<u>SUPREME COURT OF NOVA SCOTIA</u>
<u>(FAMILY DIVISION)</u>
Citation: ***Power v. Power***, 2015 NSSC 234

Date: 2015 - 08 - 11
Docket: 1201-059120; SFH-D 035445
Registry: Halifax

Between:

Joseph Patrick Power

Petitioner

v.

Angela Rose Power

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: September 25, 2014, and April 8, 2015 in Halifax, Nova Scotia

Counsel: Brian F. Bailey for Joseph Power
Judith A. Schoen for Angela Power

By the Court:

Introduction

[1] This decision relates to Joseph Power's application to vary child support. He seeks to vary the amount of child support he pays both prospectively and retroactively from May 6, 2013. As well, he seeks "forgiveness of child support arrears and/or a moratorium on collection of child support arrears" and an order under sections 15 and 46 of the *Maintenance Enforcement Act*, S.N.S. 1994-95, c. 6 addressing arrears of support.

Proceeding

[2] Mr. Power filed his variation application in July 2014, after his former wife filed a motion to find him in contempt of two orders.

[3] Pre-trial conferences were held before other judges, and both the contempt motion and variation application were scheduled to be heard simultaneously. The parties agreed to condense the amount of time for the hearing to a single day and to schedule it before me, rather than wait for two days to be available before their conference judge. The hearing wasn't completed in one day, and the parties waited almost seven months to complete it.

[5] More importantly, the conference judge was willing to hear the contempt motion and the variation application simultaneously. While some will take this approach to reduce delay and minimize cost, I do not adopt this procedure for the reasons given by Justice Saunders at paragraph 44 in *Godin*, 2012 NSCA 54. Since we do not all adopt the same approach, I believe that in contempt motions the judge hearing a preliminary conference must be the judge who hears the motion.

[6] To ensure that the contempt motion and variation application are isolated as best as I can, I have considered them separately. Unique reasons will be provided for my decision on the contempt motion. This decision addresses only Mr. Power's variation application.

The analytic approach

[7] Mr. Power is applying to vary a variation order. In 2013, following a one day hearing at which both Mr. Power and Ms. Power offered evidence, Justice Lynch reserved her decision. She released written reasons in *Power*, 2013 NSSC 99. At paragraph 24 of her reasons, Justice Lynch concluded that the case was an appropriate one in which to impute income to Mr. Power.

[9] Subsection 17(4) of the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3 requires that before I vary a child support order, I must be satisfied 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."

[10] The applicable guidelines are the *Federal Child Support Guidelines*, SOR/97-175. Section 14 of the *Guidelines* addresses the variation of child support orders in three different

circumstances. Justice Lynch ordered Mr. Power to pay child support based on the tables. According to subsection 14(a) of the *Guidelines*, the change of circumstances required to vary Justice Lynch's order is "any change in circumstances that would result in a different child support order or any provision thereof."

[11] The tables determine child support based on three variables: the payor's income; the payor's province or territory of residence; and the number of children being supported. Mr. Power says that his income has changed, and this is the basis for his variation application.

[12] While Justice Lynch calculated child support using the tables, she imputed income to Mr. Power.

[13] In *Trang*, 2013 ONSC 1980, Justice Pazaratz addressed the question of whether a payor could simply rely on his or her current income (shown on line 150 of his or her tax return) in a variation application where the order sought to be varied was based on imputed income. He said, at paragraph 51:

> When the court imputes income, that's a determination of a fact. It's not an estimate. It's not a guess. It's not a provisional order awaiting better disclosure, or a further review. It's a determination that the court had to calculate a number, because it didn't feel it was appropriate to rely on - or wait for - - representations from the payor.

[14] Because Justice Lynch made a determination of fact, if Mr. Power believes that income was wrongly imputed he has two options: appeal the decision or bring a motion to set aside the order based on mistake or misrepresentation. According to the Court of Appeal in *Gaetz v. Jakeman*, 2005 NSCA 77, a variation application is neither an appeal nor an opportunity to re-litigate the prevailing order. A variation application proceeds on the basis that the prevailing order was correct when it was made, and that it has been superseded by later events.

[15] At paragraphs 43 to 60 in *Trang*, 2013 ONSC 1980, Justice Pazaratz considered whether all variation applications involve the same analysis. At paragraph 46, he concluded that where support is based on imputed income, "a more comprehensive analysis is required" in variation applications. This analysis compels me to consider:

> a. *Why* did income have to be imputed in the first instance? Have those circumstances changed? Is it still appropriate or necessary to impute income to achieve a fair result?
>
> b. *How* exactly did the court quantify the imputed income? What were the calculations, and are they still applicable?

