



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2023: No. 52

BETWEEN:

Mother

Applicant

- and -

Father

Respondent

Ex Tempore Ruling

(In Chambers)

Date of Hearing: 21 February 2025

Date of Ruling: 28 February 2025

RULING of Martin, J

Introduction

1. This is an application by the Father to vary the original interim order for child support that was made by consent between the parties. The amount agreed was BD\$1000.00 per month. The Father wants to reduce the payments to BD\$350.00 per month or even further to zero, and wants the Order to be back dated to the date of his application to reduce the burden of the accumulating arrears. He puts his case on the grounds that the loss of his employment last July amounts to a relevant change of circumstances because it has affected his income, and therefore his ability to make the payments.
2. The Mother also cross applied for an increase in the child support payments to take account of the increased burden on her for (i) health insurance expenses for the children (ii) child counselling services and (iii) costs of extra curricular activities.
3. The matter was adjourned on the last hearing on 23 January 2025 because full disclosure of the Mother's financial position had not been made.

Background

4. The Mother refused to produce the documents that relate to her historic pay and credit cards on the grounds that her bank statements and credit card statements are in joint names with one of her adult sons and she considered that this was confidential information that she was prohibited from disclosing by reason of the Personal Information Protection Act 2015 ("PIPA") which has recently come into force.
5. The Mother has not produced the documents by way of disclosure, and the Father says that he is disadvantaged in the presentation of his case without the disclosure.
6. The Mother maintains her objections to producing the documents. She has offered to go into the witness box to testify to her means and disclose her credit card history. The Father objected on the basis that this (i) does not give him a chance to prepare questions or (b) challenge her evidence.

7. The Father stood on his rights that a redacted disclosure would not be sufficient, and he did not trust the redaction process or the means by which he would get access to the full information.

Analysis

8. The Court has therefore looked at PIPA to determine what if any restrictions exist in relation to the Mother's disclosure of documents under that Act. The Act is primarily aimed at preventing the collection and retention of personal information and the unauthorised sharing of that information by any organisation (ie natural persons or legal entities) that are engaged in business or other activities in the course of which automated or partly automated requests are made for personal information which are to be kept as part of a structured filing system¹. This can be in any walk of life or activity.
9. In this case, for example, the Bank who issues the bank statements and credit card statements would be restricted from disclosing or sharing the information without the consent of the account holder (such consent to necessary sharing of private information gathered by the Bank is normally given by accepting the Bank's standard terms and conditions of service).
10. However, the person sharing the information in this case is the account holder herself. There is no restriction under PIPA that restricts the account holder from disclosing information about their own account. The Mother says that because the account is held jointly with her son, the statements contain private information concerning his information and so she says that this means that she is not able to disclose the statements.
11. It seems to me that this is not the correct analysis. A joint account holder is entitled to disclose the contents of the joint account statement to a third party if they choose to do so. It is one of the incidents of joint ownership. The funds in the account are jointly owned, and the records of payments in (or charges made) are the property of both of

¹ Section 3 PIPA

the account holders. Furthermore, the Mother's adult son is not the applicant seeking to protect the "private" information that relates to his financial affairs.

12. But more to the point, even if he had objected, where the Court requires the disclosure of information for the purposes of determining an issue in proceedings involving one of the joint account holders, it is no answer to say that the documents cannot be disclosed because they contain information relating to the payments in or out of the account made by the joint account holder, or charges made on a joint credit card. These are the legal burdens that come with joint ownership.

Personal Information Protection Act 2015

13. The disclosure obligation of a party to litigation does not fall within PIPA at all. Section 4 (3) provides:

"This Act shall not apply to...

(b) limit the information available by law to a party to any legal proceedings".

14. The disclosing party in litigation is fulfilling a legal obligation under the Rules of the Supreme Court to disclose **all** relevant material in his or her possession that relates to the issues in dispute or may put the other side on a train of enquiry as to other materials *which may be relevant* to the issues in dispute.
15. It is also relevant to note that the party who receives the information is under a strict obligation to maintain the confidentiality of the material until it is disclosed in open court as part of the proceedings. The Court can make orders to protect the disclosure or publication of that material if it is particularly sensitive or confidential.
16. The Father is entitled to see **all** the relevant documents in an unredacted form. He has made his own disclosure, and the Mother must do the same.
17. In addition, PIPA makes express provision for an exclusion in respect of *"personal information contained in a court file and used by a judge of any court in Bermuda or*

used as part of judicial administration...but only where such personal information is necessary for judicial purposes.”

18. Therefore, the Court record is also exempted from the operation of PIPA.
19. Accordingly, the Court holds that (i) the Mother is able to disclose the information in her bank account statements and her credit card statements without the consent of her adult son (ii) the Mother is not restricted by any provision of PIPA from making the disclosure (iii) the Mother is under a positive legal duty to disclose the information for the purposes of these Court proceedings and must do so in an unredacted form.

Dated this 28th day of February 2025



THE HON. JUSTICE MR. ANDREW MARTIN
PUISNE JUDGE