

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

CITATION: *Nova Scotia (Director of Maintenance Enforcement) v. D.R.B.*,
2025 NSSC 189

Date: 20250606

Docket: *Bwt* No. SFBWMEA-133306

Registry: Bridgewater

Between:

Director of Maintenance Enforcement for the Province of Nova Scotia

Applicant

v.

D.R.B.

Respondent

Judge: The Honourable Justice Aleta C. Cromwell

Heard: May 26, 2025, in Bridgewater, Nova Scotia

Written Release: June 6, 2025

Counsel: Megan Roberts for the Applicant
D.R.B., did not attend

By the Court:

Introduction

[1] D.R.B. has failed to consistently pay child support in accordance with a support order granted in 2014 for the benefit of his daughter. Since 2020, he has accumulated maintenance arrears of more than \$32,000.

[2] Despite efforts by the Director of Maintenance Enforcement (the “Director”) to obtain compliance with the order through various administrative enforcement actions, D.R.B. has failed again and again to make his payments.

[3] The Director now seeks, among other relief, the payment of the arrears and incarceration of D.R.B. should he fail to comply with the proposed payment schedule that would see the payment of the arrears by January 1, 2028.

[4] D.R.B. did not attend the scheduled hearing nor provide any income information or information related to his circumstances. He also failed to make application to vary his child support obligation either retroactively or prospectively.

Issues

[5] This decision is about the appropriate remedy to be imposed under s. 37(3) of the *Maintenance Enforcement Act*, S.N.S. 1994-95, c.6 (the “*Act*”).

Background

[6] An Order pursuant to the *Interjurisdictional Support Orders Act* (the “ISO Order”) was issued by Justice Mona Lynch on November 26, 2014, after D.R.B., failed to appear at the scheduled hearing held on October 27, 2014. The ISO Order is in relation to one child, B.D.B. born 2013.

[7] D.R.B. was ordered to pay support for the child of \$600.00 per month commencing May 7, 2014, and continuing the first day of the month thereafter until further order of the Court.

[8] The ISO Order was enrolled for enforcement with the Maintenance Enforcement Program (the “Program”) initially on January 14, 2015, and has been withdrawn and re-enrolled on several occasions since, both in Nova Scotia and Alberta where D.R.B. resided and worked for a period.

[9] On March 21, 2024, the Director made application under section 37 of the *Act* for a finding that D.R.B. is in default of support payments, without valid reason; a

determination of the arrears owing; and seeking remedies available under the *Act*, including incarceration of D.R.B. should he default on payment of arrears.

[10] An *Ex Parte* Motion was filed by the Director on September 20, 2024, seeking an order for substituted service after repeated efforts to personally serve D.R.B. with documents related to this proceeding were unsuccessful.

[11] An Order for Substituted Service was granted September 26, 2024, providing for service of documents on D.R.B. through three email addresses that he had previously provided to the Program, through Facebook Messenger and by providing the documents in a sealed box to be provided to D.R.B. by staff members of the John Howard Society in Bridgewater.

[12] The Director served D.R.B. with the court documents via substituted service methods on October 2, 2024. D.R.B. did not participate in the initial teleconference on October 31, 2024, nor did counsel participate on his behalf.

[13] A Post-Conference Memorandum was sent by the Court, via email, to D.R.B. following the initial court appearance with relevant information including details of the next court date of January 16, 2025, along with filing deadlines and details for the hearing scheduled for February 24, 2025.

[14] D.R.B. again failed to participate in the pre-trial conference on January 16, 2025. At the request of the Director after receiving information that D.R.B. was in receipt of Income Assistance since May of 2024, the Hearing was rescheduled. A further pre-trial conference was scheduled for April 2, 2025.

[15] On February 13, 2025, D.R.B. spoke with the Enforcement Officer, Shannon Campbell. This application was discussed along with his maintenance arrears. D.R.B. was encouraged to obtain legal advice and file a variation application should he be unable to make the required payments. He was again provided with the documentation in this matter via email along with the details of the pre-trial conference so that he could participate on April 2, 2025.

[16] On February 25, 2025, D.R.B. again spoke with the Enforcement Officer to advise that he had obtained employment. An agreement was reached whereby the Director would reinstate D.R.B.'s Driver's License and he agreed to make his maintenance payments in the amount of \$300.00 bi-weekly.

[17] Unfortunately, D.R.B. did not make the agreed upon maintenance payments and his income was garnished through his employer until he left his employment at the end of April 2025.

