

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Hajjar v. Youssef*, 2019 NSSC 382

Date: 2019-12-19
Docket: 1206-7186
Registry: Sydney

Between:

Sandy Hajjar

Applicant

v.

Chadi Youssef

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: October 9, 10, and 11, 2019 in Sydney, Nova Scotia

Final Written October 30, 2019

Submissions:

Written Decision: December 19, 2019

Issues:

- (1) Divorce
- (2) Matrimonial Assets
- (3) Child Support
- (4) Section 7 Expenses
- (5) Spousal Support

Results: Matrimonial Assets: unequal division of assets denied; Child Support: lump sum support based on imputed income; Section 7 Expenses: private school expenses denied; Spousal Support: lump sum awarded.

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Counsel: Elaine Gibney for the Applicant
Chadi Youssef, Self Represented

By the Court:

Facts

[1] The parties were married in Lebanon on February 7, 2010. Ms. Hajjar moved to Canada to join her husband 6 months later. They have one child together, A.Y, who is now 6 years of age.

[2] At the time of the marriage, Mr. Youssef was a business owner operating a pizza shop. In early 2014, a second shop was acquired and renovated. That pizza shop was destroyed by fire shortly after renovations were complete. Mr. Youssef was charged with arson arising from that fire, as well as the destruction of two vehicles by arson previously. He pled guilty and was sentenced to serve 2 years and 8 months in prison.

[3] The parties separated on May 2, 2016, the day Mr. Youssef was sentenced, but Ms. Hajjar visited him in prison and worked for his family in Port Hawkesbury after that date. A brief reconciliation attempt in 2017 was unsuccessful.

[4] An interim parenting order was issued on May 16, 2017 after Ms. Hajjar filed an *ex parte* motion for the return of A.Y. to her care. She was granted primary care, with access time for Mr. Youssef. On May 29, 2018 I rendered a decision on Ms. Hajjar's motion for mobility rights. I granted her permission to move the child to live in Lebanon. Since that time, Mr. Youssef has paid no support to Ms. Hajjar.

[5] A trial on divorce and other corollary relief was held on October 9, 10, and 11, 2019. The issues to be determined include child support, spousal support, and the appropriate division of matrimonial assets. Written submissions were filed. In Mr. Youssef's submissions, where additional evidence was offered that wasn't advanced at trial, I have given it no weight.

Divorce

The parties have been living separate and apart since May 2, 2016 and there is no possibility of reconciliation. I'm satisfied that there's been a permanent breakdown in the relationship and that all jurisdictional and legislative requirements have been met. The divorce is granted.

Matrimonial Assets

[6] At the time the parties separated, they owned of a home in Sydney River, which was unencumbered with debt.

[7] The parties also owned two vehicles, one of which was owned outright. Mr. Youssef took one vehicle after his release and paid the associated loan. They also had money in the bank, furnishings and expensive personal items, including watches, gold jewellery and electronics. Ms. Hajjar says that Mr. Youssef took and kept her clothing, jewellery and some contents after their attempted reconciliation in 2017. She asks that he be directed to return the gold jewellery, which includes jewellery belonging to their daughter. Mr. Youssef seeks credit for contents sold by Ms. Hajjar, as well as for the vehicles she sold.

[8] The parties both have student loans and there was a credit card with an outstanding balance at separation, but no other debt.

Insurance money

[9] The matrimonial home was damaged by a flood in October, 2016. The home and insurance were in Ms. Hajjar's name. Mr. Youssef says that Ms. Hajjar took the insurance settlement (which he estimates at \$27,000.00) but didn't repair the flood damage to their home. He says that he and his brother repaired the basement, and that this is why in 2017, Ms. Hajjar wrote a cheque to his brother for \$25,000.00.

[10] The brother did not testify, and Mr. Youssef's evidence about that \$25,000.00 payment is disputed (Ms. Hajjar says that it formed part of the \$45,000.00 payment to Mr. Youssef and that it was paid to the brother to avoid the insurance claim pending against Mr. Youssef for the burned vehicles – an explanation I accept).

[11] Ms. Hajjar didn't advance evidence to show whether and how these monies were used to repair the home. However, she acknowledges that she received the money, so the insurance proceeds are matrimonial assets to be divided.

