

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

**Citation:** *Direction of Maintenance Enforcement for the Province of Nova Scotia*  
*v. V. E. W.*, 2024 NSSC 175

**Date:** 20240508  
**Docket:** FBWMEA-128172  
**Registry:** Bridgewater

**Between:**

Director of Maintenance Enforcement for the Province of Nova Scotia

Applicant

v.

V. E. W.

Respondent

Judge: The Honourable Justice Aleta C. Cromwell

Heard: April 9, 2024, in Bridgewater, Nova Scotia

Written Release: May 8, 2024

Counsel: May Knox for the Applicant  
V. E. W., self represented

## **By the Court:**

### **Introduction**

[1] On March 15, 2018, a Consent Order was issued whereby V. E. W. agreed to pay support for his daughter of \$450.00 per month.

[2] Since the issuance of the Consent Order in 2018, V. E. W. has struggled to keep up with the required support payments but has refused to make application to vary his child support obligation either retroactively or prospectively.

[3] The Director of Maintenance Enforcement (the “Director”) has made application under section 37 of the *Maintenance Enforcement Act*, S.N.S. 1994-95, c.6 (the “*Act*”) seeking a finding that V. E. W. is in default of support payments, without valid reason, under the Consent Order filed for enforcement with the Maintenance Enforcement Program (the “Program”) and determine the arrears owed.

### **Issues**

[4] This decision is about the appropriate remedy to be imposed under section 37(3) of the *Act*.

## **Background**

[5] A Consent Order was issued by Judge William J. Dyer on March 15, 2018, following conciliation in relation to one child, N. W., born in 2006. V. E. W. agreed to pay support of \$450.00 per month although his annual income in 2018 was only \$14,438.00 corresponding to child support under the *Nova Scotia Child Support Guidelines* of \$57.51. Child support payments commenced on March 15, 2018, and continued the 15<sup>th</sup> day of each month.

[6] The Consent Order was enrolled for enforcement with the Program for the third time on May 31, 2020. Since that time, various administrative enforcement actions were taken by the Program without success.

[7] The Director filed the application on December 7, 2022, under section 37 of the *Act*.

[8] V. E. W. was personally served with the court documents on January 6, 2023, including the particulars about the initial court appearance. V. E. W. did not participate in the teleconference on January 24, 2023.

[9] An Order to Appear was issued and V. E. W. was again personally served with the court date and time. He appeared in person on May 24, 2023, and

indicated that he did not wish to retain legal counsel or seek a variation of the Consent Order.

[10] Further conferences were held on June 7, 2023, and June 9, 2023. V. E. W.'s payment proposal to address his arrears of support was accepted by the Director. The hearing scheduled for June 29, 2023, was adjourned with the consent of the Director.

[11] A further conference was held on October 19, 2023, to check in on the status of arrears paid in accordance with the payment plan. Again V. E. W. did not appear and a further Order to Appear was served on V. E. W.

[12] A conference was held on October 26, 2023, and the matter again set down for a hearing. Filing deadlines were provided in a Post-Conference Memorandum sent to the parties.

[13] The hearing scheduled for February 5, 2024, was re-scheduled to April 9, 2024, due to the weather conditions.

[14] The hearing proceeded on April 9, 2024, with Alison Rowter, Enforcement Officer testifying with limited cross-examination by V. E. W.

[15] V. E. W. was permitted to take the stand and provide limited evidence. He was cross-examined by counsel for the Director.

[16] Four exhibits in total were filed by the Director along with a pre-hearing brief and book of authorities. Oral submissions were heard, and my decision was reserved.

### **Director's Position**

[17] The Director says V. E. W. has failed to show he is unable to pay the arrears owed. The Director asks that V. E. W. be found in default of the order without valid reason and for his arrears to be set at the date of the hearing at \$16,150.00.

[18] The Director seeks relief under the *Act*, including the payment of arrears, continued payment of his ongoing support obligation and imprisonment of V. E. W. for a period of sixty days should he default on his payment of the full amount of arrears by June 1, 2024.

[19] A draft Enforcement Order was filed by the Director in advance of the scheduled hearing of February 5, 2024, which was adjourned due to the weather conditions. The Director continues to rely on that draft order with necessary adjustments to dates given the re-scheduled hearing.

