provided evidence as to her current earnings as a pre-school instructor and anticipates that her 2013 income will be about the same as the previous year. Accordingly, she calculates that for child support purposes her income will be \$9,111, although she has claimed some employment expenses which were not supported.
- [155] Mr. Rana did not dispute these figures from Ms. Rana for the purposes of the necessary calculations. I find that her 2012 to 2014 guideline income for child support purposes is \$10,000.
- [156] I have already outlined Mr. Rana's employment history above from 2005 to April 2012 and also his most recent employment as a cab driver commencing in October 2013. As with the asset disclosure issues, Mr. Rana failed to disclose necessary information and documentation regarding his past and present income in accordance with s. 21 of the Federal Child Support Guidelines, S.O.R./97-175 [Guidelines].
- [158] I have already outlined the deficiencies in Mr. Rana's Financial Statements. His evidence concerning the taxi cab business and the eform.com business is completely lacking and I am unable to accept what Mr. Rana did disclose as truthful. Even accepting that evidence, my conclusion as above is that he is intentionally under-employed based on the principles cited in *Hanson v. Hanson*, [1999] B.C.J. No. 2532 at paras. 8-20 (S.C.).
- [159] I reject Mr. Rana's contention that his income for support purposes is \$8,900. Mr. Rana indicates that jobs for his skill level are not prevalent in B.C. I accept that but would also state that consistent with the comments of the court in *Hanson*, a parent cannot refuse to take reasonable steps to support children because he "cannot obtain interesting or highly paid employment" (para. 14). Nor is it appropriate to persist in an endeavor such as his website business to the exclusion of remunerative work.
- [160] In deciding what amount should be imputed, I must consider the "age, education, experience, skills and health" of Mr. Rana: *Hanson* at paras. 14, 20. Ms. Rana seeks an order imputing income of \$90,000 to him. She has provided some documentation from various websites, including from the government of Canada, indicating salaries of computer and IT managers in the Lower Mainland of \$91-95,400. This evidence is not ideal but doing the best I can, I impute income to Mr. Rana of \$90,000 from September 2012 to the present and continuing.
- [163] On the basis of the \$90,000 income which I have imputed to Mr. Rana, the guideline amount for the children is \$1,345 per month. Mr. Rana will pay this amount to Ms. Rana commencing April 1, 2014.

- [171] In the circumstances, I am satisfied that an award for retroactive child support from September 2012 is appropriate.
- [172] Using the same guideline income for Mr. Rana, the amount outstanding for the 19 months from September 2012 to March 2014 at \$1,345 per month equals \$25,555. Ms. Rana has sought an order that this amount be paid within one month of this order which I accept is also appropriate.
- [182] Ms. Rana seeks an order for indefinite ongoing support and also retroactive support from September 2012, using the mid-range SSAG [Spousal Support Advisory Guidelines] amount. Again, Mr. Rana does not object to this claim other than his assertions that his income is low (\$9,600) and their incomes are about equal. Again, I have rejected Mr. Rana's assertions and have imputed income to him.
- [183] Using the imputed guideline income for Mr. Rana of \$90,000, and the guideline income of Ms. Rana of \$10,000 (which assumes that she receives government child benefits of \$4,660), the mid-range SSAG amount is \$1,131. Mr. Rana will pay the amount of \$1,130 to Ms. Rana commencing April 1, 2014.
- [184] The amount of spousal support for the 19 months from September 2012 to March 2014 at \$1,130 per month equals \$21,470. Ms. Rana has sought an order that this amount be paid within one month of this order which I accept is also appropriate.