[12] I accept Mr. Youssef's claim that he paid home repairs of \$1,360.00 and insurance costs of \$609.00 before the home sold. Ms. Hajjar had exclusive occupation of the home. She was responsible for its maintenance and upkeep, so Mr. Youssef will receive credit for those payments.

Bank Accounts

[13] Ms. Hajjar seeks an equal division of the monies held in the parties joint BOM bank account. That account balance on May 2, 2016 was \$14,930.97. Mr. Youssef says that a further \$10,000.00 was deposited on May 17, 2016 from a refund of his bail money. This came from savings. Ms. Hajjar used the money in that account for living expenses.

[14] A bank draft for \$7,000.00 was issued from that account on November 14, 2016. Mr. Youssef acknowledges that he received that money. Ms. Hajjar withdrew the balance of funds on the same day. To effect an equal division, Mr. Youssef should have received another \$5,465.49. This will be credited against any retroactive child support he may owe.

[15] There was also a bank account at RBC. It was held jointly by Ms. Hajjar and her mother-in-law. The genesis of this account is unclear, as both parties gave conflicting evidence. Ms. Hajjar says that the money in the account came from the 2016 sale of business assets to Mr. Youssef's brother.

[16] Mr. Youssef says that \$70,700.00 of this money was originally a loan from his parents for the business, and he seeks an order returning that money to them. He says that the account was placed in joint ownership to ensure that Ms. Hajjar had access to funds while he was incarcerated. That explanation doesn't make sense, where Ms. Hajjar had access to funds in the BMO account.

[17] As well, his parents didn't testify, and there are no loan documents tendered to confirm that the monies were a loan from family. Further, Mr. Youssef says that the business expansion was financed by his company, not his family. Combined with my credibility findings above, that leads me to accept Ms. Hajjar's version of where these monies originated. I reject Mr. Youssef's request that the court recognize a debt of \$70,700.00 owing to his family.

[18] After Mr. Youssef's release and their failed reconciliation attempt, the parties negotiated a deal, whereby Ms. Hajjar would take A.Y. and move back to Lebanon, in exchange for payment to him of \$45,000.00. As part of that deal, Mr. Youssef was to purchase tickets for her and A.Y. to Lebanon. She agreed and paid the \$45,000.00, but Mr. Youssef reneged. He canceled the flights and took A.Y. to Port Hawkesbury, where she stayed for three weeks without seeing her mother. An interim parenting order was put in place after Ms. Hajjar filed an *ex parte* application.

[19] The \$45,000.00 paid by Ms. Hajjar came from the proceeds of sale from the business assets. Those assets had been transferred into Ms. Hajjar's name personally in 2014, after Mr. Youssef was charged criminally. Ms. Hajjar claims a 100% interest in the sale proceeds, presumably as an exempt business asset. However, the assets were transferred to her personally and the monies were paid to her, apparently in an effort to avoid creditors. Both parties were complicit in this, so to reward Ms. Hajjar with a 100% interest would be contrary to public policy. The monies will form part of the matrimonial assets to be divided.

[20] What happened to the balance of the RBC account is also disputed. Ms. Hajjar says that Mr. Youssef used \$5,000.00 to pay business expenses; \$10,000.00 to pay on his student loan; \$1,000.00 for a grad ring; \$8,000.00 on their MasterCard; \$1,500.00 for his living expenses, and \$2,000.00 in cash for himself. She acknowledges that she spent the rest of the monies on living expenses for herself and A.Y.

[21] The business assets were sold for \$89,000.00. Each party should have received \$44,500.00. Instead, Ms. Hajjar transferred \$45,000.00 to Mr. Youssef's mother and brother, and Mr. Youssef spent \$27,500.00. Ms. Hajjar spent the balance of \$16,500.00 on her own needs. That means that Mr. Youssef still owes Ms. Hajjar \$28,000.00 (\$44,500.00 - \$16,500.00) from the sale proceeds. This figure reflects my finding that the \$45,000.00 paid to Mr. Youssef's brother and mother went to him indirectly.

Contents

[22] Ms. Hajjar says that Mr. Youssef removed some of the home's contents in 2017, and that she sold the rest of the contents before leaving Canada. Mr. Youssef placed values on the items she sold, but neither party tendered an appraisal or a full listing of the contents. I therefore direct that each party retain the contents they removed or their proceeds of sale. There will be no further division of contents.

