SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Fox v. Muise*, 2024 NSSC 50

Date: 2024-02-29
Docket: *SFHMCA* No. 075135
Registry: Halifax

Between:

Leonard Fox

Applicant

v.

Margaret (Pegi) Muise

Respondent

Judge:	The Honourable Justice Theresa M Forgeron
Heard:	January 17 and 18, 2024, in Halifax, Nova Scotia
Written Release:	February 29, 2024
Counsel:	Leonard Fox, self represented Margaret (Pegi) Muise, self represented

By the Court:

Introduction

[1] Leonard Fox and Margaret Muise are the parents of two children who were born in 2001 and 2004. Although the parties never married, they previously shared a common law union. Because they had not resolved their outstanding issues, a contested hearing was held in 2012 and 2013 before Jollimore J. who rendered a decision about parenting, child support, and unjust enrichment.

[2] About nine years later, Mr. Fox sought to vary the child support and property provisions of the last court order. He stated that he should be reimbursed for overpaying child support by terminating the unjust enrichment award that was previously granted and which remained unpaid.

[3] Ms. Muise disagreed with Mr. Fox's position. She said that Mr. Fox underpaid child support. She wants the prior order enforced until the children ceased to be dependent.

Issues

[4] The following issues will be determined in my decision:

- Did Mr. Fox underpay or overpay child support?
- Should I retroactively adjust child support, and, if so, in what amount?
- Does the court have jurisdiction to cancel or vary the unjust enrichment award?

Background Information

[5] The parties' relationship spanned about 20 years; they separated in 2010. At the time of separation, their sons were 7 and 9. A contested hearing was held on November 20 and 21, 2012, and September 16 and 20, 2013. At its conclusion, Jollimore J. issued a decision, reported as ***Muise v Fox***, 2013 NSSC 349, and an order dated December 2013. The 2013 decision and order included the following provisions:

- Ms. Muise was granted primary care of both children.

- Based on his evidence, Mr. Fox's annual income was found to be $73,400 in 2012 and 2013.

- Mr. Fox was ordered to pay the table amount of child support of $1,014 per month.

- Mr. Fox was ordered to pay s. 7 expenses of $158.33 per month. Although the order did not specify what s. 7 expenses were included, the decision indicates that they were payable for the children's hockey and soccer: ***Muise v Fox***, *supra,* para 120.

- Mr. Fox was ordered to forthwith pay Ms. Muise $33,950 to satisfy her unjust enrichment claim: ***Muise v Fox***, *supra*, para 101. This amount was reduced to $32,000 at para 9 of the order.

- Mr. Fox was ordered to pay $200 per month in spousal support for 14 months. Jollimore J. reached this determination given Mr. Fox's child maintenance obligation and the unjust enrichment award that he was required to pay: ***Muise v Fox***, *supra*, para 169.

[6] The parties' financial circumstances did not unfold as anticipated. Ms. Muise's financial situation declined. Mr. Fox did not pay the $32,000 unjust enrichment award. Ms. Muise's income was below the poverty line until 2019, when she started to work in the insurance industry. In 2019, she earned $26,641, with modest increases thereafter, until 2023, when her income jumped to $50,314. As a result, Ms. Muise could not afford to enrol the children in organized sports following the December 2013 order.

[7] In contrast, Mr. Fox's income exceeded the amount in the order. For example, his actual earnings in 2012 and 2013 were $76,327 and $79,075, not $73,400. Mr. Fox did not provide a reasonable explanation for the significant disparity between his court reported income and his actual income for those years. In addition, Mr. Fox continued to earn more income than $73,400 after 2013. Although his 2016 reported income was less, it was only because his $23,261 disability benefits were non-taxable. The only years that Mr. Fox earned less than $73,400 were 2021 and 2022, assuming that Mr. Fox did not receive tax-free disability benefits. Mr. Fox didn't think he had, but was not certain.

[8] Additionally, Mr. Fox was well aware that his sons were not enrolled in organized sports at any time after the December 2013 order issued. Despite this

knowledge, Mr. Fox said that he did not file a variation application because he wanted to avoid the hassle.

[9] In August 2020, the oldest child ceased to be dependent, having graduated from high school at the end of June. His dependent status resumed from September 2022 until June 2023, when he returned to pursue post-secondary studies, living most of his time with Ms. Muise. For two days a week, he lived in another town to attend school.