[16] Justice Pazaratz said, at paragraph 52 in *Trang*, 2013 ONSC 1980, when a payor argues that an imputed income level is no longer appropriate, the payor must "go beyond establishing

[his or her] subsequent "declared" income". The payor must offer evidence of changed circumstances that establishes either:

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

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

[17] I accept this is the correct approach to adopt in deciding Mr. Power's variation application. As Justice Pazaratz said, at paragraphs 53 to 60 in *Trang*, 2013 ONSC 1980, allowing a payor to vary child support based on declared income, after income has been imputed, defeats the purpose of imputing income. The burden is on the party seeking the variation to prove that circumstances have changed, not for the support recipient to prove that income should still be imputed to the payor.

***Why* did income have to be imputed in the first instance?**

[18] Adopting Justice Pazaratz's analysis, I must first consider why Justice Lynch imputed income to Mr. Power in 2013.

[19] At paragraph 23 of her decision, Justice Lynch gave four specific reasons for imputing income to Mr. Power. First, she found that Mr. Power had diverted income to his current wife which would affect the level of child support he ought to pay: this circumstance is found in clause 19(1)(d). Second, Justice Lynch said there was "an abundance of evidence" that Mr. Power had "failed to provide income information which was requested by counsel for Ms. Power, which was directed by the court and which was ordered to be provided in the Corollary Relief Judgment." This relates to clause 19(1)(f). Third, she found that there was evidence that expenses Mr. Power had deducted from his income were "not all reasonable". This circumstance is found in clause 19(1)(g). Fourth, having regard to clause 19(1)(h), Justice Lynch found that Mr. Power derived a significant portion of his income from dividends.

Have the circumstances justifying the imputation of income changed?

Clause 19(1)(d) - diverting income

[20] In March 2013, Justice Lynch concluded that Mr. Power diverted income to his current wife that would affect the level of his child support payments. Clause 19(1)(d) provides that income may be imputed where "it appears that income has been diverted which would affect the level of child support to be determined under these *Guidelines*". It's unclear from her decision exactly how the diversion of income to Tara Power affected the level of child support to be determined under the *Guidelines*.

[21] During an examination in aid of execution conducted under the *Maintenance Enforcement Act* in November 2013, when Mr. Power was questioned about these payments to his wife, he couldn't identify how these funds were used.

[22] Before me, Mr. Power didn't testify about diverting income to his wife. He didn't address this issue in his affidavit.

[23] Mr. Power's Statement of Expenses showed that he was paying his wife $4,000.00 each month "for all household expenses including but limited to mortgage, utilities, food, child related expenses."

[24] Mr. Power provided no information to put the $4,000.00 in context: I don't know whether he is paying all of the expenses or a fraction of them. According to his affidavits, his current wife is employed by the federal government. I do not know her income, and I cannot determine whether the $4,000.00 payment is excessive, appropriate or paltry.

[25] Mr. Power hasn't proven that this continued diversion of funds no longer affects the level of child support that would be determined under the *Guidelines*.

Clause 19(1)(f) - failing to provide income information despite legal obligation

[26] On his July 2014 Statement of Income, Mr. Power indicated that he is now self-employed. He was previously employed by a company he controlled.

[27] Self-employed individuals are required to provide true copies of the financial statements of their business or professional practice for the three most recent tax returns and a statement showing a breakdown of all payments or benefits paid to or for non-arm's length individuals and corporations with their Statements of Income. This requirement is imposed by subsection 21(1) of the *Guidelines* and reiterated in *Civil Procedure Rule* 59.11(1).

[28] Mr. Power did not provide the requisite disclosure relating to his self-employment with his July 2014 Statement of Income. Separately, he filed invoices from MouseWorks, a company headquartered at his home, to Training Ground. According to Ms. Power, Training Ground is a company name which Mr. Power chose for a business he wanted to operate. Ms. Power suggests Mr. Power has an interest in Training Ground.