Jewellery

[23] Ms. Hajjar also seeks recovery of (or reimbursement for) gold jewellery she says belongs to her and A.Y. She says that Mr. Youssef took the jewellery in 2017. She acknowledged on cross-examination that she sold a gold ring belonging to Mr. Youssef, but she denies that she took or sold any other gold jewellery.

[24] Mr. Youssef alleges that some of the jewellery belonged to his mother, and he seeks reimbursement for the value of her jewellery. He didn't identify the items, or have his mother testify to confirm that she loaned Ms. Hajjar any jewellery. Again, given my credibility findings above and these inconsistencies, I accept Ms. Hajjar's version of events. I find that the jewellery belonged to her and A.Y.

[25] I also find that Mr. Youssef removed the bulk of jewellery belonging to Ms. Hajjar and A.Y. in 2017. This is consistent with his actions at that time, whereby he conned Ms. Hajjar into paying him \$45,000.00 from the monies she removed from the RBC account, and then reneged on his agreement to allow her to leave Canada with A.Y. This was also when he kept A.Y. from her mother for three weeks.

[26] There was no appraisal or list of gold jewellery tendered in evidence. Ms. Hajjar tendered receipts for items bought in Lebanon, but those receipts were created after the fact. She also tendered stock photos of jewellery which she says formed part of her collection, but she offered no photos of her actually wearing the items. Mr. Youssef takes issue with this evidence and asks the court to disregard it. I agree that the evidence is unsatisfactory. Other than a few receipts, the only evidence I have of the jewellery's value is that of Mr. Youssef himself. During the 2017 hearing, he suggested that Ms. Hajjar removed \$50,000.00 worth of gold from the home.

[27] Ordering Mr. Youssef to deliver all the gold jewellery to Ms. Hajjar is one option, but given that there's no list of items and disputes are very likely to arise, I direct instead that he reimburse Ms. Hajjar the sum of \$25,000.00, being his estimate of the value of half the jewellery removed from the home.

Miscellaneous Personal Items

[28] Ms. Hajjar says that, when he removed certain items from the home in 2017, Mr. Youssef took her new laptop and the child's iPad. In addition, she says that Mr. Youssef removed the contents of the basement, which included business and personal papers. She seeks the return of her electronics, her personal records, and her daughter's personal documents, including her passport.

[29] Realistically, where Mr. Youssef denies taking these items and two years have passed, there's little point in ordering their return. I direct instead that, as an incidence of custody, Ms. Hajjar will be permitted to apply for a copy of the

child's birth certificate and to renew A.Y.'s Canadian passport, without Mr. Youssef's consent or authorization.

Matrimonial Home

[30] The home was registered in the name of Ms. Hajjar solely in 2014. It was unencumbered at the time of separation and was sold on December 5, 2018 for \$190,000.00. The net proceeds of \$179,214.97 were paid into counsel's trust account. From that sum the amount of \$13,750.00 was paid to Ms. Hajjar for a costs award due from Mr. Youssef. Ms. Hajjar seeks the entire balance in an unequal division of assets, given what she claims to be the impoverishment of the parties finances caused by Mr. Youssef's criminal behaviour.

Unequal Division

[31] Ms. Hajjar seeks an unequal division of matrimonial assets under section 13 of the *Matrimonial Property Act* [RSNS 1989, c. 275] which states

13 Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, **where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable** taking into account the following factors:

(a) **the unreasonable impoverishment by either spouse of the matrimonial assets;**

...

[32] The onus is on Ms. Hajjar to prove that an equal division would be unfair or inequitable. She says that Mr. Youssef unreasonably impoverished their assets by investing approximately \$500,000.00 in the second pizza shop, which was lost when Mr. Youssef committed arson. She also says that he spent \$55,000.00 on his defence on those charges, unreasonably impoverished their assets further.

[33] Mr. Youssef denies that the parties invested approximately \$500,000.00 in the second pizza shop. He concedes that money was spent on leasehold renovations (valued at \$130,000.00 according Ms. Hajjar's T2125) as well as

chairs, tables and equipment (valued at \$77,314.59 according to Exhibit 12). He says that:

- she failed to prove the amount of the loss;
- she benefitted from the disposal of the business;
- she never contributed a dime to establishing the business;
- she was compensated for her work in the business;
- the business is exempt from division in any event;
- Ms. Hajjar has no credibility and lied in court “many times”.