### **V. E. W.'s Position**

[20] Although V. E. W. attended the hearing, he has chosen not to provide any evidence to dispute the claim of the Director, nor has he made an application to vary his support obligation or reduce his arrears.

[21] V. E. W. says he has received some legal information/advice but was not represented by legal counsel throughout the hearing.

[22] Based on the evidence contained in the Affidavits of Ms. Rowter and the limited direct evidence from V. E. W., I have *some* information as to his circumstances and position.

[23] V. E. W. says he suffered a brain injury a number of years ago and his brain does not function like everyone else. He says he deals with things by hoping they go away.<sup>1</sup>

[24] V. E. W. owns his own small business. He also operates an after-school program where he cares for school aged children. During the summer months he operates a children's day camp.

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<sup>1</sup> Affidavit of Alison Rowter sworn November 27, 2023, at paragraph 16.

[25] V. E. W. has not sought to vary the Consent Order as he says his daughter deserves the money and he is willing to pay the arrears and the ongoing support as ordered but would be unable to do so by June 1, 2024. He says since the Covid-19 pandemic, his business is recovering but if sentenced to a period of imprisonment, as requested by the Director that his business would close permanently, further interrupting his efforts to pay the arrears and ongoing support.

### **The Law**

[26] Section 37 of the *Act* provides where a payor defaults in the payment of child support under an order and the order is being enforced by the Director, the Director may apply to the court for a hearing.

[27] Further subsection (2) provides:

(2) At a hearing pursuant to this Section, unless the contrary is shown

(a) the payor is presumed to have the ability to pay the arrears owing and to make subsequent payments under the maintenance order; and

(b) a statement of arrears prepared by the Director is presumed to be correct as to the arrears owing.

[28] Extensive remedies are provided under the *Act* unless the payor can demonstrate they are “unable for valid reasons to pay the arrears or to make subsequent payments under the maintenance order”: section 37(3) of the *Act*.

[29] Further, the *Act* provides a remedy of imprisonment where a payor has not paid arrears by a specified date or is in default of any payment ordered: section 37(3)(j) and (k) of the *Act*.

[30] I note, imprisonment does not discharge arrears and does not preclude a subsequent imprisonment for the same arrears: section 37(6) of the *Act*.

[31] A number of cases have been provided by the Director to support its position that V. E. W. has failed to rebut the presumption and show a valid reason for his failure to pay in accordance with the Consent Order. When considering the term “valid reason” in reference to non-payment of arrears or ongoing support, the Director has provided *Ontario (Director, Family Responsibility Office) v. O’Neill*, 2018 ONCJ 343 and *Nova Scotia (Maintenance Enforcement) v. Dolliver*, 2023, an unreported decision from Justice Michelle K. Christenson where she endorsed the reasoning found *O’Neill*.

[32] At paragraphs 31 to 36, Justice Carole Curtis in *O’Neill* provides:

[31] A valid reason would be an event over which the payor has no control that renders him totally without assets or income with which to meet his obligations. Illness and involuntary unemployment are such examples. In considering a payor’s ability to pay, the court can consider not only his income, but also his assets.

[32] Valid reasons, within the meaning of section 41(1) of the *Act*, imply reasons for which the payor cannot be faulted or for which the payor does not bear responsibility in the culpable sense. The court would expect some



evidence of circumstances where, despite reasonable, diligent and legitimate efforts by the support payor to comply with the support order, the support payor has been unable to do so for reasons that are not connected with an unwillingness to pay, a lack of effort, a failure to prioritize the support obligation or a deliberate neglect, failure or avoidance on the part of the payor. Evidence relating to the past and present circumstances of the payor, including his financial circumstances since the time of the first default under the order, the manner in which he has applied his available income and assets, and his efforts to secure employment or income during the time that the arrears have arisen will have some bearing upon the determination of the legitimacy of the reasons the payor puts forward for his default under the support order.

[33] Circumstances that are beyond the control of the payor, resulting in the payor's inability to pay, would be valid reasons. An illness on the part of the payor, including a mental disorder, rendering the payor completely unable to work on either a full or part time basis, would amount to a valid reason for the payor's failure to pay.