[29] Both MouseWorks and Training Ground have been registered in Anguilla as operating from the very same address. Information from Anguilla's Commercial Registry identifies Fiona Curtis as a common actor in both companies. If Mr. Power is involved in both companies (and he has not categorically stated that he is not), then he is being paid at two levels: first, by the work MouseWorks bills to Training Ground and, second, by the amount Training Ground bills its clients in excess of the amount of MouseWorks' invoices. The evidence raises a suspicion that Mr. Power's corporate holdings are more extensive than they appear. If this is correct, his financial disclosure doesn't fulfil his legal obligation. It isn't necessary for me to decide whether his disclosure is sufficient on this point because it falls short otherwise.

[30] Mr. Power also provided a profit and loss report for MouseWorks for 2013 and one for the first six months of 2014. These materials were unsupported by any receipts. Mr. Power said that he had prepared these statements at his lawyer's request. These were filed less than one week before the hearing began. The date of their filing made it impossible for Ms. Power to request or review supporting documents. These profit and loss reports showed professional fees described as "management consulting fees" and "consulting and services fees", but there is no detail to confirm that these payments or benefits aren't paid to non-arm's length individuals or corporations.

[31] Mr. Power said he generated the profit and loss reports on September 19, 2014, and testified that the contents were true and accurate as of that date. While he offered these documents for the truth of their contents (without corroborating documents), during cross-examination, when questioned about why he hadn't prepared a series of monthly profit reports, Mr. Power said "My credibility in terms of providing paper is somewhat subject." This statement served as a gentle reminder of Mr. Power's admission to Justice Lynch that he had been dishonest about his income to Ms. Power, to Her Ladyship and to the Canada Revenue Agency.

[32] Mr. Power continues to fail to provide income information despite the legal obligation imposed on him by *Civil Procedure Rule* 59.22(1), which parallels section 21(1) of the *Guidelines*.

Clause 19(1)(g) - unreasonably deducting expenses from income

[33] The Statement of Income requires parties to state their "gross salary or wages or **net** professional income". Mr. Power estimated his net professional income at $7,500.00 each month. When dealing with net professional income it's important to consider the expenses that have been deducted from the gross professional income.

[34] In the 2014 profit and loss report he prepared, Mr. Power deducted $13,038.32 for legal expenses. More than $14,000.00 was deducted in 2013. Mr. Power identified no legal expenses required to be incurred by or for MouseWorks. In cross-examination, Mr. Power admitted that he, personally, is the subject of a forensic audit by the Canada Revenue Agency and he said that this was the only legal proceeding in which he was involved, though it has not progressed to a court. It appears that Mr. Power's personal legal expenses are being deducted from MouseWorks' income, rather than from Mr. Power's own income - which would be done *after* his child support was calculated on his total income. By deducting his personal expenses from MouseWorks' income, he is reducing the income upon which his child support payments would be determined.

[35] As well, Mr. Power deducted expenses for travel and accommodation of $7,096.07, while noting that these were "reimbursable".

[36] Mr. Power's report showed MouseWorks to have a profit of $80,157.97 to June 2014. This equates to a monthly minimum of $13,359.66 (not the $7,500.00 that Mr. Power claimed on his Statement of Income). At this level of monthly income, Mr. Power's annual income would

be approximately $160,000.00. If I include the reimbursable expenses and legal expenses, the company's profit for that period is $100,292.36 or $16,715.39 each month. Depending on whether I use the profit amount calculated by Mr. Power or the adjusted profit figure which I have calculated, Mr. Power's annual income is in the range of $160,000.00 to slightly more than $200,000.00.

[37] Mr. Power continues to unreasonably deduct expenses from his income, based on this evidence.

Clause 19(1)(h) - deriving a significant portion of income from dividends

[38] Justice Lynch rendered her decision in March 2013. According to his 2012 return, except for the Universal Child Care Benefit of $1,200.00, his entire income came as dividends from an unidentified taxable Canadian corporation.

[39] The most recent income tax return Mr. Power provided was his 2013 income tax return, which reported his income as "other employment income". His tax return did not attach T-slips which would allow me to know how his income was received or from whom it was paid. According to the return, this other employment income was foreign employment income.

[40] According to Mr. Power's July 2014 Statement of Income, he derived no income from dividends. He swore he had "gross salary or wages or net professional income" in the estimated annual amount of $90,000.00 as a "freelance identity and access management specialist".

[41] From his 2013 tax return, it appears that Mr. Power no longer derived a significant portion of his income from dividends. His 2014 tax return was not provided. It would not have been available when the hearing began in September 2014 and when the hearing resumed, in 2015, he was being cross-examined.