[34] In Mr. Youssef’s post-trial submissions, he references ASM Haydar Ltd, which owned the first pizza shop and issued T4 slips to Ms. Hajjar until 2014. Mr. Youssef says that the company was “disposed” in 2014, at which time the assets were transferred to Ms. Hajjar. He also signed a Quit Claim deed to Ms. Hajjar for the home in May, 2014. This all coincides with the arson charges against Mr. Youssef.

[35] Mr. Youssef didn’t provide disclosure of his business/corporate holdings, despite request from Ms. Hajjar’s counsel. He decided that the information isn’t relevant, so he refused to disclose it. He also says that Ms. Hajjar had access to that information herself. Ownership of the first pizza shop’s assets was transferred to her in 2014.

[36] Even after hearing evidence, it’s still unclear to me how the second shop was financed. It’s clear that there is no personal debt associated with the expansion, so it was either financed by Mr. Youssef’s company or through their savings. Other than Ms. Hajjar’s assertion that the money came from savings, I have no proof of its source.

[37] Further, Mr. Youssef relies on s.2 of the *Matrimonial Property Act* and argues that the business/company is exempt from division, and thus any monies the company spent on expanding into the second location, which were lost by virtue of his actions, is irrelevant.

[38] A second argument involves the funding for Mr. Youssef’s criminal defence on the arson charges. Ms. Hajjar says that this ate up a significant amount of

savings, money which would otherwise be available for division. Mr. Youssef refused to disclose his defence lawyer's account, so the amount he paid for his defence, and how it was funded, is unknown.

[39] Ms. Hajjar argues that her estimate of Mr. Youssef's defence cost of \$55,000.00 is uncontroverted. While that's true, there's still no basis in Ms. Hajjar's evidence to support that figure. Defence counsel wasn't subpoenaed to provide an accounting. I don't know whether there was a trial, a preliminary inquiry, a bail hearing, etc. I cannot take judicial notice of the amount routinely charged for a criminal defence, and I can't accept a figure seemingly pulled from the air by Ms. Hajjar.

[40] I also don't know the source of those funds. Mr. Youssef borrowed money from his family to fund his legal bill for the mobility hearing. It's entirely possible that he borrowed money from them to fund his criminal defence as well.

[41] Ms. Hajjar says that she supported Mr. Youssef in expanding the business, gaining his education, and in taking care of A.Y., with little financial assistance from him. She also points to her student loan debt as a factor to be considered in an unequal division.

[42] These are all valid considerations under section 13(a) of the **MPA**, but only in the context of unreasonable impoverishment of "**matrimonial** assets". Ms. Hajjar has not proven, on a balance of probabilities, that the monies invested in the business were matrimonial assets, and that those matrimonial assets were unreasonably impoverished by virtue of the investment in, and subsequent loss of, the pizza shop. Nor has she proven that Mr. Youssef's criminal defence depleted matrimonial assets. I therefore decline to grant Ms. Hajjar's claim to an unequal division of the proceeds of sale for the matrimonial home.

[43] Finally, Mr. Youssef takes issue with the sale price for the home. He says that a few years prior, it was appraised much higher than the sale price. He alleges that Ms. Hajjar let it fall into disrepair, thereby reducing the value. The realtor wasn't subpoenaed to testify. There is no written valuation from the realtor, indicating that the list price was reduced due to the condition of the home. The listing itself wasn't tendered in evidence. And there's no appraisal or photos showing the condition of the home anytime after May, 2016. I can't compensate Mr. Youssef for an unproven, unquantified decrease in value.

Vehicles

[44] The parties owned two vehicles at separation. Neither party tendered appraisals for the vehicles or loan balances. Mr. Youssef says that he paid the monthly loan payment on the vehicle he took. At one point, he had both vehicles in his possession. Ms. Hajjar later obtained one of the vehicles and sold it before leaving for Lebanon.

[45] With a dearth of evidence on values and associated debt, I direct that each party retain the vehicle in their possession (or the sale proceeds in Ms. Hajjar's case) without compensation to the other.

Debts

[46] Each party incurred student loans. Mr. Youssef says that he still owes about \$19,000.00. Ms. Hajjar suggests that this is post-separation debt. It's unclear from the evidence when the loan was incurred. However, Mr. Youssef started repaying the loan in 2018, and he didn't return to university until the fall of 2019, at which time he says he'd saved money for his tuition. I find that the debt was incurred for his CBU degree, which makes it a matrimonial debt.