The respondent's application to vary the final order for spousal and child support

- [10] The orders for spousal and child support were made pursuant to the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). Section 17 of the Divorce Act governs the variation of support orders and provides as follows:
- 17 (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,
- (a) a support order or any provision thereof on application by either or both former spouses;
 - (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.
- (4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.
- (7) A variation order varying a spousal support order should

- (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
 - (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.
- [11] The respondent must establish that there has been a material change in circumstances since the March 28, 2014 order before I am able to exercise my discretion to vary that order. A material change of circumstance is a change that, if known at the time of the order, would likely have resulted in different terms: *G.(L.) v. B.(G.)*, [1995] 3 S.C.R. 370 and *Willick v. Willick*, [1994] 3 S.C.R. 670.
- [12] The respondent at trial was imputed with an annual income of \$90,000. The claimant's Guidelines income was found to be \$10,000, including government child benefits of \$4,660.
- [13] The respondent says that he has been unable to obtain any employment other than the taxicab relief driving which he was already doing at the time of the trial. He further says that employment ceased when FMEP placed a bar on his renewal of his driver's license in April 2019. He took no formal action to review or appeal that decision of the FMEP until he attempted to seek a cancellation order in this application filed in 2020. His Canadian tax assessments show income of \$24,008 in 2014, \$9,502 in 2015, \$7,000 in 2016, \$6,500 in 2017, \$10,500 in 2018, and \$8,600 in 2019.
- [14] The onus is on the respondent to prove that he should no longer be imputed with an income of \$90,000 based on a material change of circumstances. Essentially, he seeks an order to vary the finding of fact that his income capability is \$90,000. The respondent refers me to *Trang v. Trang*, 2013 ONSC 1980, followed in this Court in *Lessard v. Mahoney*, 2019 BCSC 551, which sets out the effect of an imputed income finding on a later application to change that finding:

52 A party who argues that an imputed income level is no longer appropriate must go beyond establishing their subsequent "declared" income. They must address why income had to be imputed in the first place. They must present evidence of changed circumstances which establish that either:

- a. It is no longer necessary or appropriate to impute income. The payor's representations as to income should now be accepted, even if they weren't accepted before.

Or,

- b. Even if income should still be imputed, changed circumstances suggest a different amount is more appropriate.

53 If "declared income" automatically prevailed on a motion to change support, it would defeat the purpose of imputing income in the first place. It might even be a disincentive for payors to participate in the initial court process. They could simply ignore support Applications - as they often do. They could wait to see if the court imputes income, and how much. If dissatisfied with the amount, the payor could later return to court waving their tax returns, to suggest that the original judge got it wrong.

54 Support claimants should not be forced to go through this two-step process. Our family court system certainly can't afford it.

55 Similarly, the onus should not fall on the support recipient to establish why income should still be imputed on a motion to change. That determination has already been made. The onus is on the support payor to establish that there should be a change in the way their income is to be calculated.

[15] At trial, the respondent's evidence was generally rejected. He gave a number of explanations for his stated financial circumstances which were found to be unreasonable or not credible. He failed to disclose much financial information, having filed deficient financial statements. The court found that he hid assets, removed monies from Canada, and refused to disclose information and documentation. He was purposely unemployed and underemployed. He blamed his lack of employment on lack of access to his passport but that was found to be untrue.

[16] Before me, the respondent makes similar arguments. His India passport is apparently not good for travel since he is now a Canadian citizen. The block on his obtaining a Canadian passport means he cannot obtain employment since the most opportunities in his field of expertise are located outside of Canada. Interestingly, for the tax year 2019 his income level reported on his tax returns, which he testified was from taxi driving, was similar to other years, and yet his driver's license was cancelled in April of that year. But like before, he has not taken action to seek a lifting of that restriction which has been in place since September 2014. Unlike at trial, the respondent did provide a number of emails and documentation about jobs he has applied for. Interestingly, a couple date prior to the trial. The vast majority of the records relate to correspondence between 2016 and 2018. Many are repetitive as they relate to the same inquiry or application. The respondent testified that once foreign employers found out that he had to go to court to access his passport they became no longer interested and now of course he has no useable passport.