[34] In order for a payor to argue that he is unable for a valid reason to pay the arrears, he must demonstrate that:

- (a) the circumstances giving rise to failure to pay is not voluntary;
- (b) he accepts his responsibility and places the interests of the child above his own; and
- (c) he has provided full, frank disclosure to the court.

[33] The Director has provided caselaw from Nova Scotia where imprisonment was ordered including *Baker v. Baker*, 2003 NSSC 203. In that decision, Justice Margaret Stewart said at paragraph 16 the following:

[16] In making an order for incarceration, I am mindful we do not send people to prison for non-payment of debts. We can however, punish for wilful disobedience of a Court Order when it is within their capacity to comply...

[34] In *Director of Maintenance Enforcement for the Province of Nova Scotia v. R.M.*, 2016, an unreported decision from Judge Michelle K. Christenson (as she then was), the importance of court orders was emphasized at paragraphs 27 & 28:

[27] Our entire judicial system is premised on the basis that Orders issued by Courts are to be followed. There must be consequences for individuals who fail to comply. Although I do acknowledge that R.M. did take steps in the last six weeks to reduce the quantum owed, it is too little too late...

[28] A message needs to be sent to both R.M., and to the public as a whole that there are consequences for non-compliance with Court Orders. It is clear from the case law that child support is a priority. It is time for payors to align their actions with this principle.

[35] In *Nova Scotia (Maintenance Enforcement) v. Hill*, 2017 NSSC 112, Justice Lee Anne MacLeod-Archer had an analogous situation to the one being decided here, where the payor was unrepresented and attended the hearing but failed to file any documentation or make a variation application.

[36] In those circumstances, where the payor was in arrears of \$34,221.54 at the time of the hearing and had made no payments since enrollment in the Program except for a payment under a federal garnishment, she ordered the following at paragraphs 18-21:

- The payor was to report to the court in three months time his compliance with the Enforcement Order.
- The payor was to pay within forty-five days of the decision half of the arrears and provide a reasonable plan to pay the balance.

- A warrant was issued but held for the payor's arrest and imprisonment for a period not exceeding ninety days pending his compliance with the Enforcement Order; and
- The payor was to pay costs to the Director.

[37] Further caselaw has been provided by the Director to support the relief sought, including imprisonment. I have reviewed each case provided along with the relevant sections of the *Act* in making my decision.

### **The Evidence**

[38] It is not my intention to recite all the evidence heard in this proceeding although I have reviewed and considered it in its entirety.

[39] The Affidavits from Alison Rowter, Enforcement Officer sworn November 30, 2022, and November 27, 2023, and entered as Exhibits 1 & 2, outline the various administrative enforcement actions taken by the Program commencing May 31, 2020, when the Consent Order was enrolled with the Program for the third time.<sup>2</sup>

[40] The available administrative actions have included provincial property, power, JEIN, MSI and registry of motor vehicle traces and federal traces, arrears

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<sup>2</sup> The Affidavit of Alison Rowter sworn November 30, 2022, at paragraph 9 filed as Exhibit #1 and the Record of Payments filed as Exhibit # 3 indicate the Consent Order was filed for enforcement with the Program on March 21, 2018, and withdrawn on May 7, 2018. The Consent Order was again filed for enforcement with the Program on July 4, 2019, and again withdrawn on January 29, 2020. Finally, the Consent Order was filed for enforcement with the Program on May 31, 2020.

and default notifications, collection calls, notices of garnishment, driver's license and passport revocations, and Notice of Examination and Demand for Financial Information by the Director.

[41] V. E. W. as a self-employed individual has presented additional barriers to the Program's enforcement measures.

[42] The Director has provided Record of Payments, entered as Exhibits 3 & 4, alleging arrears owing at the date of the hearing totalling \$16,150.00 with the next child support payment due on April 15, 2024.

[43] V. E. W. did not respond to the numerous enforcement actions and communications provided by the Director until he was personally served with the application on January 6, 2023.

[44] A payment proposal from V. E. W. was accepted by the Director on June 7, 2023. V. E. W. agreed to pay \$500.00 per month (during the summer months \$1,000.00 per month) towards his arrears until paid in full. Total payments of \$950.00 per month (\$1,450.00 during the summer months) were due with the goal of paying off his arrears in twenty months.<sup>3</sup>

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<sup>3</sup> V. E. W.'s arrears at that time were noted as \$18,000.00.

