

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** S.J. v. S.P., 2008 NSSC 104

**Date:** 20080409

**Docket:** SFHMCA-054732

**Registry:** Halifax

**Between:**

S. J.

Applicant

v.

S. P.

Respondent

**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

**Revised Decision:** The text of the original decision has been corrected according to the attached erratum dated April 29, 2008.

**Judge:** The Honourable Justice Moira C. Legere Sers

**Heard:** April 7, 2008, in Halifax, Nova Scotia

**Counsel:** Andrew Pavey, for the applicant  
S. P., self-represented

**By the Court:**

[1] This is the application of Mr. S. J. dated August 13, 2006. Mr. J. wishes to vary the order issued on April 29, 1999.

[2] That order granted Ms. S. P., the respondent herein, custody of their daughter with reasonable access to the applicant.

[3] The estimate of the Applicant's employment income in April, 1999, was \$22,512. The Court ordered him to pay a base amount of child support in the amount of \$184, in addition to the sum of \$221 per month which was to be his proportionate share of the net childcare costs for babysitting pursuant to s. 7 of the *Federal Child Support Guidelines*. The payments were to commence on April 15, 1999, and continue thereafter.

[4] Further, the record of the Maintenance Enforcement Program indicates that the arrears as of October 9, 2007, were \$21,768.69 with outstanding fees in the amount of \$213.

[5] The original order issued on April 29, 1999, has not been varied by any subsequent application made by either party.

[6] The arrears have been calculated based on the monthly amount as noted in the original order.

[7] The child, S. J., was born on February [...], 1998, and currently continues to live with the mother.

[8] In or about November, 2003, the applicant was diagnosed with paranoid schizophrenia. This diagnosis has not been challenged.

[9] Currently, the applicant's sole source of income is Canada Pension Plan Disability Benefits (hereinafter referred to as "CPP Benefits") in the amount of \$8,874.12 per annum.

[10] The parties have agreed on a change in the terms of the current order noting that the guideline amount for Mr. J.'s current salary is \$7 per month.

[11] The father asked to be relieved of his obligation to pay and to have the arrears forgiven; in the alternative, he asks the Court to impose a moratorium on the arrears based on his actual income and a moratorium on enforcement.

[12] The medical report indicates that the father began his treatment as a patient for this medical condition in 2003 with dates of admission in August 1, 2003, to September 16, 2003, and November 7, 2003, to December, 2003. This appears to be the first episode of psychosis. The medical report indicates that he has not recovered from his initial episode and has become disabled; thus, he is in receipt of CPP Benefits.

[13] I confirm with the parties and counsel their respective annual income taken from their income tax returns from 1999 to 2008. The exhibit attached by the father's counsel noting the table arrears based on a recalculation of his income from 1999 to 2007 has been determined to be in error. The income does not reflect his total income and has not reflected his line 150 income.

[14] Counsel for the father and the mother, who is self-represented, have confirmed their incomes from their income tax returns and it is on that basis of the accurate incomes that I have calculated the arrears.

[15] For the father, from 1999 to 2007, I have used the following annual incomes:

1999	\$23,835
2000	\$33,287
2001	\$39,455
2002	\$39,658
2003	\$29,423
2004	\$30,004
2005	\$13,204
2006	\$8,692
2007	\$8,874

[16] From April, 1999, to December, 1999, the table amount based on Mr. J.'s accurate income would have been \$203 per month, for a total of \$1,827 per the remaining nine months of 1999. For 2000, the table amount would have been \$294; for 2001, \$343; for 2002, \$345; for 2003, \$262; for 2004, \$268; for 2005, \$87; for 2006, \$6; for 2007, \$7. A recalculation back to April, 1999, based on his actual income would result in a base amount owing in the amount of \$21,171, plus childcare arrears inclusive of April, 1999, at the court ordered rate up to 2001 when the receipts reflect a change in childcare expenses. Childcare expenses would amount to \$12,094.80.

[17] To compare, the total payable under the old order is \$40,905. As of October, 2007, the total payments were \$19,136.31 which would leave arrears owing in the amount of \$33,265.80.

[18] Counsel for the father argues that because there are no receipts for 1999 and 2000 the only childcare expenses that should be considered in a retroactive analysis should be the childcare expenses from 2001 forward. If I were not to consider 1999 and 2000 at \$221 per month, the arrears in childcare expenses would reduce the childcare expenses owing under this order to \$7,453.80 (in 1999 from April to December at nine months x \$221, totalling \$1,989; 12 months for 2000 at the court ordered \$221 equals \$2,652 for a total of \$4,641 leaving receipted amounts of \$7,453.80 for a total owing of \$28,624.80 reduced by total payments to October in the amount of \$19,136.31 for an amount owing in the amount of \$9,488.49).