[10] On November 9, 2022, Mr. Fox applied to vary the 2013 court order.

[11] In November 2023, the youngest son turned 19 and ceased to be a dependent child because he was employed and not pursuing education.

[12] The parties were unable to resolve the issues arising from the 2022 variation application. Settlement attempts were unsuccessful. As a result, the matter was scheduled for a contested hearing. On January 17 and 18, 2024, the parties appeared before me. Each party testified, was cross-examined, and provided submissions.

[13] During the hearing, Mr. Fox sought to vary child support and to cancel the unjust enrichment award. Mr. Fox offered two reasons for his position that he had overpaid support. First, the children were never enrolled in hockey or soccer. Second, his sons were no longer dependent. Mr. Fox wanted to offset the unpaid unjust enrichment award against his perceived overpayment.

[14] Ms. Muise objected to Mr. Fox's requests for four reasons. First, she stated that although she could not enroll the children in organized sporting activities because of her dire financial circumstances, she nonetheless paid for their other activities throughout the years. Second, she noted that as Mr. Fox was fully aware that the children were not enrolled in organized activities, he should not now be able to claim retroactive relief. Third, she said that Mr. Fox underpaid child support throughout the years and that he did not provide her with his income information until after the variation proceeding commenced. Finally, Ms. Muise wants to receive the unjust enrichment award ordered by Jollimore J.

Analysis

Did Mr. Fox underpay or overpay child support?

[15] For the vast majority of time, and even prior to the court order, Mr. Fox underpaid the table amount of child support. For example, the income information

which Mr. Fox provided to Jollimore J. was incorrect. He did not earn $73,400 in 2012 and 2013, but rather $76,327 and $79,075. Those earnings produce a table amount, using the 2011 Tables, of $1,053 and $1,089 per month, and not the $1,014 ordered. I recognize, however, that Mr. Fox was also ordered to contribute to s. 7 expenses which were never incurred.

[16] Therefore, I must now determine if there was an under or overpayment of child support, given the lack of s. 7 activity expenses. I will focus on three periods. The first period is from January 2014, the month after the order issued, until January 2024, the date of the hearing. The second period is from the date of formal notice in November 2022 until January 2024. The third period is from December 2019, three years before formal notice, until January 2024.

January 2014 to January 2024

[17] Mr. Fox's income and resulting child support obligation, without reference to s. 7 payments, would have been as follows:

Year	**Income**	**Table Amount**	**Total Amount Due**
2014	$86,464	$1,184	$14,208
2015	$88,916	$1,214	$14,568
2016	$100, 948[i]	$1,362	$16,344
2017	$82,065	$1,153	$13,836
2018	$85,987	$1,205	$14,460
2019	$80,482	$1,131	$13,572
2020	$82,542	$1,159 for 8 months $709 for 4 months	$12,108
2021	$72,942	$624	$7,488
2022	$65,219	$557 for 8 months $924 for 4 months	$8,152
2023	$76,985	$1,084 for 6 months	$9,144

	$660 for 4 months	
	Total Due	$123,880

[18] According to the MEP records, during this time, Mr. Fox paid child support and spousal support of $121,745.95, of which $2,400 should be deducted as spousal support, and $2,820.33 for the arrears outstanding as of January 1, 2014. Mr. Fox thus paid $116,525.62 in total child support payments. Therefore, he *notionally underpaid* the table amount of support by *$7,354.38*.

November 2022 until January 2024

[19] During the second period, Mr. Fox's income and resulting child support obligation, without reference to s. 7 payments, would have been as follows:

Year	**Income**	**Table Amount**	**Total Amount Due**
2022	$65,219	$924 for 2 months	$1,848
2023	$76,985	$1,084 for 6 months	$9,144
		$660 for 4 months	
		Total Due	$10,992

[20] According to the MEP records, during this time, Mr. Fox paid child support of $9,079 from November 2022 until January 2024, of which $5,042.23 should be deducted for the arrears outstanding as of November 1, 2022.[ii] Mr. Fox thus paid $4,036.77 in total child support payments. Therefore, he *notionally underpaid* the table amount of support by *$6,955.23*.

December 2019 to January 2024

[21] During the third period, Mr. Fox's income and resulting child support obligation, without reference to s. 7 payments, would have been as follows:

Year	**Income**	**Table Amount**	**Total Amount Due**
2019	$80,482	$1,131 for 1 month	$1,131
2020	$82,542	$1,159 for 8 months	$12,108
		$709 for 4 months	
2021	$72,942	$624 for 12 months	$7,488

2022	$65,219	$557 for 8 months $924 for 4 months	$8,152
2023	$76,985	$1,084 for 6 months $660 for 4 months	$9,144
		Total Due	$38,023

[22] According to the MEP records, during this time, Mr. Fox paid child support of $34,713 from December 2019 until January 2024, of which $1,222.81 should be deducted for the arrears outstanding as of December 1, 2019. Mr. Fox thus paid $33,490.19 in total child support payments. Therefore, he *notionally underpaid* the table amount of support by *$4,532.81*.

Should I retroactively adjust child support and if so, in what amount?

[23] Before addressing the law, I must comment on some unusual features of this case:

- The order which is sought to be varied was not being enforced in its totality by MEP. For example, beginning in August2020, MEP reduced, without court order, the amount of child support due from $1,172.33 per month to $786.93, then to $628.00 per month, and finally to $0.
- MEP was not enforcing all outstanding arrears.
- The order required Mr. Fox to pay s. 7 expenses which were not being incurred.
- The order was based on an income which Mr. Fox had, for the most part, exceeded.
- At various points, the children ceased being dependent.

[24] With these circumstances in mind, I will now review the applicable law as stated in ***DBS v SRG***, 2006 SCC 37; ***Michel v Graydon***, 2020 SCC 24; and ***Colucci v. Colucci,*** 2021 SCC 24. Because the parties are self-represented, I will first review foundational child support principles, followed by the legal test.

[25] Foundational principles include a recognition of the payor's duty to disclose and pay based on their income; the adoption of a holistic approach because of the feminization of poverty; and the impact that informational asymmetry has on the determination of effective notice.

Duty to Disclose and Pay

[26] In ***DBS***, *supra*, Bastarache J. confirmed that parents who do not increase their child support payments to correspond with their income do not fulfill their obligation to their children:

> 54 In summary, then, **parents have an obligation to support their children in a way that is commensurate with their income. This parental obligation, like the children's concomitant right to support, exists independently of any statute or court order.** To the extent the federal regime has eschewed a purely need-based analysis, this free-standing obligation has come to imply that the total amount of child support owed will generally fluctuate based on the payor parent's income. Thus, under the federal scheme, **a payor parent who does not increase his/her child support payments to correspond with his/her income will not have fulfilled his/her obligation to his/her children.** However, provinces remain free to espouse a different paradigm. When an application for retroactive support is made, therefore, it will be incumbent upon the court to analyze the statutory scheme in which the application was brought. [Emphasis added]

[27] In ***Michel v Graydon***, *supra*, Brown J. held that a parent should not profit from knowingly paying inadequate support or from making inadequate or delayed disclosure:

> 32 **Retroactive child support awards will commonly be appropriate where payor parents fail to disclose increases in their income**. Again, *D.B.S.* is instructive: ". . . a **payor parent who knowingly avoids or diminishes his/her support obligation to his/her children should not be allowed to profit from such conduct**" (para. 107). And where the strategy for avoiding child support obligations takes the form of inadequate or delayed disclosure of income, the effect on the child support regime is especially pernicious. This is because the methodology adopted by the *Federal Child Support Guidelines*, SOR/97-175, which are expressly incorporated in the *FLA*, results in information asymmetry. Apart from shared parenting arrangements, the *Guidelines* calculate child support payments solely from the payor parent's income. At any given point in time, therefore, the payor parent has the information required to determine the appropriate amount of child support owing, while the recipient parent may not. Quite simply, the payor parent is the one who holds the cards. While an application-based regime places responsibility on both parents in relation to child support (*D.B.S.*, at para. 56), the practical reality is that, without adequate

> disclosure, the recipient parent will not be well-positioned to marshall the case for variation.
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> [33] **Failure to disclose material information is the cancer of family law litigation** (*Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.), at para. 9, quoted in *Leskun v. Leskun*, 2006 SCC 25, [2006] 1 S.C.R. 920, at para. 34). And yet, **payor parents are typically well aware of their obligation as a parent to support their children, and are subject to a duty of full and honest disclosure — a duty comparable to that arising in matrimonial negotiations** (*Brandsema*, at paras. 47-49). The payor parent's obligation to disclose changes in income protects the integrity and certainty afforded by an existing order or agreement respecting child support. **Absent full and honest disclosure, the recipient parent — and the child — are vulnerable to the payor parent's non-disclosure.** [Emphasis added]

Gender-Based Links to Poverty & Holistic Approach

[28] In ***Michel v Graydon,*** *supra,* Martin J. held that because a disproportionate number of single mothers and their children live in poverty, and poverty negatively affects access to justice, a holistic response is required:

> [94] This case too illustrates how children's wellbeing and that of their custodian are intertwined parts of the same whole. Today, **women still bear the bulk of child care and custody obligations *and* earn less money than men, so women's poverty remains inextricably linked to child poverty** (Statistics Canada, *The gender wage gap in Canada: 1998 to 2018* (October 2019), at pp. 4 and 10; Statistics Canada, *Maximum insights on minimum wage workers: 20 years of data* (September 2019), at p. 8). Among the Canadian population of children aged 14 years and under in 2016, 81.29 percent of children living in a lone-parent family lived with their mother (Statistics Canada, *Portrait of children's family life in Canada, 2016 Census* (August 2017), at p. 2). **Children in lone-parent families live in low-income households at a rate more than three times higher than children in a two-parent household. Among these lone-parent families, the low income-rate for such children living with a mother** (42 percent) **is much higher than those living with a father** (25.5 percent) (Statistics Canada, *Children living in low-income households, 2016 Census* (September 2017), at pp. 2-3). In 2018, Attorney General Wilson-Raybould announced that approximately 96 percent of cases registered for enforcement involved female recipients (*House of Commons Debates*, vol. 148, No. 326, 1st Sess., 42nd Parl., September 26, 2018, at p. 21867).
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> …
>
> [96] Given these circumstances, **women will often face financial, occupational, temporal, and emotional disadvantages. Moreover, access to justice in family law is not always possible due to the high costs of litigation. In this larger social context, women who obtain custody are often badly placed to evaluate their**

> **co-parent's financial situation and to take action against it.** Measures that place further barriers on their ability to claim and enforce their rights, like a jurisdictional bar, inhibit their ability to improve their circumstances and those of their children. Yet, as this Court stated in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 1: "Without an effective and accessible means of enforcing rights, the rule of law is threatened."
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> ….
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> [100] **Family law's holistic approach demands that we take account of the interconnected nature of issues of child support, child poverty, and the consequent feminization of poverty. Given the gender dynamics in child support law, legal rules cannot ignore the realities that shape women's lives and opens them up to experiences and risks less likely to be experienced by men: like intimate partner violence, a higher proportion of unpaid domestic work accompanied by less work experience and lower wages, and the burden of most childcare obligations.** [Emphasis added]

Information Asymmetry and Effective Notice

[29] Information asymmetry was briefly discussed in ***Michel v Graydon,*** *supra*, para 32, and more fully canvassed in ***Colucci v. Colucci,*** *supra*, where Martin J. noted that information asymmetry is both connected to the determination of effective notice and the presumptive period of retroactivity:

> [7] Given the informational asymmetry between the parties, **a payor's success in obtaining a retroactive decrease will depend largely on the payor's financial disclosure and communication.** Indeed, effective notice in this context is only "effective" when there has been disclosure of the changed financial circumstances. At the stage of considering the *D.B.S.* factors, disclosure will once again be a key consideration in assessing whether the payor's conduct operates to shorten or lengthen the presumptive period of retroactivity. [Emphasis added]

[30] Martin J. further stated that information asymmetry results in two distinct burdens. For payee parents, effective notice only requires the broaching of an increase. In contrast, a payor parent seeking a decrease must provide reasonable proof:

> [86] What qualifies as "effective notice" must be viewed in light of the information asymmetry between the parties and the way that certainty, flexibility and the child's best interests play out in retroactive decrease cases. **When a recipient seeks a retroactive increase, the Court held in *D.B.S.* that the recipient will have provided effective notice simply by broaching the topic of a potential increase** (para. 121). This **low bar was justified by the recipient's informational disadvantage.** Regardless of whether the recipient had given notice,

> the payor knew when their own income had increased and must be taken to know that more income means more support.
>
> [87] In the decrease context, by contrast, experience has shown that it is **not enough for the payor to merely broach the subject of a reduction of support with the recipient. A payor seeking a retroactive decrease has the informational advantage. The presumptive date of retroactivity must encourage payors to communicate with recipients on an ongoing basis and move with reasonable dispatch to formalize a decrease through a court order or change to a pre-existing agreement. The timing and extent of disclosure will be a critical consideration in ascertaining whether and when effective notice has been given and determining whether to depart from the presumptive date of retroactivity.**
>
> [88] In decrease cases, therefore, **courts have recognized that effective notice must be accompanied by "reasonable proof" that is sufficient to allow the recipient to "independently assess the situation in a meaningful way and respond appropriately"** (*Gray*, at para. 62, citing *Corcios*, at para. 55; *Templeton*, at para. 51). This ensures that effective notice provides a realistic starting point for negotiations and allows the recipient to adjust expectations, make necessary changes to lifestyle and expenditures, and make informed decisions (*Hrynkow v. Gosse*, 2017 ABQB 675, at para. 13 (CanLII); *Hodges v. Hodges*, 2018 ABCA 197, at para. 10 (CanLII)). [Emphasis added]

[31] In ***Colucci v. Colucci,*** *supra*, Martin J. confirmed the test to be applied where the payor seeks a downward variation and a forgiveness of arrears:

> [113] To summarize, where the payor applies under s. 17 of the *Divorce Act* to retroactively decrease child support, the following analysis applies:

(1) The payor must meet the threshold of establishing a past material change in circumstances. The onus is on the payor to show a material decrease in income that has some degree of continuity, and that is real and not one of choice.

(2) Once a material change in circumstances is established, a presumption arises in favour of retroactively decreasing child support to the date the payor gave the recipient effective notice, 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 accompanied by the disclosure of any available documentation necessary to substantiate the change and allow the recipient parent to meaningfully assess the situation.

(3) Where no effective notice is given by the payor parent, child support should generally be varied back to the date of formal notice, or a later date where the payor has delayed making complete disclosure in the course of the proceedings.

(4) The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The *D.B.S.* factors (adapted to the decrease context) guide this exercise of discretion. Those factors are: (i) whether the payor had an understandable reason for the delay in seeking a decrease; (ii) the payor's conduct; (iii) the child's circumstances; and (iv) hardship to the payor if support is not decreased (viewed in context of hardship to the child and recipient if support *is* decreased). The payor's efforts to pay what they can and to communicate and disclose income information on an ongoing basis will often be a key consideration under the factor of payor conduct.

(5) Finally, once the court has determined that support should be retroactively decreased to a particular date, the decrease must be quantified. The proper amount of support for each year since the rate of retroactivity must be calculated in accordance with the *Guidelines*.

[32] Further, at paras 133 to 141, Martin J. confirmed the adoption of a highly restrictive approach that includes a presumption against rescinding arrears, with the caveat that the presumption can be rebutted "where the payor parent establishes on a balance of probabilities that – even after a flexible payment plan – they cannot and will not ever be able to pay the arrears": para 138.

[33] Applying this legal test, I find that Mr. Fox proved a material change in circumstances in that the ordered s. 7 expenses were not being incurred and that, by the date of trial, neither child was dependent. Thus, a presumption is created that favours a retroactive variation to the date of effective notice, up to three years before formal notice was provided. In the absence of effective notice, child support is varied to the date of formal notice. The retroactive adjustment is subject to the court's discretionary authority to depart from the presumptive date if unfairness would result, based on an assessment of the modified ***DBS*** factors.

[34] The following factual findings guide my decision:

- I infer that Mr. Fox did not seek to vary the 2013 order when he knew that the children were not enrolled in sports because he did not want to disclose his increased income and his nonpayment of the unjust enrichment award.

- Mr. Fox did not take action until there was a change in the dependency status of the children. At that point, Mr. Fox connected with MEP who then adjusted the enforceable amount of child support. The oldest child ceased to be dependent in August 2020 after graduating from high school. His status

as a dependent child resumed in September 2022 until June 2023 when he was enrolled in post-secondary educational programming. The youngest child ceased to be dependent in November 2023.

- Mr. Fox did not provide proof of his income on an annual basis as was required. Disclosure did not occur until after Mr. Fox filed his November 2022 variation application. As a result, effective notice was not perfected.

- Mr. Fox engaged in blameworthy conduct in two respects. First, he did not inform Ms. Muise of his significant income increases, which would have impacted her ability to assess the child support quantum. Second, he refused to pay the unjust enrichment award to Ms. Muise as ordered. As a result, Mr. Fox prioritized his own needs over the needs of the children.