[47] Ms. Hajjar owes \$33,321.00 on her student loan. The difference between the two loan balances is \$14,321.00 so Mr. Youssef will compensate Ms. Hajjar for half that sum (\$7,160.50).

[48] There was also a MasterCard credit card used by the parties. The balance owing at separation isn't clear, but Mr. Youssef offered evidence to show that Ms. Hajjar charged \$1,281.31 for clothing, gifts and food after separation. I have not considered electronics he says were charged to the card, as he kept those items after the attempted reconciliation. However, I will credit \$1,281.31 against any retroactive child support owed by Mr. Youssef. The balance will be Mr. Youssef's responsibility.

Child Support

[49] The parties have one dependent child who lives with her mother. Mr. Youssef paid \$300.00 per month for a period of time, but he hasn't paid child support since June, 2018.

[50] Ms. Hajjar asks the court to grant lump sum child support in accordance with s.7 of the *Child Support Guidelines*, which states:

7. The court may require in a child support order that the amount payable under the order be paid in periodic payments, in a lump sum or in a lump sum and periodic payments.

[51] Ms. Hajjar says that Mr. Youssef can't be trusted to pay child support even if a court order is granted. She says that she's been left to bear sole financial responsibility for A.Y.'s care and needs. She and A.Y. currently live with Ms. Hajjar's parents.

Determination of Income

[52] Ms. Hajjar asks the court to impute income to Mr. Youssef. She says that he failed to provide timely and complete financial disclosure for purposes of assessing his child support obligations, and that he's hiding income sources. She suggests that a figure of \$100,000.00 is reasonable, based on his skills and qualifications. This would result in a child support payment of \$853.00 per month.

[53] Before his incarceration, Mr. Youssef attained his Bachelor and Masters of Business Administration degrees. After he was charged with arson, he arranged for his brother to purchase the assets of the remaining pizza shop. When he was released from prison and after leaving the halfway house in Sydney, he moved back to Port Hawkesbury to work in his family's pizza shop.

[54] At trial, Mr. Youssef testified that he found it difficult to obtain work with a criminal record. He says that's the reason he returned to university in Halifax in September, 2019.

[55] Ms. Hajjar seeks prospective child support, payable in a lump sum. Based on an imputed income of \$100,000.00 over the next 13 years (until the child reaches the age of majority), she calculates the amounts at \$133,068.00.

[56] In addition to prospective child support, Ms. Hajjar says that there is retroactive child support owing to her in the amount of \$13,648.00 (based on an imputed income of \$100,000.00).

[57] Mr. Youssef argues that imputing income to him of \$100,000.00 is unrealistic. He says that he's not hiding income. At trial, he provided tax information for the last two years, which shows that he made far less than \$100,000.00 each year.

[58] Mr. Youssef says that he recognizes his obligation to pay child support. He points out that he paid some support to Ms. Hajjar in 2018, and that he contributed to the child's daycare expenses. In addition, he says that he incurred transportation costs of \$200.00 per month to exercise access while living in Port Hawkesbury.

[59] However, he says that he cannot afford to pay child support now, as he has limited income, and his access costs traveling to Lebanon will be high.

[60] Mr. Youssef estimates that the average cost of a trip for him to Lebanon will be \$6,000.00, and he expects to make two trips annually. He offered no documentary proof of his expenses from his last trip to Lebanon, so it's not clear if his estimate includes monies spent to have his fiancé accompany him, or what other expenses it includes. However, the evidence is clear that a return tickets costs between \$1,900.00 - \$2,500.00 and that Mr. Youssef can stay with family in Lebanon.

[61] Child support is the right of a child. It must be paid based on a payor's actual income, according to line 150 of their filed income tax returns. Alternatively, it may be based on an imputed income if the appropriate income information is not available, or doesn't properly reflect the income available to pay child support.

[62] Mr. Youssef says that he has no other sources of income or unreported income. He is currently collecting EI benefits of \$770.00 bi-weekly, while attending university. Ms. Hajjar questions how Mr. Youssef could afford to travel to Lebanon, attend university in Halifax, and buy his fiancé expensive jewellery, if he has so little income.