[18] D.R.B. did not participate in the pre-trial conference held on April 2, 2025. A further Post-Conference Memorandum was sent to D.R.B. providing him with the Hearing date of May 26, 2025, along with relevant information to assist him in preparing for the Hearing.

[19] On April 8, 2025, D.R.B. advised Shannon Campbell, the Enforcement Officer he would resign from his employment if the Program garnished his income.

[20] D.R.B. did not attend Court on May 26, 2025, and the hearing proceeded in his absence. The only witness was the Enforcement Officer, Shannon Campbell.

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

Director's Position

[22] The Director says D.R.B. has failed to show he is unable to pay the arrears owed. The Director asks that D.R.B. be found in default of the order without valid reason and for his arrears to be set at the date of the hearing at \$32,399.10.

[23] The Director seeks relief under the *Act*, including, but not limited to, the payment of arrears through a payment plan commencing September 1, 2025, and

continuing until January 1, 2028; continued payment of his ongoing support; and imprisonment of D.R.B. intermittently for a period of thirty days should he default on any of his maintenance arrear payments.

D.R.B.'s Position

[24] At no time, since the commencement of this proceeding by the Director, has D.R.B. participated in the matter nor has counsel participated on his behalf.

[25] D.R.B. has also not filed with the Court any documentation providing information on his income or circumstances nor has he sought to vary his support obligations.

[26] Based on the evidence before the Court, through the affidavit evidence provided by the Enforcement Officer, I am satisfied that D.R.B. is aware of the proceeding through service of the documents and conversations with the Enforcement Officer. He chose not to present any evidence, and he chose not to participate in the Hearing.

The Law

[27] In March 2024, the Director applied to the Court for a hearing in accordance with s. 37(1) of the *Act*, after D.R.B. continued to default in his payments of child support under the ISO Order.

[28] At a hearing, s. 37(2) of the *Act* provides that D.R.B. is presumed to have the ability to pay the arrears owing and to make subsequent payments under the order. Further, a statement of arrears prepared by the Director is presumed to be correct.

[29] D.R.B. can rebut the presumptions by presenting evidence to satisfy the Court that he is unable for valid reasons to pay the arrears or make subsequent payments. D.R.B. can also present evidence should he take issue with the accuracy of the statement of arrears provided by the Director.

[30] Several cases have been provided by the Director to support its position that D.R.B. has failed to rebut the presumption of his ability to pay and show a valid reason for his failure to pay in accordance with the ISO Order.

[31] 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.

[32] Nova Scotia courts have continued to accept the Ontario case for an overview of what constitutes a “valid reason”, most recently in *Nova Scotia (Director of Maintenance Enforcement) v. Adeyemi*, 2025 NSSC 76.

[33] If D.R.B. is unable to demonstrate that he is unable for valid reason to pay the arrears or to make subsequent payments under the ISO Order, extensive and discretionary remedies are provided for the Court’s consideration based on all the circumstances at s. 37(3) of the *Act*.

[34] As one of the possible remedies, the *Act*, at s. 37(3)(j) and (k), provides for imprisonment where a payor has not paid arrears by a specified date or is in default of any payment ordered.

[35] The *Act* at s. 37(6), also provides that imprisonment does not discharge arrears and does not preclude a subsequent imprisonment for the same arrears.

[36] Several Nova Scotia cases have been provided by the Director where imprisonment was ordered.

[37] In *Baker v. Baker*, 2003 NSSC 203 at paragraph 16, Justice Margaret Stewart, discussed incarceration of a payor. She said:

[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...

[38] The importance of following court orders was emphasized in an unreported decision from 2016 in *Director of Maintenance Enforcement for the Province of Nova Scotia v. R.M.*, from Judge Michelle K. Christenson (as she then was). She said:

[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.

Analysis and Decision on Appropriate Remedies

[39] I have reviewed each case provided by the Director along with the relevant sections of the *Act* and evidence presented by the Director in making my decision.

[40] The Director asks that I exercise my discretion to impose remedies against D.R.B. pursuant to various provisions in the *Act*.

[41] Specifically, the Director seeks findings, and an Enforcement Order as follows:

- D.R.B. is in default of the ISO Order granted October 27, 2014, and issued November 26, 2014, by Justice Mona Lynch, without valid reason.
- D.R.B. has failed to respond to the enforcement actions taken by the Director.
- D.R.B. has failed to take steps to comply with the ISO Order or to make payment arrangements for his long-standing non-payment of maintenance.
- The Director has exhausted all available administrative enforcement options.
- The Director has been unable to find consistent sources of income despite diligent efforts.
- Commencing July 1, 2025, and continuing monthly, D.R.B. will report, to the Director his efforts to comply with the Enforcement Order arising from the decision of the Court: s. 37(3)(h) of the *Act*.
- When reporting to the Director, D.R.B. will provide particulars of his residential address and telephone number, his current employer

and their address and telephone number and any sources of income:

s. 37(3)(i) of the *Act*.

- D.R.B. will report any change in employer or personal contact information to the Director within 10 days of any change.
- D.R.B. owes maintenance arrears of \$32,399.10 as of May 26, 2025.
- D.R.B. will pay to the Director all maintenance arrears in accordance with the following payment schedule:
 - \$4,049.00 by September 1, 2025
 - \$4,049.00 by January 1, 2026
 - \$4,049.00 by May 1, 2026
 - \$4,049.00 by September 1, 2026
 - \$4,049.00 by January 1, 2027
 - \$4,049.00 by May 1, 2027
 - \$4,049.00 by September 1, 2027
 - \$4,056.10 by January 1, 2028

- For each occasion that D.R.B. defaults on a payment of his arrears in accordance with the payment schedule, he be imprisoned for a period of 30 days to be served from Fridays at 6:00 p.m. until Mondays at 6:00 a.m.: s. 37(3)(k) of the *Act*.
- A Warrant be issued for the arrest and committal of D.R.B. upon written notice from the Director that he has defaulted on payment of his arrears.
- D.R.B. may be imprisoned for the same arrears: s. 37(3) of the *Act*.
- Imprisonment of D.R.B. does not discharge arrears under the ISO Order: s. 37(6) of the *Act*.
- D.R.B. is not relieved of his obligation to make all monthly child support payments in accordance with the ISO Order in the amount of \$600.00 until further order of a Court of competent jurisdiction.
- D.R.B. pay costs of the application to the Director within three months of the issuance of the Enforcement Order: section 37(3)(p) of the *Act* and s. 13 of the *Maintenance Enforcement Regulations*.

- A Judgment against D.R.B. for the arrears and costs with interest of five percent per annum: ss. 37(3)(n) and 38(3) of the Act and s. 2(1) of the *Interest on Judgments Act*.

[42] The Affidavits from Shannon Campbell, Enforcement Officer sworn March 18, 2024, September 19, 2024, and May 8, 2025, were entered as Exhibits 1, 2 & 3.

[43] Those Affidavits outline the various administrative enforcement actions taken by the Program including provincial property, power, JEIN, MSI and registry of motor vehicle demands for information; federal traces and interceptions; arrears and default notifications; collection calls; notices of garnishment; driver's license and passport suspensions; public safety investigations to gather information; and demands for financial information since enrollment of the ISO Order with the Program.

[44] Since 2015, D.R.B. has had periods of work outside the province, he has been frequently unemployed, he has sometimes worked for cash, and he has had periods of housing insecurity and struggles with substance abuse. These circumstances have presented additional barriers to the Program's enforcement measures.

[45] Over the years, D.R.B. has occasionally responded to communications from the Program. Since re-enrollment of the ISO Order with the Program on April 23, 2021, Enforcement Officers have spoken with D.R.B. in May and July 2021; April, June, August, September, and October 2022; and February and April 2025.

[46] Enforcement Officers have repeatedly encouraged D.R.B. to provide a payment proposal to address the maintenance arrears, seek legal advice, make application to vary his support obligations and provide income and other information regarding his circumstances.

[47] Since the Director filed this application in March 2024, D.R.B. has made payment proposals to address his maintenance arrears in February and April 2025. Each time, however, he failed to follow through.

[48] The payment proposal provided by D.R.B. on February 25, 2025, was that he would pay \$300 bi-weekly commencing March 14, 2025. He asked that his driver's license be reinstated so that he could accept an offer of employment selling motor vehicles. The proposal was accepted by the Director. Unfortunately, D.R.B. failed to follow through on his payment proposal and a Notice of Garnishment was provided to his employer.

[49] On April 8, 2025, D.R.B. spoke with Shannon Campbell, the Enforcement Officer. Although he threatened to resign from his employment if the Program proceeded to garnish his wages to address his arrears and ongoing support obligations, he provided two recent pay stubs and completed the Income and Expense Forms along with a payment proposal.

[50] The payment proposal provided by D.R.B. on April 8, 2025, was that he would pay \$300 bi-weekly towards his monthly maintenance and an additional \$75.00 bi-weekly towards the arrears. Although the proposal was accepted by the Director in the interim, the hearing remained scheduled for May 26, 2025.

[51] D.R.B. was employed for a short period of time between February and April 2025, with his last day of employment on April 4, 2025.

[52] The Director has continued with various administrative enforcement actions to encourage compliance by D.R.B. with the ISO Order and enforce the order with limited engagement by him. I accept based on the evidence; the Director has exhausted all available administrative enforcement measures.

[53] It is clear from the evidence presented by the Director that D.R.B. is aware of the ISO Order through repeated notifications from the Program of his default and he

has not complied with his support obligations. D.R.B. has not made any voluntary payments of support since October 2022.

[54] It is also clear that D.R.B. has defaulted on his maintenance payments as required in the ISO Order and has failed to provide all necessary evidence regarding his income, expenses and ability to pay, depriving his daughter of support.

[55] The ISO Order and the amount owing under that order continues to be valid and enforceable. The ISO Order was not appealed, nor has it been varied since it was issued. It remains a valid and enforceable order.

[56] The ISO Order when re-enrolled with the Program on April 23, 2021, had maintenance arrears totalling \$20,033.65. Since that time, the maintenance arrears have grown to \$32,399.10. I accept the Record of Payments marked as Exhibit 4 as evidence of the arrears owing from D.R.B..

[57] It is unfortunate that D.R.B. chose not to file any evidence and failed to attend the hearing. D.R.B. is presumed to have the ability to pay the maintenance arrears and make payments under the ISO Order. In the absence of any evidence presented by D.R.B., no valid reason has been provided for his failure to pay the maintenance arrears or his ongoing support obligations.

[58] I am satisfied based on the evidence filed by the Director that D.R.B. 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 D.R.B..

[59] D.R.B. also 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 hearing are \$32,399.10. The presumption under section 37(2)(b) of the *Act* has not been rebutted by D.R.B..

[60] Having determined there is no valid reasons for default or for not paying support, and determining the outstanding arrears of \$32,399.10, an appropriate remedy pursuant to s. 37(3) of the *Act* must be decided.

[61] I have considered of all of the relevant facts, including the lack of reasons provided by D.R.B. for the default, D.R.B.'s conduct, including leaving his job in April 2025 after a Notice of Garnishment was sent to his employer when he failed to follow the payment proposal, the absence of any regular and consistent payments since October 2022, the extent of enforcement actions taken to compel compliance, and the period of time over which the default occurred.

[62] Although he is aware of the option, D.R.B. has chosen not to apply to vary his child support obligation under the ISO Order. He remains responsible to pay monthly child support in the amount of \$600.00 on the 1st of each month, in addition to the outstanding arrears of \$32,399.10.

[63] D.R.B. faces incarceration because of the arrears that have accumulated.

[64] Since October 2022, D.R.B. has made little effort to pay support. He has failed to keep the Program informed of his address, contact information or details of any income sources or employment. He has provided payment proposals and failed to follow through. This suggests bad faith on D.R.B.'s part with no genuine effort to pay his arrears or ongoing support.

[65] I have concluded that incarceration of D.R.B. should he fail to follow the payment schedule is a necessary consequence in all the circumstances. He must begin to take his obligations more seriously and make his payments towards his arrears in accordance with the payment schedule or risk incarceration.

[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:

- D.R.B. will report to the Director his efforts to comply with the terms of this order every thirty days commencing on Thursday, July 3, 2025, and continuing monthly until his outstanding arrears are fully paid: section 37(3)(h) of the *Act*.
- D.R.B. will provide to the Director particulars of his address and telephone number, his current employer, their address and telephone number and any sources of income. He will provide to the Director any change in his address or employment as soon as they occur: s. 37(3)(i) of the *Act*.
- D.R.B. will make payments towards his outstanding arrears, until paid in full, in accordance with the following payment schedule:¹
 - o \$4,049.00 by September 1, 2025
 - o \$4,049.00 by January 1, 2026
 - o \$4,049.00 by May 1, 2026
 - o \$4,049.00 by September 1, 2026
 - o \$4,049.00 by January 1, 2027

¹ Section 37(3)(a) of the *Act*.

- o \$4,049.00 by May 1, 2027
 - o \$4,049.00 by September 1, 2027
 - o \$4,056.10 by January 1, 2028
- A Warrant for D.R.B.'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 D.R.B. 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 \$32,399.10 will be entered: section 37(3)(n) of the *Act*.
- No costs or interest on the outstanding arrears.

[67] I would ask Ms. Roberts to draft the necessary Enforcement Order arising from this decision and file it with the Court to be issued.

Cromwell, J.