[42] Mr. Power's financial disclosure raises another issue. Mr. Power testified that because he did a poor job of managing his finances, he hired Counsel Limited, a company in Anguilla, to do this for him.

[43] On Mr. Power's February 2013 Statement of Income, he indicated that he was an employee in 2011 and 2012 and that, as well, he controlled a corporation. His employer was Training Ground. Mr. Power invoiced Training Ground through his company, MouseWorks.

[44] According to his 2012 tax return, he was paid entirely by way of dividends. MouseWorks invoiced Training Ground, received the payments, and paid them to Mr. Power by way of dividends. Based on his Statement of Income and his 2011 tax return, a different sort of arrangement seems to have existed in 2011: his total income in that year was derived from dividends and "other income", the source of which wasn't identified.

[45] Letters from Fiona Curtis were attached to Mr. Power's 2013 Statement of Income. In these, she said that Mr. Power was employed by Training Ground in 2011 and in 2012.

However, records from the Commercial Registry in Anguilla show that Training Ground wasn't formed until November 2012.

[46] The web of companies in which Mr. Power has been involved is intricately woven. In his testimony, Mr. Power said various companies hired him to work for their clients: for example, Training Ground, dCipher Inc., and MouseWorks (in its Anguillan form). His invoices to these companies, correspondence from them, and the Anguillan Commercial Registry information show that all these entitles have the same address: The Hansa Bank Building, First Floor, Landsome Road, The Valley, Anguilla. Fiona Curtis is a common actor in each company. Counsel Limited appears to manage each company. Angela Power suggests that Mr. Power is involved in these companies, and that Anguillan corporate law enables this to be hidden. Attachments to Mr. Power's tax return may have shed some light on this, but they were not filed.

[47] Mr. Power provided copies of invoices from MouseWorks to BeachHead Incorporated and from himself to Aviva Canada for the period from January 6, 2014 to June 26, 2014. These totalled $125,924.63. Approximately $16,400.00 of this amount was HST, calculated at the thirteen percent rate used in Ontario.

[48] The profit and loss report for MouseWorks for the period from January 1, 2014 to June 2014 was prepared by Mr. Power. It showed that MouseWorks had total consulting income of $111,677.50. This amount does not match the invoices that were provided to me. This discrepancy wasn't explained. One possible explanation is that there are additional invoices which were not provided.

[49] Historically, Mr. Power was a shareholder of MouseWorks, and it paid him dividends. Mr. Power said, as best his evidence can be understood, that he retained the name "MouseWorks" because Fiona Curtis liked the logo. MouseWorks' name and logo disappeared from his invoices at the end of May 2014. However, the June 2014 balance sheet and profit report show consulting income was earned for that month.

[50] The three most recent invoices attached to Mr. Power's 2014 Statement of Income have been redacted to remove the name of the company billed for Mr. Power's services. The postal code which remained visible does not match the postal codes of any of the other companies he invoiced, suggesting this was an additional income source.

[51] If I accept Mr. Power's testimony that Counsel Limited is managing his financial affairs, I must assume that his dealings with the company have changed significantly. His July 2014 Statement of Income encloses a letter from Fiona Curtis (writing on behalf of Training Ground) stating that "no withholdings were made" on Mr. Power's behalf in 2011 and he "is solely responsible for taxation and other federal and local and federal disclosure and contributions." Fiona Curtis also provided a second letter which was attached to Mr. Power's 2013 Statement of Income. In it, she said that from January 1, 2012 to July 6, 2012 (the date of her letter), "No withholdings were made on behalf of Mr. Power and he is solely responsible for taxation and other federal and local and federal contributions disclosure and contributions." This too was written on behalf of Training Ground. The balance sheet Mr. Power provided for MouseWorks as of June 30, 2014 showed no amounts withheld for taxes, CPP or Employment Insurance.

Until May 2014, MouseWorks operated from Mr. Power's home address. Commercial Registry information from Anguilla shows that MouseWorks was formed in Anguilla in November 2012 and was still in good standing in December 2013.

[52] Mr. Power did not explain why, in attempting to order his financial affairs, it was appropriate or necessary to deal with a foreign company. Mr. Power could reasonably expect his former wife would suggest that he was seeking to put his income beyond the reach of Canadian enforcement agencies. He did not address this. His current financial dealings trace back to an organization which appears to have been part of his financial problems in the past as a result of its failure to remit federal payments for income tax.

[53] In the absence of his T-slips or any documentation showing how he was paid, I cannot determine that Mr. Power no longer derives a significant portion of his income from dividends.