[63] Credibility plays an important role in determining whether to impute income to Mr. Youssef. There are a number of instances where his evidence lacked credibility. A small sampling includes:

- He denied receiving his criminal file from defence counsel, despite counsel's letter to Ms. Gibney advising that Mr. Youssef was given the file.
- He took his fiancé with him on one of the trips to Lebanon, at which time he presented her with an engagement ring. His claim that the ring is "fake" is completely incredible. First, he said that he bought it

at the farmer's market for \$100.00. When the subject arose again, he said the ring was plastic (suggesting it's worth even less than \$100.00). He denies that the ring he gave to his fiancé is a valuable piece of jewellery. His fiancé's Facebook post about the engagement was presented in evidence. It shows her wearing what appears to be a large diamond ring. The ring box in the photo (which Mr. Youssef is holding) has a jeweller's name embossed on it, though Mr. Youssef claims that it's a repurposed box he got from home. I find it's extremely unlikely that Mr. Youssef would present a fake ring to his fiancé, and even more unlikely that she'd post photos and brag about it.

- Mr. Youssef claims that the ring was originally intended for Ms. Hajjar, but that she didn't "earn it" (which I take to mean she didn't deserve it) so he kept it. Given the lifestyle the parties shared prior to their separation, I highly doubt that Mr. Youssef would buy Ms. Hajjar a fake or plastic ring.

[64] Overall, much of Mr. Youssef's evidence appeared fabricated on the spot. His evidence was strategic, evasive, argumentative, inconsistent and defensive. He exaggerated at times, then backtracked when confronted on those claims. In many instances where Ms. Hajjar's evidence contradicts his, I accept hers as the more credible evidence. That is not to say that I accept all of her evidence without question. There were times where her evidence was strategic and defensive, but generally her evidence was more consistent and credible than Mr. Youssef's.

[65] Mr. Youssef says that he can't earn the same level of income that was available to him before 2016. I accept that his criminal record likely poses a problem for employment with arms' length parties, especially in his field of study. However, his family owns several businesses and he worked with them until he returned to university. There's no reason that he can't continue to work for them, earning at least \$37,440.00 per year (as he did in 2018).

[66] I reject Ms. Hajjar's suggestion that an imputed income of \$100,000.00 is reasonable. There's no evidence that opportunities currently exist for Mr. Youssef to earn that level of income. While evidence of past income and lifestyle is often

helpful in assessing a payor's true ability to pay support, it's not useful here where his circumstances have changed so drastically. Given the fact that Mr. Youssef no longer operates his own business and has a criminal record, that figure is out of the realm of reality (at least while he lives in Canada).

[67] However, payors have an obligation to earn an income commensurate with their qualifications in order to help support their children. Mr. Youssef offered no evidence to show how further education will enhance his ability to provide for his daughter. In his post trial submissions, he suggests that he may move to Lebanon, where his criminal record won't be held against him. If that's the case, further studies in Canada will not likely enhance his current qualifications. He should therefore be working for his family, earning at least what he made in 2018, to help support his daughter.

[68] In the circumstances, I impute income to Mr. Youssef in the amount of \$37,440.00 per year. That sum is based on his 2018 line 150 income. It's a sum that's realistically available to him in the circumstances.

Lump sum child support

[69] I accept Ms. Hajjar's argument that Mr. Youssef is unlikely to pay child support. Her request for a lump sum paid from the house proceeds is reasonable in these circumstances. The problem with a lump sum calculated over the next 13 years is that I must forecast Mr. Youssef's income into the future. If his income increases, the child will lose out. However, Ms. Hajjar sees value in having certainty of payment, which is understandable.

[70] I therefore order under s.11 under the *Federal Child Support Guidelines* that Mr. Youssef pay lump sum child support based on an income of \$37,440.00 per year under the Nova Scotia table. At \$320.00 per month, this equates to \$49,920.00 over 13 years. This isn't a capitalized figure, but I balance that with the fact that Mr. Youssef's income will likely increase over the years, especially if he moves back to Lebanon. I've made no reduction for access costs because I don't accept that two trips per year will cost nearly what Mr. Youssef suggests. I've also considered the fact that, if he moves back to Lebanon, Mr. Youssef's access costs will be negligible.

Retroactive child support

Mr. Youssef paid some child support after separation, but none since June, 2018. Based on an income of \$37,440.00 he should have paid \$320.00 per month to October, 2019. The total amount owing is \$5,120.00.