[45] Unfortunately, V. E. W. did not follow through and make the payments in accordance with the payment plan and it was subsequently voided. Between June 2023 and March 2024, a period of ten months, V. E. W. agreed to pay \$10,500.00 (regular payment plus arrears) but paid only \$5,650.00.

[46] In the summer of 2023, V. E. W. provided to the Director evidence of past direct payments of support made to the recipient. He has been credited with those payments (four payments in 2020 prior to enrollment for enforcement and one payment in 2021 of \$700.00 for which he received a credit on August 29, 2023).

### **Analysis and Decision**

[47] The Consent Order issued March 15, 2018, was not appealed nor has it been varied since it was issued. It is a valid and enforceable order. I am satisfied that V. E. W. was aware of the Consent Order and has not complied with his support obligation.

[48] The Director, since enrollment of the Consent Order with the Program on May 31, 2020, has made extensive efforts to enforce the order for support with no response from V. E. W. I accept based on the evidence; the Director has exhausted all available administrative enforcement measures.

[49] The Director has attempted to engage V. E. W. in the process without success until taking the matter to court. Since that time, V. E. W. has minimally engaged in this process.

[50] V. E. W. provided no voluntary payments through the Program since enrollment for the third time, until June 2023 when he entered the Payment Plan which was voided when he failed to comply with the payment schedule. The last payment made by V. E. W. was on March 26, 2024, for \$650.00.

[51] V. E. W. accepts some responsibility to pay child support for his child and he has refused to apply to vary his support obligation. Although no documents were filed, V. E. W. did attend the hearing and participate unlike in the two cases provided by the Director (*Nova Scotia (Maintenance Enforcement) v. Dolliver*, 2023; and *Nova Scotia (Director of Maintenance Enforcement) v. R.J.H.*, 2021 NSSC 105).

[52] I accept the submission of the Director that non-payment of the court ordered child support and arrears has resulted in a detriment to V. E. W.'s daughter, N. W.

[53] Although I can take judicial notice<sup>4</sup> of the general negative impact on businesses during the global Covid-19 pandemic that began in March 2020 and continued for almost three years, V. E. W. has provided no evidence to rebut the presumption that he has the ability to pay the arrears and his failure to pay support was not voluntary. He provided no evidence regarding his financial circumstances or the circumstances giving rise to his failure to meet his support obligation. He has not suggested an inability to pay the arrears for a valid reason but instead suggested that he requires more time to pay the arrears. He is self-employed and provided no evidence as to his assets or income. He also did not provide evidence of a medical reason for his lack of payment despite mentioning a brain injury which occurred a number of years ago.

[54] I am satisfied based on the evidence filed by the Director that V. E. W. can pay the arrears and does not have a valid reason for failing to do so. The presumption under section 37(2)(a) of the *Act* has not been rebutted by V. E. W.

[55] V. E. W. has not taken issue with the statement of arrears filed by the Director. The evidence supports a finding that the current arrears at the date of the

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<sup>4</sup> In *J.C. v. B.W.*, 2024 NSSC 95 at paragraph 65 and 66, Justice Samuel Moreau provides an overview of the law that allows a Judge to take notice of “basic facts” which are “so notorious as not to be the subject of dispute among reasonable persons or capable of immediate and accurate demonstration by resorting to readily accessible sources of indisputable accuracy”.

hearing are \$16,150.00 and the presumption under section 37(2)(b) of the *Act* has not been rebutted by V. E. W.

### **Appropriate Remedies**

[56] Having determined there is no valid reasons for default or for not paying support, and outstanding arrears of \$16,150.00 have accumulated, I must consider an appropriate remedy pursuant to section 37(3) of the *Act*.

[57] As submitted by the Director at page 6 of their Pre-Trial Brief dated January 9, 2024, I have considered all of the relevant facts, including the reason for the default, V. E. W.'s conduct towards the payment of support and towards enforcement, if any regular payments since enrollment of the Consent Order with the Program have been made, the extent of enforcement actions taken to compel compliance, and the period of time over which the default occurred.