Is it still appropriate or necessary to impute income to achieve a fair result?

[54] The objectives of the *Federal Child Support Guidelines* include establishing "a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation". Imputing income is one way in which this is done.

[55] At paragraph 55 of *Trang*, 2013 ONSC 1980, Justice Pazaratz made clear that, "The onus is on the support payor to establish that there should be a change in the way their income is to be calculated."

[56] Mr. Power has not shown the circumstances which prompted Justice Lynch to impute income to him to have changed. I conclude that it remains appropriate and necessary to impute income to Mr. Power to achieve a fair result. In these circumstances, the fair result is a level of child support that ensures the children continue to benefit from their father's financial means.

***How* exactly did Justice Lynch quantify the imputed income?**

[57] Justice Lynch quantified Mr. Power's income by grossing up his reported income by forty percent. Ms. Power advocated this approach. Mr. Power disagreed with this amount, but offered no alternative. Her Ladyship specifically said, at paragraph 24, "Pouring over the documents provided by Mr. Power provides little assistance as there are documents missing, inaccuracies in the documents and dishonesty in the documents."

Are the calculations still applicable?

[58] Neither party has adduced any evidence to suggest that the calculations done by Justice Lynch are no longer appropriate. Mr. Power, of course, argues that the income stated on his Statement of Income is the appropriate amount to use, but I have found that it remains appropriate to impute income to him.

[59] Mr. Power has not identified any changes in his expenses which would suggest that his means have changed.

[60] Justice Lynch identified the shortcomings in Mr. Power's evidence as arising from missing, inaccurate and dishonest documents. Those specific problems do not plague me. Since Justice Lynch made her decision, Mr. Power has re-ordered his affairs and moved them offshore. He has not clearly accounted for his financial dealings. He has found a new way to obscure his finances.

[61] I find that the calculation Justice Lynch made remains appropriate.

[62] I conclude that Mr. Power has not proven a material change in circumstances, and I dismiss his variation application.

Retroactive reduction of child support

[63] Our Court of Appeal considered an application to vary child support retroactively in *Smith v. Helppi*, 2011 NSCA 65 at paragraph 21 where Justice Oland (on behalf of the unanimous court) adopted the reasoning of Justice Robertson of the New Brunswick Court of Appeal in *Brown*, 2010 NBCA 5 (now reported as *P.M.B. v. M.L.B.*), that:

> . . . the jurisdiction to order a partial or full remission of support arrears is dependent on the answer to two discrete questions: Was there a material change in circumstances during the period of retroactivity and, having regard to all other relevant circumstances during this period, would the applicant have been granted a reduction in his or her support obligation but for his or her untimely application? As a general proposition, the court will be asking whether the change was significant and long lasting; whether it was real and not one of choice.

[64] So, I am to determine whether the change Mr. Power alleges was: significant, long lasting and not of his making. Only if it was all of these things may I then vary his child support obligation retroactively.

[65] According to Mr. Power's evidence, his employment circumstances changed in November 2013, after enforcement proceedings resulted in the revocation of his passport. He said that this impaired his ability to secure employment, both because he was no longer able to travel, and he lost the Canadian and American security clearances which were attached to his passport. He said that his work visas, including his work visa for the United States, were revoked when his passport was revoked.

[66] Mr. Power's passport was revoked on October 31, 2013. It was returned to him on March 10, 2014. Approximately four months later, he filed this variation application.

[67] According to Mr. Power, he was doing most of his work in the United States for American companies and when he lost his passport he "was unable to continue to work".

[68] Mr. Power also testified that a website, created by Sean Forbes, describing him and documenting his failure to pay child support, hurt his ability to find work. He has not identified by name, any individual who does not employ him as a result of the website. He has not identified any past or present employer who has accessed the website.

[69] Mr. Power has not provided evidence to substantiate his assertions about the impact of the temporary loss of his passport, work visas and security clearances, and the website, and I do not accept his claims that his earnings have suffered.

[70] In cross examination, Mr. Power admitted that regardless of the revocation of his passport in October, 2013, MouseWorks invoiced the company for which it provided services for $26,256.00 in the month following the loss of his passport. Previous invoices had been submitted until the end of October 2013, so the November invoice would have related to employment following the loss of his passport, visas and security clearance.

