

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Nova Scotia (Maintenance Enforcement) v R.M.*, 2024 NSSC 56

**Date:** 20240308

**Docket:** 124728

**Registry:** Port Hawkesbury

**Between:**

Director of Maintenance Enforcement

Applicant

v.

R.M.

Respondent

<b>DECISION</b>
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Judge: The Honourable Justice Lorne J. MacDowell

Heard: February 2, 2024, in Port Hawkesbury, Nova Scotia

Written Release: March 08, 2024

Counsel: May Knox, Counsel for the Director of Maintenance Enforcement  
Jeffrey Columbus for R.M.

## Introduction

[1] This matter is an enforcement proceeding brought by the Director of Maintenance Enforcement (the Director), against R.M., an Indigenous person and resident of Potlotek First Nation, for non-payment of child support. The order of Justice Kenneth Haley, dated December 10, 2013, required the payment of \$390.00 per month for the support of two children. The payee and children are also Indigenous.

[2] The order was registered under the Maintenance Enforcement Program, subject to the provisions of the *Maintenance Enforcement Act*, SNS 1994-95-c.6, as amended (The Act). The Director's application was filed January 28, 2022.

[3] The Director sought enforcement of the order and among other remedies, incarceration in default of payments on the alleged arrears.

[4] In response to the application, the hearing commenced on September 16, 2022, and was completed on March 16, 2023. Despite R.M. being given many opportunities to file financial material and to participate in the hearing, he did not do so. I heard evidence and an oral decision was rendered on September 8, 2023,

## Background

[5] On September 8, 2023, I found that:

- The Director had proven arrears owing by R.M. as of March 14, 2023, in the amount of \$32,660.44.
- The Director had exhausted all reasonable administrative enforcement efforts.
- R.M. had not shown a valid excuse for not paying the support or arrears.
- When a remedy of imprisonment is sought by the Director for Indigenous payors in default of court ordered child support payments, the principles in **R v Gladue**, [1999] 1 SCR 688 and **R. v. Ipeelee**, 2012 SCC 13, [2012] 1 S.C.R. 433 (the **Gladue** principles) are applicable.
- It is at the remedial stage of the proceeding that the **Gladue** principles apply.

- The Director does not collect, secure, or use individualized information regarding Indigenous payors.
- There was essentially no individualized information before the Court regarding R.M., to assist with the consideration of the **Gladue** principles.
- R.M. had not specifically waived his right to have such information considered.
- Judicial notice was not sufficient in this case to inform me of R.M.'s circumstances.
- A **Gladue** Report was warranted, and I ordered one be prepared as soon as possible.

[6] The **Gladue** Report regarding R.M. was prepared by Jan Marshall, **Gladue** writer for Mi'kmaq Legal Support Network and filed on November 22, 2023.

[7] On November 23, 2023, the parties appeared before me, and a date was set for briefs and hearing.

[8] On January 5, 2024, R.M., now represented by Jeffrey Columbus, Ms. Knox and the enforcement officer attended. The matter was adjourned, with the consent of counsel, for a further appearance on January 25, 2024, and to February 2, 2024, for final hearing.

[9] The parties agreed to proceed by way of written submissions and oral argument. The **Gladue** Report was tendered by agreement. The parties waived the attendance and cross examination of the author.

[10] Further submissions were invited on February 2, 2024, regarding my authority to direct a future review of any order. The Director provided further written submission on February 7, 2024. R.M. made no further submission.

## Issue

[11] What remedy should be imposed upon R.M., pursuant to s.37(3) of the *Maintenance Enforcement Act* given the evidence and the consideration of the principles set out in the **R v Gladue**, [1999] 1 SCR 688 and **R v Ipeelee**, [2012] 1 SCR 433.

## The Parties' Position

[12] A draft order had been presented by the Director. R.M. does not contest the provisions of the order, other than:

- how the arrears are paid, namely the amount of instalments and time period for repayment; and
- whether, as sought by the Director, R.M. should be incarcerated should he fail to pay the instalments.

[13] The parties have, at various times, referred to the remedial aspect of this matter as the “sentencing”. In oral argument, the Director submitted it is not a “sentencing. R.M argues s.718(2) of the *Criminal Code of Canada* is applicable.

[14] R.M. argues that in accordance with s.718(2) and the **Gladue** principles, all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to the victim or the community should be considered for all offenders with particular attention to the circumstances of aboriginal offenders.

[15] The Director argues that the *Criminal Code of Canada* provisions do not apply but does not contest that the principles are applicable. Rather, the Director argues that all available sanctions, other than imprisonment, are already established in the *Maintenance Enforcement Act* (the *Act*).

[16] She argues that little, if any weight should be given to the **Gladue** principles, and only as they relate to length and amount of instalment repayment and the structure and the length of incarceration.

[17] The Director points to the fact that R.M. had been given multiple opportunities to participate in the proceeding and essentially did nothing.

[18] Additionally, the Director argues that every administrative enforcement measure available to the Director was undertaken prior to the default application and that this is a last resort to ensure compliance with a valid Court order.