[58] The Director asks that I exercise my discretion and impose a remedy pursuant to the *Act* that includes:

- Monthly reporting to the Director his efforts to comply with the Enforcement Order: section 37(3)(h) of the Act.
- Providing to the Director as soon as they occur any particulars of any change of address or employment: section 37(3)(i) of the Act.



- Payment of arrears of \$16,150.00 to the Director by June 1, 2024: section 37(3)(a) of the Act.
- Imprisonment continuously for a period of sixty days if V. E. W. defaults on the payment of his arrears by June 1, 2024: section 37(3)(j) of the Act.
- A Warrant be issued for the arrest and imprisonment of V. E. W. upon written notice from the Director that he has defaulted on his arrears payment.
- Costs payable to the Director in the amount of \$664.10 within sixty days of the issuance of the Enforcement Order: section 37(3)(p) of the Act.
- A judgment against V. E. W. for the arrears and costs with interest of five percent per annum: sections 37(3)(n) and 38(3) of the Act.

[59] V. E. W. has chosen not to apply to vary his child support obligation under the Consent Order issued March 15, 2018. He remains responsible to pay monthly child support in the amount of \$450.00 on the 15<sup>th</sup> of each month, in addition to the outstanding arrears of \$16,150.00.

[60] V. E. W. faces incarceration because of the arrears that have accumulated. Despite his failure to fully comply with the Consent Order, V. E. W. has paid some arrears and ongoing support over the years. He says that his business is recovering from the impacts of the Covid-19 pandemic, and he intends on paying the arrears and ongoing support.

[61] Since the commencement of this court proceeding, V. E. W. has provided evidence of payments made directly to the recipient in 2020 and 2021 totalling \$2,500.00. Since June 2023, he has made a more concerted effort to pay support with payments made totalling \$5,650.00. This suggests good faith on V. E. W.'s part and a genuine effort to pay his arrears and ongoing support.

[62] I am sympathetic to V. E. W.'s argument that if he is incarcerated, he will be unable to earn money and his business may close, but I am also troubled by his failure to fully address his arrears and ongoing support obligations when given the chance. Ignoring the issue and hoping it will go away has not proven a successful strategy.

[63] Based on the caselaw, the legislation, the evidence, and the submissions of the parties, I have concluded that incarceration in two months time will not benefit V. E. W. given his circumstances nor will it result in payment of the outstanding arrears or payment of his ongoing support obligation.

[64] V. E. W. requires additional time to pay his arrears but also requires motivation to do so and consequences if he fails in that regard.

[65] V. E. W. will be given the opportunity to make regular payments towards his outstanding arrears to avoid the consequence of imprisonment.

[66] I have considered what may be effective in compelling compliance to ensure payment of the outstanding arrears and have concluded the appropriate remedy is as follows:

- V. E. W. will report to the Director his efforts to comply with the terms of this order every thirty days commencing on Monday, June 3, 2024, and continuing monthly until his outstanding arrears are fully paid: section 37(3)(h) of the Act.
- V. E. W. will provide to the Director particulars of any change in his address or employment as soon as they occur: section 37(3)(i) of the Act.
- V. E. W. will report to the court his compliance with the Enforcement Order in six months time. A date will be set in November 2024 for V. E. W. to return to court: section 37(3)(h) of the Act.
- By no later than November 15, 2024, V. E. W. will pay \$5,000.00 towards the outstanding arrears: section 37(3)(a) of the Act.
- Commencing December 15, 2024, V. E. W. will make payments of \$500.00 a month towards the outstanding arrears. He will continue to pay this amount on the fifteenth of each month until the outstanding arrears are paid in full: section 37(3)(h) of the Act.
- A Warrant for V. E. W.'s arrest and imprisonment, for a period of thirty days, to be served on weekends from Friday at 6:00 p.m. until Monday at 6:00 a.m. will be held: section 37(3)(k) of the Act.
- Should V. E. W. fail to pay the arrears as ordered, the Director may provide written notice to the Court with a supporting affidavit outlining the default of his arrears payment and seek the issuance of the Warrant.

- A judgment in the amount of \$16,150.00 will be entered: section 37(3)(n) of the Act.
- No costs or interest on the outstanding arrears.

[67] Ms. Knox will draft the necessary Enforcement Order and file it with the Court. I ask that she reach out to Court Administration to schedule a convenient time in November 2024 for the review.

Cromwell, J.