

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Martin v. Powell*, 2025 NSSC 211

Date: 2025-06-20

Docket: *SFSNMCA* No. 032996

Registry: Halifax

Between:

Jason Anthony Martin

Applicant

v.

Casandra Jean Powell

Respondent

Judge: The Honourable Justice Theresa M Forgeron

Heard: October 30 and 31, 2024 and January 3, 2025, in Halifax,
Nova Scotia

Decision: June 20, 2025

Counsel: Jason Martin, self-represented
Alan J. Stanwick, counsel for the Respondent, Casandra Powell

By the Court:

Introduction

[1] Jason Martin and Casandra Powell disagree about outstanding child support for their two adult children – Justice born in December 2003, and Jasmine born in June 2005.

[2] The parties only court order issued in June 2010. The order granted sole custody to Ms. Powell and directed Mr. Martin to pay child support of \$405 per month, based on an annual income of \$27,000. The order was not registered with the Maintenance Enforcement Program.

[3] Thirteen years later, in July 2023, Ms. Powell registered the order with MEP and stated that Mr. Martin owed her about \$46,000 in child support arrears. Ms. Powell stated that Mr. Martin consistently paid support until November 2013 and thereafter only paid sporadically. After Ms. Powell registered the order, MEP sought to enforce the outstanding arrears, together with the prospective monthly payments.

[4] Mr. Martin contested Ms. Powell's claim and on November 23, 2023, filed a variation application for four reasons. He stated that:

- He always paid child support by cash as requested by Ms. Powell. He was never in arrears.
- In about 2014, the children began to live with him for at least 40% of the time.
- At times, the children stopped living with Ms. Powell. For example, from September 2021 until June 2022, Justice lived in Cape Breton to pursue post secondary studies where she lived independent of either party. Further, during the summer of 2022, Justice lived with him. In addition, from July 2022 until June 2023, Jasmine lived exclusively with him and then moved in with her friend.
- The children are no longer dependent. In March 2024, Jasmine became permanently employed and financially independent, although she stopped living with either party by September 2023. In June 2024, Justice became financially independent as she worked full-time hours before gaining a permanent position in September 2024.

[5] Ms. Powell objected to Mr. Martin's variation application. In addition to collecting maintenance arrears, Ms. Powell sought a retroactive increase in child support from January 2014 forward. In so doing, Ms. Powell underscored that Mr. Martin never disclosed his annual income until after he filed his variation application and that he clearly was underpaying child support.

[6] The contested hearing was held on October 30 and 31, 2024, and January 3, 2025. Each of the parties testified, along with Jacob Kearley, Leon Duchene, Julia Donovan, Shyanne Donovan, Jennifer Robertson, and Glenda Powell. Final submissions were delivered on January 3, 2025.

Issues

[7] To resolve the competing claims, I will answer the following three questions:

- Where did Justice and Jasmine live after January 1, 2014?
- When did Justice and Jasmine cease to be dependent?
- Should either party's variation application be granted?

Analysis

Where did Justice and Jasmine live after January 1, 2014?

Position of the Parties

[8] The parties disagree about where the children lived after January 2014.

[9] Ms. Powell states that she always had primary care of both children except from September 2022 to June 2023, when Jasmine lived with Mr. Martin and Justice lived with her. Otherwise, she states that the children were in her primary care pursuant to the 2010 court order, including from September to December 2023, when Jasmine lived at her friend's home while completing grade 12.

[10] Mr. Martin disagrees. He states that there was a shared parenting arrangement in place until 2021 when Justice moved to Cape Breton for her studies and returned to live with him the following summer before returning to Cape Breton. In August 2022, he states that Ms. Powell moved to Cape Breton and Justice began living with

her. In addition, he states that Jasmine lived exclusively with him from June 2022 until August 2023, when she stayed with her friend to finish out the school year.