[17] With respect to his disclosed income, he states he has no records other than his tax returns, and that Black Top Cabs does not issue him any income-related documents. This differs from his evidence at trial where he stated Black Top Cabs would issue documentation to him for tax purposes. He stated his earnings were taken from a share of the taxi receipts. The owner of the taxi would receive all fares paid by credit card and he would receive all cash

fares. According to him, he had no expenses related to the income. He reported his income to CRA as "other income" and not business income, even though Black Top Cabs confirmed that he was an independent operator. However, on cross-examination the respondent stated he pays rent to the cab owner which is a different rent on different days (\$100 to \$150) and he splits the income three ways.

- [18] The respondent testified that he spends all of his time applying for jobs and as such he cannot take on any work in the retail or service industries, for example. Working in a store is not the life he chooses for himself. He did not go to college to drive a taxi or work a shift job. He stated his body does not permit him to do hard work but went no further.
- [19] The respondent stated that his skills are now outdated to continue working in his previous field, yet he has not undertaken any continuing education.
- [20] He testified that his financial problems are all due to the claimant. He further stated that his parents, who reside with him, like him, are barely surviving, thanks to the claimant. He claims he does not know what his new wife's income is and he thinks it is approximately \$10,000.
- [21] The respondent's father testified that he does not financially support his son and nor does his son support he and his wife, the respondent's mother. Both the respondent and his father testified that the respondent's mother is a director and shareholder of a company in India along with the respondent's new wife, and that the respondent does not earn any income from that business. That business has the same name as the respondent's Canadian sole proprietorship. Its LinkedIn page states they have 500-1,000 employees. The respondent's mother has never been employed outside the home.
- [22] The respondent's father testified that he earns rental income from a property in India which he denies is actually or beneficially owned by the respondent. The respondent's father also receives a pension from his past employment in India. He does not declare any of this income in his Canadian tax returns.
- [23] The respondent says his sole proprietorship had one client, however, when the payment from the client was deposited in the respondent's bank account, FMFP garnished the funds. Apparently, the respondent was not able to obtain any more work through his sole proprietorship. He stated he could not set up a Canadian bank account at that point because of FMFP. He has set up a LinkedIn page for his Canadian business, with the same name as his wife and mother's business, but he says the Canadian business does not exist; he just uses that to advertise himself.
- [24] He claims now to have a good opportunity, with the help of his sons, to obtain a contract with the provincial Attorney General to code a website for court users to access, input and file forms through his eform.com domain. He then says the Attorney General's office informed him that project would be on hold until at least 2021 due to COVID-19.

- [25] The respondent went out of communication with the claimant and his sons for almost two years, despite having shared parenting time. He explained that he had not left the country as the claimant suspects, and that the children knew how to reach him if they wanted to connect. He states he went to Calgary to visit a relative for spiritual guidance and also went to Kelowna to visit his American-based cousin who was visiting, but that otherwise he did not leave the area during that period of non-communication with the respondent and their children.
- [26] The respondent has not undertaken any retraining.
- [27] Like at trial, the respondent comes up with unreasonable excuses for his apparent lack of employment. He has utterly failed to contribute to the support of his children and former spouse from the onset. His financial disclosure, what there is of it, continues to be suspect. He simply blames the claimant for his perceived woes and sees no reason to make an effort to contribute to her support, not to mention his own children's support.
- [28] The respondent's representation about the eform.com contract possibility is similar to the respondent's plans revealed at trial which the court found to be a speculative venture. At trial, the court found "What Mr. Rana fails to appreciate is that his wife and children need support now, not if and when these efforts might bear fruit." Rana, supra at para.135.
- [29] The fact that he has apparently recruited one or both of his sons to work for his business is extremely troubling. They should not be asked to do unpaid work in order to assist their father in obtaining remuneration, which in turn would go toward fulfilling his child and spousal support obligations. The respondent has no apparent sense of the impropriety of his actions.
- [30] I do not find that there has been a material change to the respondent's circumstances and as such decline to vary the order with respect to the respondent's imputed income.
- [31] The respondent also argues that the claimant's income status is a material change which warrants a reduction in spousal support. The respondent testified that he thought the claimant has enough money. Her evidence is that she has been working hard at improving her financial income by taking last minute back-up shifts at the community centre. However, she was furloughed due to COVID-19 and has no idea how and when she may return to work. Her income in 2015 was \$22,753.98, in 2016 \$32,718, and in the years 2017 to 2019 her income was approximately \$39,000. At trial, the court found the following:
- [177] Ms. Rana's disadvantage is such that she is now only able to obtain a low paying job and there is no doubt that she requires Mr. Rana's support for not only the necessities of life but other expenses which would allow her lifestyle to more approximate that which she enjoyed during the marriage. Mr. Rana acknowledges that his income earning potential is much higher than that of Ms. Rana.