[19] R.M. counters that his individual contextualized circumstances and the judicial notice consideration that must be taken of systemic background factors affecting indigenous people in Canadian society, mitigate against any imprisonment in these circumstances. He argues that the amount and schedule of instalments

sought by the Director of \$2500.00, over 14 instalments, with intermittent custody of 30-90 days in default of each instalment, does not properly consider those principles. Instead, he proposes monthly additional payments of \$410.00 in addition to the payment of the current monthly support order of \$390.00, for a total of \$800.00 per month over 80 months.

[20] Mr. Columbus argues R.M. is now intending to pay the existing order. He submits any incarceration of R.M. will result in another Indigenous person being placed in jail. He argues the remedy sought by the Minister is not reasonable in the circumstances and out of proportion to the gravity of the situation before me.

### **Analysis and Decision**

[21] I have considered the oral and written submissions made by the parties in coming to my decision.

[22] This is not a criminal proceeding and the *Criminal Code of Canada* does not apply. R.M. is not an offender; however, in the context of this Maintenance Enforcement proceeding, I must consider the **Gladue** principles as set forth in the caselaw as part of my remedial deliberation.

[23] I find that in consideration of the **Gladue** principles, when determining remedies for an Indigenous defaulting payor in the circumstances of an enforcement proceeding such as this, I must:

- Take judicial notice of the systemic and background factors impacting Indigenous defaulting payors including such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Indigenous people.
- Consider any evidence tendered in the matter and if required, review a **Gladue** Report with respect to specific individualized information contextualizing the unique circumstances of the particular defaulting payor.
- Consider and apply the Supreme Court of Canada's direction that judicial notice considerations and the contextualization of the unique

circumstances of the particular Indigenous defaulting payor are to be used in a remedial restorative manner.

- Consider whether and how the judicial notice and the contextualization of the unique circumstances of the particular Indigenous defaulting payor impacts a fit and proper remedy.
- Consider **Gladue** factors on the evidence as it pertains to moral blameworthiness and appropriate sanctions. If R.M. is to rely on **Gladue**, there must be some evidence to show how his circumstances, as an Indigenous person, affect either, his moral blameworthiness or the appropriate remedial options.

[24] Neither the Director nor R.M. argue that the recommendations of the **Gladue** report are pertinent to my decision. However, the report does provide me with individualized information and context regarding R.M.'s life circumstances to consider.

[25] The remedies I may impose pursuant to s. 37(3) of the *Act* are discretionary. In coming to a fit and proper remedy in this circumstance, I have:

- 1) Taken judicial notice of the systemic and background factors as required.
- 2) Reviewed the evidence before me, the **Gladue** Report and the specific individualized information contextualizing the circumstances of R.M.
- 3) Considered and applied the Supreme Court of Canada's direction that judicial notice considerations and the contextualization of the unique circumstances of R.M. are to be used in a remedial and restorative manner at the remedial portion of this proceeding.
- 4) Considered whether and how the judicial notice and contextualization of the unique circumstances of R.M. impact a fit and proper remedy.
- 5) Considered the **Gladue** factors as they are pertinent to either the moral blameworthiness or appropriate remedy in regard to, R.M.

[26] I make the following findings after considering the **Gladue** Report:

- R.M. has personally experienced the adverse impact of many factors continuing to plague Indigenous communities since colonization, and in his immediate family and among peers:
  - i. Sexual Abuse
  - ii. Domestic Violence
  - iii. Family Deterioration
  - iv. Low Income and unemployment due to substance abuse and lack of education
  - v. Poverty
  - vi. Overt and Covert Racism
  - vii. Abuse – emotional, verbal, mental and physical
  - viii. Community break-down
  - ix. Food and Housing Insecurity
  - x. Residential School (his family members)
  - xi. Socio-economic Conditions
  - xii. Low Educational Achievement’
  - xiii. Foster Care System (group Homes)
  - xiv. Homelessness.

[27] The **Gladue** principles and pertinent **Gladue** factors are considerations but not the only factors considered in my determination of a fit and proper remedy.

[28] Christenson J. has stated in **Director of Maintenance Enforcement v. R.M.** 2016 (February 11, 2016, Digby FDMEA-094938 unreported decision) that the judicial system is premised on the basis of Court orders being followed and there must be consequences for failure to comply; she also noted that child support is a priority (para 27, 28). (See also **Nova Scotia (Director of Maintenance Enforcement v R.J.H.**, 2021 NSSC 105)(Morris, J.)

[29] In **Armoyan v Armoyan**, 2015 NSSC 174, Forgeron, J. noted the *Act* is structured to ensure compliance and the enforcement and collection of Court ordered support (para 58).

[30] What is required here is the consideration of the **Gladue** principles within the context of the *Act*. In determining a remedy and balancing the **Gladue** principles, I cannot lose sight of the *Act's* purpose.

[31] In this proceeding, R.M. has:

- failed to engage in enforcement processes,
- failed to engage in the Court process on multiple occasions and despite multiple attempts to have him do so, (with and without counsel),
- failed to take any action to vary or appeal the original order,
- failed to attend Court appearances,
- failed to file required documentation, despite many opportunities to do so,
- failed to provide evidence that he had a reason for failing to pay the arrears or payments,
- failed to make any payments voluntarily pursuant to the order.