Decision

[11] I have reviewed the evidence of the parties and the various witnesses. In reaching my decision, I have made credibility determinations by applying principles stated in *Baker-Warren v Denault*, 2009 NSSC 59, as approved in *Gill v Hurst*, 2011 NSCA 100. In addition, I made inferences in keeping with the comments of Saunders, JA in *Jacques Home Town Dry Cleaners v Nova Scotia (Attorney General)*, 2013 NSCA 4. In making my findings, I note that I can accept all, some, or none of what the witnesses said. After completing my credibility analysis, I find the evidence of Mr. Kearley, Mr. Duchene, and Ms. Julia Donovan most helpful and credible. In addition, at times, I prefer the evidence of Mr. Martin to that of Ms. Powell.

[12] After considering the evidence, I make the following findings of fact:

- Ms. Powell exercised primary care of the children from 2010 until 2014.
- In 2014, Mr. Martin and Ms. Donovan moved to Dartmouth to be closer to Justice and Jasmine. Ms. Powell was already living in the Dartmouth area with her common law partner. Mr. Martin, Ms. Powell, and their partners enjoyed an excellent coparenting arrangement. The parties and their common law partners allowed the children to move freely from home to home.
- Starting in 2014, the children began to spend more time with Mr. Martin such that they generally stayed with him on all weekends, half of the holidays, during the summer, and between 2017 and 2019, on other days when Mr. Martin was coaching basketball as Justice and Jasmine liked to work the concession stands and time clocks. On a balance of probabilities, beginning in 2014, Mr. Martin had the children in his care for at least 40% of the time.
- In September 2021, Justice moved to Cape Breton to study and initially stayed with a maternal cousin. Ms. Powell paid for some of Justice's expenses, although these were not quantified. In January 2022, the cousin moved out and Justice shared the rent with three other roommates. Further, Justice worked during this time. At some point, an

altercation occurred amongst the roommates, and Mr. Martin travelled to Cape Breton to sort out the issue.

- Justice returned to Halifax in the summer of 2022. She lived with both parties.
- After ending her relationship with her former partner, in July 2022, Ms. Powell moved to Cape Breton where she had full time employment. Justice and Jasmine continued to live with Mr. Martin.
- In September 2022, Justice returned to Cape Breton to continue her studies and lived with Ms. Powell. Jasmine remained living with Mr. Martin.
- In the summer of 2023, Mr. Martin moved. Because Jasmine wanted to complete grade 12 at the school she always attended, she moved in with a friend. She successfully completed her high school courses in December 2023.

When did Justice and Jasmine cease to be dependent?

[13] Jasmine completed her studies in December 2023. She found full-time employment by March 2024. Jasmine stopped living with her parents in September 2023. Ms. Powell provided some money to Jasmine between September and December 2023, although the amounts were not clarified. Jasmine ceased being dependent on her parents when she moved in with her friend in September 2023.

[14] Justice graduated in June 2024. She was working full-time hours as of June 2024, although she did not obtain permanent employment until September 2024. Justice ceased being dependent as of June 1, 2024.

Should either party's variation application be granted?

[15] The first stage of the analysis involves a determination of the notional amount of child support that Mr. Martin would have paid based on the *CSG* and using the Nova Scotia tables commencing January 1, 2014. The calculations assumed the following points:

- The 2011 tables were used until December 2017.
- The 2017 tables, which came into effect in November 2017, were used as of January 2018.

- In 2024, I prorated Mr. Martin's paystub to arrive at an income estimate for the year.
- The impact of the shared parenting arrangement will be considered later in my analysis because I don't have the necessary income and expense information to complete the s. 9 Contino analysis. Neither do I have a children's budget.
- From July 2022 to June 2023, child support is based on each party having care of one child. In July to December 2022, Mr. Martin should have paid \$634 for one child, while Ms. Powell should have paid \$367 based on an income of \$43,068, leaving a setoff of \$267.
- From January 1, 2023 to August 2023, child support is based on each party having care of one child. Mr. Martin should have paid \$634 for one child, while Ms. Powell should have paid \$439 based on an income of \$51,675, leaving a setoff of \$195.
- From September 2023 to December 2023, child support is based on Ms. Powell having care of one child.
- From January to June 2024, child support is based on Ms. Powell having care of one child.