[71] According to the invoices he provided, MouseWorks continued operation until June 2014, more than one year after Justice Lynch granted her order. I have noted, at paragraph 36, that MouseWorks continued to generate considerable income throughout the first five to six months of 2014, for which Mr. Power provided financial disclosure.

[72] Describing himself as a "piss-poor bookkeeper, accountant" and someone who "could not manage a business", Mr. Power engaged with a financial management company in 2013 because he "had issues with Revenue Canada". This financial services company is located in Anguilla. Mr. Power testified that when he submits an invoice for payment, he receives notification that he is paid. He said that he had no idea where the payment goes. He was unable to identify that his expenses were actually paid by the financial management company.

[73] Mr. Power agreed that certain documents could be entered for the truth of their contents. Included in these is the summary of Mr. Power's examination in aid of execution by Barbara Larade of the Maintenance Enforcement Office. According to this, Mr. Power said that Training Ground (one of the companies for which he works, which represents him largely in North America and the Caribbean), "works in very confidential circles that advertising is not needed and it has a client base currently with word of mouth advertising". Where advertising wasn't needed, Mr. Power's poor reputation in cyberspace wouldn't be relevant.

[74] Mr. Power's passport was revoked when he failed to make ordered child support payments. In October 2013 when he learned his passport would be revoked, Mr. Power took no steps to pay the amounts ordered. During his examination in aid of execution, Mr. Power said that when his passport was revoked, he "drained his accounts" to provide money for himself – not to meet his court-ordered obligation to his son and daughter.

[75] The website created by Mr. Forbes in early 2014 sought information about Mr. Power's employment to enable enforcement of support and costs orders. It recited details of Justice Lynch's decision and Justice Beveridge's decision on Ms. Power's motion for security for costs. According to Mr. Forbes, but for Mr. Power's failure to meet his child support obligations, the website would not exist. Mr. Forbes testified that statements that were defamatory would be

removed from the website and, "if the cause for the website no longer existed" it would "absolutely" be taken down.

[76] Mr. Power has not satisfied me that any of the requirements of *Smith v. Helppi*, 2011 NSCA 65 are met. The loss of his passport resulted from his failure to pay child support. It is a circumstance of his making. It was not a circumstance which lasted for long. His passport was returned to him less than five months later. The loss of his work visas and security clearances has not prevented him from being employed. He remained able to work and has continued to work.

Relief claimed under the *Maintenance Enforcement Act*

[77] Mr. Power also claimed an order under sections 15 and 46 of the *Maintenance Enforcement Act*, S.N.S. 1994-5, c. 6. The former section deals with the enforcement of arrears. Within section 15 only subsection 15(4) provides any relief which might be claimed by a payor: where a payor disputes the amount of arrears, the payor may apply to court for an order determining the amount of arrears.

[78] Here, I have no evidence that Mr. Power disputes the amount of arrears calculated by the Maintenance Enforcement Program, having regard to the child support ordered and the amount he has paid. He disputes the amount of arrears because he takes issue with the amount of child support he was ordered to pay.

[79] Section 15 of the *Maintenance Enforcement Act* deals with enforcement of arrears by the Director. In the context of enforcement proceedings, either the recipient or payor may challenge the amount calculated to be in arrears. In *Bell*, 2013 NSSC 330 at paragraph 22, I've expressed my view that this section of the *Act* is restricted to proceedings involving the Director.

[80] Section 46 deals with the recovery of payments. Subsection 46(4) is the only subsection which could possibly apply to these parties. It provides that where payment under a maintenance order is in default, I may grant an order relieving a payor of the obligation to pay the full amount that is in default, or some part of it, where I am satisfied of two things: first, that it would be grossly unfair and inequitable not to do so, having regard to the payor's interests, and second, that it is justified having regard to the interests of the person entitled to payments.

[81] Mr. Power adduced no evidence with regard to whether it would be grossly unfair and inequitable to not relieve him of the obligation to pay some or part of the accumulated child support arrears. Similarly, he adduced no evidence with regard to whether it was justified to relieve him of his obligation, having regard to the interests of his son and daughter, who are entitled to the payments.

[82] In the absence of this evidence, I dismiss Mr. Power's application to be relieved of some or part of his arrears of child support.

Conclusion

[83] Mr. Power's application to vary his child support both retroactively and prospectively, and his claim for orders under sections 15 and 46 of the *Maintenance Enforcement Act* are dismissed. An order has been prepared.

[84] If the parties wish to be heard on costs, they may file submissions by September 8, 2015.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia