

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**Citation: *Murray v. Proulx*, 2018 NSSC 214**  
**ENDORSEMENT**

September 11, 2018

Jason Murray v. Sara Proulx  
SFH-DVRO 109251

Appearances: Jason Murray unrepresented  
Sara Proulx unrepresented and not appearing

**Decision:**

Beginning on January 1, 2018, Jason Murray shall pay monthly child support of \$109.00 for two children based on an annual income of \$13,500.00.

Jason Murray shall provide Sara Proulx with a copy of his income tax return every year by June 1 of the year.

Jason Murray must advise the Maintenance Enforcement Program of his home and work address and keep MEP advised of any changes to these addresses, notifying MEP within ten days of any change.

Jason Murray's child support payments from January 1, 2014 to December 31, 2017 are as set out in the table at paragraph 19 of this endorsement.

**Reasons:**

1. Jason Murray has applied to vary the April 30, 2012 order of Justice M. Quigley. He wants to vary child support prospectively and retroactively. His application is a provisional one under section 18 of the *Divorce Act*, R.S.C. 1985 (2<sup>nd</sup> Supp.), c. 3. My order is provisional and does not become final until confirmed by a court in Ontario.
2. Sara Proulx is the respondent. In 2012 she used the surname Steinburg.
3. Justice Quigley ordered Mr. Murray to pay monthly child support of \$500.00 for his daughters, Haley (born June 23, 2005) and Katlynn (born May 12, 2008). Payments were to start on May 1, 2012.

4. Justice Quigley made the order in Mr. Murray's absence. Mr. Murray did not appear and filed no materials.
5. First, I consider Mr. Murray's prospective application.
6. Mr. Murray was laid off from his employment in December 2017.
7. He is starting his own business and projects an annual income of \$10,000.00 to \$15,000.00 for 2018. He has made a few thousand dollars since starting his business in August. Based on his projection and his earnings to date, I find his income in 2018 is \$13,500.00 and I order him to pay monthly child support of \$109.00 each month beginning on January 1, 2018 and continuing until further court order or agreement of the parties.
8. Mr. Murray must provide Ms. Proulx with a copy of his income tax return every year by June 1 of the year.
9. Mr. Murray must advise the Maintenance Enforcement Program of his home and work address and keep MEP advised of any changes to these addresses, notifying MEP within ten days of any change.
10. Next, I consider Mr. Murray's retroactive application. Mr. Murray has three reasons for his retroactive application: he made payments directly to Ms. Proulx that aren't reflected in the records of the Maintenance Enforcement Program; the number of children in Ms. Proulx's care was reduced; and his income was lower than the amount on which Justice Quigley based his child support payments.
11. The jurisdiction to remit arrears depends on the answers to two questions:
  - Was there a material change in circumstances during the retroactive period, and
  - Considering all the relevant circumstances, would Mr. Murray have been granted a reduction in his support obligation but for his untimely application: *Smith v. Helppi*, 2011 NSCA 65.
12. The change must be "significant and long-lasting", "real and not one of choice: *Smith v. Helppi*, 2011 NSCA 65.
13. Exhibit 2 is a collection of records Mr. Murray provided showing child support payments he made before the MEP became involved. These materials show he paid \$5,625.00, reducing MEP's opening balance of arrears from \$12,680.04 to \$7,055.04.

14. The outstanding balance calculated by MEP is premised on a monthly child support obligation of \$500.00. This premise is challenged by Mr. Murray's claims that Haley lived with him for some of the time he was ordered to pay support and that his income has been too low for him to pay this amount.
15. Mr. Murray testified that Haley lived with him from the start of the summer of 2014 until the end of the summer of 2015. The girls generally spend their summers with Mr. Murray and Haley lived with her father during her Grade 4 year.
16. Mr. Murray's testimony is supported by Haley's school records and a letter from Ms. Proulx confirming that Haley could live with her father.
17. Haley's time with Mr. Murray means that for 2014 and 2015, she was in his primary care. She lived with him for more than 60% of each year and he should not have been required to pay child support for her during that time: section 9, *Federal Child Support Guidelines*, SOR/97-175. He was required to pay support only for Katlynn. (Mr. Murray has not asked for child support for Haley under section 8 of the *Guidelines*).
18. Mr. Murray provided his tax records for 2014, 2015, 2016 and 2017. These show his income was in the range of \$40,000.00 to \$44,000.00 from 2014 to 2016 and approximately \$13,000.00 in 2017 when he was unemployed. Mr. Murray's reduced income has been consistent and reflects his income-earning ability.
19. I calculate Mr. Murray's child support for these years as shown in the table below.

<b>Year</b>	<b>Income</b>	<b>Number of children</b>	<b>Monthly amount</b>	<b>Annual total</b>
2014	41,224.00	1	347.00	4,164.00
2015	43,974.88	1	369.00	4,428.00
2016	40,241.00	2	573.00	6,876.00
2017 (old tables)			126.00	1,386.00
2017 (new tables)	13,043.00	2	92.00	92.00
<b>Total owed</b>				<b>16,946.00</b>

**Additional direction:**

The provisional package will be prepared and forwarded to Ontario. Mr. Murray will receive a copy of the package. The terms of the provisional order are not final until confirmed by a court in Ontario.

A separate order has been granted directing the MEP to suspend enforcement so that Mr. Murray's driver's license will be returned to him and he can work.

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