- [32] The order was made six years ago. The claimant's income, while recently increased, through no fault of her own is not at a level where her lifestyle has become more approximate to that which she enjoyed during the marriage. It was contemplated by the trial judge that the claimant would take time in order to gain such employment. The respondent's failure to provide support has eliminated any retraining possibilities as she spends her time, when not caring for her family, taking irregular shift work. Given her current unemployment status, I do not find that the claimant's recent increased income level is steady enough to be a material change in the circumstances.
- [33] At trial, the parties were ordered to exchange tax return information annually and the respondent was ordered to increase child support payable if his line 150 income in the future exceeds \$90,000.
- [34] I do find that the claimant's income level of \$39,000 for the years 2017 to 2019 is a material change in the circumstances, and based on the with child spousal support guideline formula I vary the spousal support to \$379 per month for those three years retroactively. Given her current unemployment, I do not find that the claimant's recent increased income level is steady enough to be a material change for this current year or future years.
- [35] Apart from the variation ordered above, I decline the respondent's application to vary the orders for spousal and child support.

Respondent's alternative application for the court to set a payment schedule for arrears

- [36] The respondent, in the alternative, requests that the court make an order that spousal and child support arrears be paid in monthly installments. The respondent's financial situation is not clear enough, apart from imputed income, at this point. He has not provided information on security for payment or made a formal proposal.
- [37] I understand that the respondent will be seeking some relief from FMEP related to his driver's license and passport restrictions. I recommend that the respondent first approach FMEP to request a payment schedule for arrears before coming to the court for an order. I decline to make this order.

Claimant's application for contempt orders

Contempt of court

- [38] The claimant bears the onus of establishing beyond a reasonable doubt that the respondent deliberately breached an order of the court. The applicable principles on such an application are set out in *Jackson v. Honey*, 2009 BCCA 112:

- [12] The principles governing a contempt application were summarized by Donald J.A. in *Peel Financial Holdings Ltd. v. Western Delta Lands Partnership*, 2003 BCCA 551, 21 B.C.L.R. (4th) 340 (C.A.):
- [18] The principles governing a motion of contempt are uncontroversial. I would summarize the principles relevant to this case in this way:
1. The proceedings are quasi-criminal in nature and the rules of *strictissimi juris* apply, meaning for example that the evidence supporting the motion must conform to the rules of admissibility at a trial; so no hearsay, opinion, conclusions and the like are receivable: *Glazer v. Union Contractors Ltd.* (1960), 33 W.W.R. 145 (B.C.S.C.) at 151.
 2. The applicants bear the onus of proving the elements of contempt on the criminal standard, viz. beyond a reasonable doubt: *Bhatnager v. Canada (Minister of Employment & Immigration)*, [1990] 2 S.C.R. 217 (S.C.C.) at 229.
 3. If the order said to be breached is ambiguous, the alleged contemnor is entitled to the most favourable construction: *Melville v. Beauregard*, [1996] O.J. No. 1085 (Ont. Gen. Div.) at para. 13; see also *Skybound Developments Ltd. v. Hughes Properties Ltd.* (1988), 24 B.C.L.R. (2d) 1 (B.C.C.A.) at p. 8, cited in *Hama v. Werbes* (2000), 76 B.C.L.R. (3d) 271 (B.C.C.A.) at para. 8 where the need for clarity and precision in the order to be enforced was discussed.
- [13] The facts in support of a finding of contempt must establish, beyond a reasonable doubt, that the contemnor wilfully disobeyed a court order that was clear and precise in its meaning. In *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316, 29 B.C.L.R. (4th) 214 Newbury J.A., for the Court, cited *Re Sheppard and Sheppard* (1976), 67 D.L.R. (3d) 592 where the Ontario Court of Appeal described the act of contempt as "the intentional doing of an act which is in fact prohibited by the order": para. 12. Madam Justice Newbury went on to cite *Topgro Green houses Ltd. v. Houweling*, 2003 BCCA 355, 184 B.C.A.C. 118 where the Court described the act of contempt as "deliberate conduct that has the effect of contravening the order": para. 14.
- [39] Where the related order is for payment of money, the claimant must also establish, again beyond a reasonable doubt, that the respondent debtor had the capacity to pay the amount: *Swann v. Swann*, 2009 BCCA 335. Impecuniosity is an excuse for non-compliance.

The March 28, 2014 order to pay \$25,430 for asset division within one month

- [40] The respondent admits he has not paid this order. He claims he is incapable of paying the order. Like in *Swann*, the evidence of the respondent's means is limited. At trial, the testimony of the claimant and the respondent's deficient financial statement were sufficient to convince the court that the respondent had the means to pay. But that does not determine whether at this stage the respondent's subsequent capacity to pay is established beyond a reasonable doubt.

- [41] The respondent's December 2019 financial statement claims a \$7,000 income and that of that he spends \$5,640 directly on his children. He apparently pays for no food or housing for himself, nor does he contribute to his current spouse or third child's living expenses.
- [42] The respondent's own testimony that he refused to even consider working at a job that did not require a college education leads me to find that he is flouting the court's payment orders, including the asset division order. His statement that the claimant has enough money also leads me to find that the respondent does not accept the findings of the trial judge or the necessity to pay the asset division order. He stated if the claimant could have helped him get his job back "I think I would have helped myself."
- [43] He was upset about the asset division order because the claimant never paid for anything when they lived together.
- [44] Like the trial judge, I have suspicions that the respondent continues to have hidden assets. The claim that his wife runs a business with his mother, and that he has no interest or knowledge of that business or its earnings is incredulous. However, given the lack of evidence I am not in a position to find that he has undisclosed assets nor what the value of those assets might be.
- [45] I do not have enough evidence before me to find beyond a reasonable doubt that the respondent is hiding income and assets.
- [46] Also, based on the evidence before me, I do not find that it is beyond a reasonable doubt that he is capable of earning \$90,000 a year. However, I do find that he is capable of earning \$40,000 to \$50,000 a year beyond a reasonable doubt, given his skill set and availability. As in Swann, where the debtor had a reduced income but was making payments, with that income the respondent could have been making payments toward the asset division. Instead, the respondent refused to pay out of spite.
- [47] I find that the respondent is wilfully and deliberately disobeying the order by refusing to make any attempt to obtain employment which would provide him with income in order to pay the order. It is not an impossibility for him to pay the order, or certainly to pay toward the order. I find the respondent in contempt of court by reason of his failure to pay the March 28, 2014 asset division amount of \$25,430 to the claimant.
- The March 28, 2014 order to provide documents to the claimant with respect to his taxicab driving income
- [48] The trial judge ordered the respondent to deliver to the claimant his income tax returns for 2010, 2011, and 2012, his notice of assessment for 2012, and all documentation regarding his 2013 taxicab income, within two weeks of the judgment.

- [49] The claimant submits the respondent has not provided her with "all documentation regarding his taxi cab income" in that he has not provided any receipts or records other than his tax return information. The respondent testified there are no other records. While this differs from his testimony at trial, where he stated that Black Top Cabs provides him with documents for tax purposes, Black Top Cabs confirmed that they do not provide him with records as he did not work for them. He worked as an independent operator.
- [50] It may very well be that the respondent has no such records as the income may have been earned "under the table". It would appear likely given his description of how the income sharing worked with the taxi owners.
- [51] I do not find that the claimant has proven beyond a reasonable doubt that the respondent has not complied with this order.

The March 28, 2014 order to abide by notice provisions with regard to application for certain documents with respect to the children

- [52] The trial judge ordered that neither party shall make any application for citizenship documents, birth certificates, social insurance cards, any travel document, including but not limited to passports and Nexus cards, for the children unless there is a written agreement between the parties or further order of the court.
- [53] The respondent admitted to signing an application as parent for his younger son for a Canadian permanent resident card in 2019. He said it was because his son wanted to get a driver's license when he turned 16 and that he had no identification to be able to do that. He stated that he had renewed his sons' permanent resident cards up until 2012. After that, he stated his sons had had no identification at all.
- [54] The respondent admitted that he knew the terms of the order. He stated he did not make the application; his son did. He did sign the application as parent. His address was also listed as his son's residential address when in fact his son's primary residence was with the claimant.
- [55] While I find that an application for a permanent resident card is squarely within the type of document that the respondent is restricted from applying for without consent, it is not clear that he actually made the application. He certainly knew about it but the application is, according to the form, made by his son. The respondent signed the form, but is not named as the applicant. The respondent's participation in the application process certainly goes against the spirit of the terms of the order, but does not convince me beyond a reasonable doubt that he took the initiative and completed and filed the application himself which is what the order prohibits. I do not find the respondent in contempt of this order in connection with his son's application for a new permanent resident card.

Filing with the court forged documents in relation to a March 2019 hearing in this matter

- [56] In an order made December 13, 2018 in this proceeding, the respondent was ordered to obtain forthwith from Canada Border Services Agency ("CBSA") a copy of his report of entries and exits to and from Canada from January 1, 2016, in compliance with a previous order of Justice Blok made July 5, 2018. The respondent was then to file that document attached to an affidavit with the court registry. On March 19, 2019, the respondent filed a CBSA report attached to an affidavit. The report does not show printout dates in the usual places other than in one place, which lists the date as March 11, 2019 in a font which is inconsistent with reports obtained by the claimant directly from CBSA.
- [57] The claimant alleges that the respondent forged the date information and removed other date information on the document. The respondent denies doing this.
- [58] I simply do not have enough evidence before me to find, beyond a reasonable doubt, that the respondent forged the document and filed it in such a way as to commit contempt of court.

Penalty

- [59] The parties made limited submissions on penalty in the context of the contempt applications. Furthermore, the respondent should have an opportunity to purge his contempt. Therefore, I ask the parties to schedule a one-hour sentencing hearing before me within 60 days.

The claimant's application for an order that the respondent pay the asset division award plus interest forthwith

- [60] The claimant seeks an order that the respondent pay the asset division amount awarded by the trial court on March 28, 2014 forthwith. There is already a final order of the court with these terms. It is enforceable now as the payment is past due and further to my reasons above, it has not been varied. I decline to make another such order.

Costs

- [61] The claimant has been substantially successful on the respondent's application, and partially successful on her own. If the parties wish to make submissions on costs, they may do so provided they contact Trial Scheduling within 30 days of receiving this decision to schedule a costs hearing. If they do not do that, then I award the claimant costs at Scale B for the respondent's application and no costs to either party on the claimant's application.

"Wilkinson J."

The Honourable Madam Justice Wilkinson

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Prepared on 27 October 2026 · Esheria