Year	Notations	Income	Table	Annual Due
2014		\$26,647	\$ 388	\$ 4,656
2015		\$32,433	\$ 473	\$ 5,676
2016		\$28,368	\$ 413	\$ 4,956
2017		\$34,856	\$ 504	\$ 6,048
2018		\$38,032	\$ 562	\$ 6,744
2019		\$50,600	\$ 726	\$ 8,712
2020		\$60,025	\$ 853	\$ 10,236
2021		\$66,475	\$ 940	\$ 11,280
2022	(6 months)	\$74,031	\$ 1,043	\$ 6,258
2022	(6 months split)	\$74,031	\$ 267	\$ 1,602

2023	(8 months split)	\$73,969	\$ 195	\$ 1,560
2023	(4 months)	\$73,969	\$ 634	\$ 2,536
2024	(6 months)	\$76,000	\$ 651	\$ 3,906
Total Notionally Due				\$74,170

[16] Mr. Martin must receive credit for all child support paid. I find that Mr. Martin proved that he paid significantly more than alleged by Ms. Powell. I do not find the receipt book to contain all payments made by Mr. Martin.

[17] I accept the evidence of Mr. Martin when he said that he paid cash at Ms. Powell's request and that she refused to supply receipts after he moved to Dartmouth. I accept that Mr. Duchene was present on one occasion in 2016 when Ms. Powell refused to supply a receipt. In addition to the evidence of Mr. Martin and Mr. Duchene, I do not accept that Ms. Powell would wait about ten years to seek enforcement if child support was not being paid.

[18] I find that Mr. Martin proved that he paid the court ordered maintenance until the summer of 2022 when each party had care of one child. Therefore, for the period between January 2014 and June 2022, I find that Mr. Martin paid \$405 monthly to Ms. Powell, for a total credit of **\$41,310**.

[19] In addition, once the order was registered with MEP, Mr. Martin began to pay child support directly to them. He is to receive credit for all payments made through MEP which assuming continued collection should equal **\$8,505**. The actual credit amount will be confirmed by MEP.

[20] Assuming the factors listed above, Mr. Martin would owe **\$24,355** in child support if a retroactive accounting was granted back to January 1, 2014. In this case, Mr. Martin has requested a downward variation based on the fluid parenting arrangements while Ms. Powell requests a retroactive increase based on Mr. Martin's increased income.

[21] In *Hilchey v Boutilier*, 2024 NSSC 198, I reviewed foundational legal principles that apply to variation requests as stated in *DBS v SRG*, 2006 SCC 37, and as expanded in *Michel v Graydon*, 2020 SCC 24 and *Colucci v Colucci*, 2021 SCC 24 which include the following points:

- Parents who do not increase their child support payments to correspond with their incomes do not fulfill their obligations to their children.
- Parents should not profit from knowingly paying inadequate support or from making inadequate or delayed disclosure.
- As a disproportionate number of single mothers and their children live in poverty, which impacts access to justice, a holistic response is required.
- Information asymmetry is connected to the determination of effective notice and the presumptive period of retroactivity. For payee parents, effective notice only requires the broaching of an increase while for payor parents seeking a decrease, proof of income disclosure is required.

[22] At para 113 of *Colucci*, Martin J. confirmed the test to be applied where the payor seeks a downward variation of child support which summarized provides as follows:

- After a material change is proven, a presumption arises in favour of retroactively decreasing child support to the date the payor gave the recipient effective notice of the change in income, up to three years before formal notice of the application to vary.
- In the decrease context, effective notice requires clear communication of the change in circumstances together with income disclosure.
- Where no effective notice is given, child support should generally be varied back to the date of formal notice, or later if there is delayed disclosure, but with the discretion to select an earlier date if the result would otherwise be unfair taking into account the modified DBS factors.