[19] I have not been offered any excuse for the non-payment of child support from April, 1999, to December, 2004, when it appears that a garnishment was put in place in order to collect the monthly payments.

[20] Nor have I been offered by the father any evidence why he did not pay well in advance of his diagnosis between April, 1999, and August, 2003.

[21] The affidavit of Ms. P. advises that when the original order was entered into in the amount of \$405 total, Mr. J. threatened to quit his job and work under the table to avoid paying that amount. Thus, they entered into an agreement that he would pay \$250 per month. As a result of this, Mr. J. paid \$75 once and \$150 after that and Ms. P. gave up attempting to pursue maintenance. That agreement

was not registered with the Court, the order was never varied and, in fact, that agreement appeared to be entered into under duress.

[22] The statement up to October 9, 2007, reflects no payments from January 15, 2003, to December 15, 2004. It also reflects as of December 31, 2002, that there were arrears in the amount of \$17,820 which represents 44 months, or 3.6 years.

[23] Clearly from his diagnosis in August, 2003, to the current date, the applicant's income began to slide such that the high in 2002 of \$39,658 was reduced in 2003 to \$29,423 with a slight elevation in 2004 to \$30,004 and eventually to significantly less income in 2005, 2006 and 2007 where his income is solely from CPP Benefits.

[24] The child receives from the father's CPP Benefits \$208.74 per month.

[25] The parties have consented to a variation reflecting a change in the circumstances such that the current payment of maintenance is reduced to \$8 per month payable on the first of each month commencing November 1, 2007, and continuing thereafter.

[26] Mr. J. must provide Ms. P. with a copy of his income tax return, completed with all attachments, even if the return is not filed along with his notices of assessment received from Canada Customs and Revenue Agency on an annual basis on or before June 1 of each year.

[27] Mr. J. will also be responsible for advising the mother, in writing, if he should be in receipt of any other supplementary income of any nature or sort and any change in employment status should he be able to return to work. He shall advise within 48 hours of such a change.

[28] The mother's income has increased from a low in 1999 of \$16,087 to an estimated \$38,175 for the 2007 year. Other than the contribution of CPP Benefits, she is essentially solely responsible for the support of their daughter.

[29] Whether as a result of his illness or otherwise, Mr. J. between 1999 and 2002 ceased seeing his child.

[30] The child still requires some day care after school and, unfortunately, because of the increases in the respondent's income she has lost her day care subsidy .

[31] The arrears as calculated under the new regime would yield \$14,129.49 rather than the \$21,768.69 which is set out in the statement from the Maintenance Enforcement Program as of October, 2007. I fix the arrears at \$17,345.67 based on a reevaluation of the support order dated April, 1999, based on actual income. I have allowed the ordered amount for 1999 and 2000 given there was no application to vary. The onus ought not to be on the recipient this late in the game at attempting to find receipts. Neither Mr. J. nor Ms. P. made an application to vary the award and a retroactive evaluation is risky at best given the likelihood that record keeping does not go back that far.

[32] I am not doing a retroactive assessment of what child support should be in the absence of an order. Thus, I am not restricted by the three year retroactive analysis. I am simply determining what the arrears are based on the old order and reducing them to reflect the actual income of the parties.

[33] There has been no excuse offered for any arrears prior to November, 2002. A reevaluation based on his actual salary retroactive to 1999 takes into consideration the significant reduction in his income starting in 2005 forward.

[34] I have reviewed the applicant's income statement. He advises that he is residing with his mother and depending on her financially for many things. He is unable to work and there is no suggestion at this point otherwise. His income is \$8,874. His suggestion that there are no childcare expenses now would be inaccurate given that the child is school age and the mother works and, thus, there are before and after school costs.

[35] Mr. J. only pays \$250 rent and a significant part of his budget is based on his capacity to pay and not on his needs. There is nothing in his budget that I could adjust to suggest that he has an ability to pay any more than that which has been agreed upon in addition to the CPP Benefits. I therefore fix the arrears and place a moratorium on payment of the arrears pending any change in his financial circumstances.

[36] The onus is on the father to advise the mother in writing forthwith, as to any changes in his financial situation that might result in an increased capacity to pay.

[37] Counsel for the applicant shall draft the order.

**Legere Sers, J.**

April 9, 2008  
Halifax, Nova Scotia

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**Judge:** The Honourable Justice Moira C. Legere Sers

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**Counsel:** Andrew Pavey, for the applicant  
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**Erratum:**

At page 4, paragraph 18, line 6, where it reads "April to December at nine months x \$221, totalling \$989", it should read "April to December at nine months x \$221, totalling \$1,989".

At page 6, paragraph 31, line 1, where it reads "would yield \$17,345.67", it should read "would yield \$14,129.49".