- Ms. Muise's financial circumstances were significantly worse than what the court anticipated in December 2013 when the order issued. Justice Jollimore specifically stated her spousal support calculation was based in part on Ms. Muise receiving "forthwith" the unjust enrichment award. Mr. Fox refused to pay that award, leaving Ms. Muise and the children in a tenuous financial situation. Thirty-two thousand dollars is a substantial amount of money to a single mother of two, living in poverty.

- Ms. Muise lost over 10 years' worth of buying power or interest on the $32,000 award. Mr. Fox retained the use of this money over the same period of time, thus improving his own financial circumstances.

- Ms. Muise used the support payments to care for the children. She met their needs in an exemplary way, given her limited resources. Ms. Muise was unable to enroll the children in organized sports because she and the children lived below the poverty line for much of the time. Ms. Muise did all within her power to pay for the children's expenses, based on her financial circumstances. Hockey and soccer expenses were well beyond her ability.

- Even though Ms. Muise was forced to raise her sons in poverty, she did not seek to increase support. Mr. Fox had chosen not to pay the unjust enrichment award, and Ms. Muise had no knowledge of his actual income. Further, the parties' prior relationship was highly conflictual.

- Mr. Fox has the ability to pay the outstanding award, especially given the absence of a support obligation at this time. No hardship will be created by Mr. Fox paying the outstanding maintenance arrears.

[35] In summary, I find that the 2013 order should be varied to state that Mr. Fox has no current obligation to pay child support subject to his payment of all outstanding child support arrears, which MEP will recalculate based on the enforcement of the 2013 order until August 31, 2020, when the following adjustments will be made to Mr. Fox's child support obligation given the children's status as dependents and Mr. Fox's income:

- From September 1, 2020 until December 31, 2020, Mr. Fox's monthly child support obligation is varied to $709 per month, given his annual income of $82,542.

- From January 1, 2021 until December 31, 2021, Mr. Fox's monthly child support obligation is varied to $624 per month, given his annual income of $72,942.

- From January 1, 2022 until August 31, 2022, Mr. Fox's monthly child support obligation is varied to $557 per month, given his annual income of $65,219.

- From September 1, 2022 until December 31, 2022, Mr. Fox's monthly child support obligation is varied to $924 per month, given his annual income of $65,219.

- From January 1, 2023 until June 30, 2023, Mr. Fox's monthly child support obligation is varied to $1,084 per month, given his annual income of $76,985.

- From July 1, 2023 until October 31, 2023, Mr. Fox's monthly child support obligation is varied to $660 per month, given his annual income of $76,985.

- From November 1, 2023, Mr. Fox is not required to pay child support.

[36] As of January 18, 2024, MEP noted arrears of $5,718.33. These arrears will increase once the above recalculations are tabulated. Mr. Fox will pay all arrears at a rate of $800 per month until paid in full.

Does the court have jurisdiction to vary the unjust enrichment award?

[37] Although the court has legislative jurisdiction to vary spousal and child support, no such legislative authority exists for property or unjust enrichment orders. Mr. Fox, who was represented at the time, did not appeal the order and the judgment stands. Mr. Fox must pay the award forthwith as ordered.

Conclusion

[38] In this decision, I dismissed Mr. Fox's application to terminate or vary the unjust enrichment award granted to Ms. Muise by the 2013 order. I did, however, grant his variation application such that Mr. Fox's obligation to pay child support is concluded at this time,[iii] subject to him paying Ms. Muise the outstanding child support arrears, which will exceed the $5,718.33 noted in the MEP records once the adjustments are made as stated in paragraph 35. Mr. Fox will pay Ms. Muise $800 per month until the child support arrears are paid in full.

[39] The court will draft and circulate the order.

[40] If Ms. Muise seeks costs, she must file her written submissions by March 19, 2024. Mr. Fox must file his written submissions by April 2, 2024.

Forgeron J.

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[i] In 2016, Mr. Fox earned taxable income of $69,687 together with non-taxable disability benefits of $23,261 which are subject to a gross up of $8,000, for a total income of $100,948 for child support purposes.

[ii] Arrears were actually greater than stated in the MEP records because, as of August 1, 2020, MEP, without court order, varied the regular amount of child support due from $1,172.33 to $786.93.

[iii] Should either child pursue other post-secondary education, then child support entitlement and quantum can be reassessed based on the circumstances then existing.