[23] At para 114 of *Colucci*, Martin J confirmed the test where a payee seeks a retroactive increase in child support which summarized provides as follows:

- After a material change is proven, a presumption arises in favour of retroactively increasing child support to the date the recipient gave the payor effective notice of the request for an increase, up to three years before formal notice of the application to vary.
- In the increase context, because of informational asymmetry, effective notice requires only that the recipient broach the subject of an increase with the payor.

- Where no effective notice is given, child support should generally be retroactively increased to the date of formal notice with the discretion to select an earlier date if the result would otherwise be unfair taking into account the modified DBS factors.

[24] In this case, as neither party provided the other with effective notice, the presumption veers to the date of formal notice which for Mr. Martin was November 2023 and for Ms. Powell, shortly thereafter.

[25] I will now holistically review the **DBS** factors so I can determine whether an earlier date is appropriate based on whether the result would otherwise be unfair.

Understandable Explanation for Delay

[26] Mr. Martin stated that he did not apply earlier because he and Ms. Powell had an excellent coparenting arrangement. He thought all was going smoothly and that financial issues only arose after he applied and received the CCB in 2023 because Jasmine was living with him.

[27] Ms. Powell stated that she waited to seek an increase in child support because she was not aware of Mr. Martin's income until after he applied to vary.

Payor's Conduct

[28] Mr. Martin acted in a blameworthy manner when he failed to disclose his income to Ms. Powell and when he failed to increase the amount of child support payable after his income increased. These acts of blameworthy conduct are mitigated by the following:

- Although Mr. Martin did not apply to vary the parenting provisions of the prior court order, the children were nonetheless in Mr. Martin's care for at least 40% of the time. He paid for the children's expenses when they were in his care, including shelter expenses (they had their own bedrooms), as well as meeting their day-to-day needs while they were living with him. He also ensured that the children were on his health plan. In addition, starting in 2017, Mr. Martin paid for Jasmine's cell phone.
- In July 2021, in anticipation of Justice moving to Cape Breton for post secondary studies, Mr. Martin purchased a second-hand car for her use.

He paid \$2,400 for the car. Although Ms. Powell initially gave \$1,200 towards this purchase, this was repaid. Mr. Martin also paid for the car insurance and gave Justice gas money.

- In 2022 and 2023, Mr. Martin was exclusively caring for Jasmine.
- In 2022 and 2023, Mr. Martin paid about \$2,097 in co-pay fees for Jasmine's dental work and medication, mainly associated with the removal of Jasmine's wisdom teeth. The balance of the fees was paid by Mr. Martin's insurance provider.

Children's Circumstances

[29] The evidence was not as robust as it could have been on this issue. I have no understanding of any specific hardships experienced by Ms. Powell or the children as a result of the underpayment of the table amount. I do infer, however, given her income, Ms. Powell and the children likely experienced some financial challenges.

Hardship Factors

[30] The evidence about hardship was not as robust as it could have been. Any hardship factors can be mitigated by a repayment schedule.

Conclusion

[31] I find that it would be otherwise unfair not to grant a variation earlier than November 2023. Mr. Martin should have some relief given the changes to the parenting arrangements and his payment of the children's expenses as a result of the *de facto* shared parenting arrangement and then the split parenting arrangement. Second, Ms. Powell should have some relief given that Mr. Martin never disclosed his income prior to applying to vary and was underpaying child support.

[32] In the circumstances, and subject to verifying that \$8,505 was paid to MEP after the order was registered in 2023, I award retroactive child support in the amount of \$16,000 together with confirmation that Mr. Martin's prospective child support obligation is terminated. Mr. Martin will pay the retroactive award to Ms. Powell through monthly instalments of \$405, all such payments will continue to be paid through MEP.

[33] Counsel for Ms. Powell is to draft the variation order. If costs are sought, submissions should be filed by August 15, 2025 and response submissions by September 15, 2025.

Forgeron, J