[32] There have been multiple administrative actions and sanctions pursued under the *Act* including revocation of R.M.'s motor vehicle license, Federal license actions, and multiple efforts to deal with R.M. short of the application before me. None have been successful. Although R.M. now says he will pay the order, he has not done so for many years. R.M. cannot be permitted to ignore the obligation under the valid order of Justice Haley.

[33] In **Armstrong v McCusker**, 2018 ONCJ 620, para. 137, the Honourable Justice Sheila O'Connell stated the following with respect to Indigenous children and recipients:

137 - Paying child support is a responsibility and obligation of every parent, regardless of their gender, race, sexual orientation or cultural history. As Mr. McCusker is an Indigenous person, so is his daughter, Skyla. All children are equally entitled to child support.

[34] As noted in **Ipeelee** (*supra*) at page 469 paragraph 60, with respect to the **Gladue** principles, "these matters, on their own, do not necessarily justify a different sentence for Aboriginal offenders".

[35] In balancing the purpose of the *Act*, the caselaw respecting incarceration, the evidence, the course of this proceeding, the **Gladue** principles and the **Gladue**



factors as they pertain to R.M., I find that a period of incarceration in default of payment is an appropriate remedy.

[36] In making this decision, I recognize the particular circumstances of R.M. and what he has faced and dealt with as an Indigenous person. I have also considered my obligation with respect to the judicial notice requirements of the **Gladue** principles and my obligation to consider the circumstances of these children, their need for support and R.M.s' failure to pay.

[37] I find, in the circumstances of this particular payor, the following is an appropriate remedy:

1. Pursuant to s. 37(3)(h) of the *Maintenance Enforcement Act*, the Respondent shall report to the Director of Maintenance Enforcement for the Province of Nova Scotia his efforts to comply with this order every 90 days commencing May 1, 2024, and continuing until such time as his arrears are paid in full.
2. Pursuant to s. 37(3)(i) of the *Maintenance Enforcement Act*, the Respondent shall provide the Director of Maintenance Enforcement for the Province of Nova Scotia particulars of his residential address and telephone number and his employer's address and telephone number when he reports to the Director of Maintenance Enforcement for the Province of Nova Scotia with respect to his efforts to comply with this Order.
3. Pursuant to s. 37(3)(a) of the *Maintenance Enforcement Act*, the Respondent shall pay, in addition to his current monthly maintenance obligation, monthly instalments to the Director of Maintenance Enforcement for the Province of Nova Scotia as set out herein to satisfy the arrears. These amounts will be payable at the same time as the current monthly amount of \$390.00 or such other table amount as he may be ordered to pay in the future.
4. That monthly payments of \$500.00 will be payable each and every month for the next twelve months commencing April 1, 2024, for a period of 12 consecutive payments towards arrears.
5. Then commencing April 1, 2025, the monthly payment on arrears will increase to \$650.00 monthly payable for twelve months.
6. Then commencing April 1, 2026, the monthly payment on arrears will increase to \$700.00 monthly for a period of twelve months.

7. Then commencing April 1, 2027, the monthly payment on arrears will increase to \$871.70 monthly for a period of twelve months.
8. Pursuant to s. 37(3) of the *Maintenance Enforcement Act*, any and all remaining arrears shall be paid by the Respondent to the Director of Maintenance Enforcement for the Province of Nova Scotia on or before April 30, 2028.
9. Pursuant to s. 37(3)(p) of the *Maintenance Enforcement Act*, and *Maintenance Enforcement Regulation* 13, the Respondent shall pay costs to the Director of Maintenance Enforcement for the Province of Nova Scotia in the amount of \$644.10 payable on or before June 30, 2028.
10. Pursuant to s. 37(3)(k) of the *Maintenance Enforcement Act*, the Respondent shall be imprisoned on the following basis:

In the event R.M. fails to pay the total amount due, in any three-month instalment period, then he shall be imprisoned for a period of seven (7) days for each such default to be served on weekends from Friday at 6:00 pm until Monday 6:00 am until served in full.

11. That a warrant for the arrest of the Respondent may be issued when the Director of Maintenance Enforcement provides written notice with an affidavit in support to the Court of the Respondent's default as specified in clause 10.
12. Pursuant to s. 37(6) of the *Maintenance Enforcement Act*, imprisonment of the Respondent does not discharge arrears under the Maintenance Order and does not preclude a subsequent imprisonment pursuant to s. 37(3) for the same arrears.
13. Nothing in this Order relieves the Respondent of his obligation to make all monthly child maintenance payments under the Maintenance Order in the amount of \$390.00 per month until further Order of a Court of competent jurisdiction .
14. Pursuant to s.37(3) of the *Maintenance Enforcement Act*, and s.38 of the *Maintenance Enforcement Act*, a judgment against the Respondent for the arrears and costs ordered in this application, is granted bearing interest at the rate of five (5) percent per annum in accordance with section 2(1) of the *Interest on Judgments Act*.

[38] Ms. Knox shall draft the order.

MacDowell, J.