Section 7 expenses

[71] Mr. Youssef further argues that he shouldn't be required to make any contribution to A.Y.'s health and private school costs. He points out that education and healthcare in Canada is free, and that there's public schooling available to A.Y. in Lebanon. He says that both he and Ms. Hajjar attended public school, so it should be good enough for A.Y.

[72] Ms. Hajjar says that public school in Lebanon is not suitable for their daughter, as class sizes are too large. She enrolled A.Y. in a private school, at a cost of \$4,650.00 per year, which her father has paid to date. She seeks a contribution from Mr. Youssef for this expense.

[73] In his post-trial submissions, Mr. Youssef argues that if Ms. Hajjar is not able to support their child on her income in Lebanon, she should not have moved. He suggests that she move back to Canada, where healthcare and education are free. Alternatively, if she chooses to stay in Lebanon, he says that he can parent A.Y. here.

[74] Mr. Youssef did request a change in custody in his Answer, but the focus of the hearing was not on parenting. That issue was laid to rest with my earlier decision on mobility. In any event, there's no evidence to show that a change in primary care and/or custody would be in A.Y.'s best interests. Mr. Youssef's suggestion arises solely in response to Ms. Hajjar's child support claim.

[75] Section 7 expenses must be reasonable and necessary. While private school is Ms. Hajjar's preference, there are public schools available at no cost. Although Mr. Youssef initially agreed to contribute to the cost of private school, he changed his mind and refused to pay. The child has no special needs, and other than class size, there's no evidence that public school isn't suitable for A.Y. It's not reasonable to order Mr. Youssef to make a contribution to A.Y.'s private school costs in the circumstances.

[76] I do find that A.Y.'s health coverage expenses are reasonable and necessary. Ms. Hajjar incurs a monthly fee of \$80.00 for her and A.Y. Mr. Youssef will contribute \$40.00 per month towards that coverage. Ms. Hajjar must advise Mr.

Youssef if and when that expense ends. Mr. Youssef will also be responsible for 50% of A.Y.'s uninsured health and dental expenses. He must reimburse Ms. Hajjar by email or wire transfer within 7 days of receiving invoices paid by her.

Spousal Support

[77] Ms. Hajjar moved back to Lebanon to be closer to family and obtain work, but she is still facing economic hardship arising from the marriage breakdown. She came to Nova Scotia speaking only Arabic and French. She didn't drive, and was entirely dependent on her new husband. She worked in the pizza business, while also being primarily responsible for A.Y.'s care. Her hard work helped Mr. Youssef expand the business with a second store. Ms. Hajjar expected to reap the benefits of her hard work for many years.

[78] I reject Mr. Youssef's suggestion that had she not come to Canada, Ms. Hajjar would have gone nowhere in life. She is smart and ambitious. Had she not married, immigrated to Canada and had a child, she might have pursued her studies sooner. In that case, she might have been established in a career by now. Instead, she's living with her parents while raising a young child. She obtained a business degree (in a newly acquired language) before leaving Nova Scotia, but her career is effectively on hold while she establishes a home for herself and A.Y. in Lebanon.

[79] Mr. Youssef says that Ms. Hajjar should be able to support herself. He says she is young and healthy. Yet at the same time he describes her as lazy. The evidence is clear that she is not. Ms. Hajjar worked with Mr. Youssef in the business while raising a child and studying for her degree. After his incarceration, she worked late nights in his family business, then drove several hours back and forth to New Brunswick to bring his mother and A.Y. to visit him on weekends. She is working now in Lebanon while raising their daughter. She is far from lazy.

[80] However, Ms. Hajjar is disillusioned and bitter. She didn't expect to lose her livelihood and her marriage through Mr. Youssef's criminal acts. She didn't expect to be left caring for a toddler alone, while her husband served time in jail.

Entitlement

[81] The parties were only married for 6 years. This is not a long-term marriage, and both parties worked during the marriage. However, Ms. Hajjar was dependent on Mr. Youssef financially. She hasn't established a career and financial

independence yet, and because she has A.Y. in her sole custody, that's not an immediate likelihood.

[82] I will address some of Mr. Youssef's arguments that Ms. Hajjar should not be entitled to spousal support:

[83] First, in her mobility application, Ms. Hajjar said that she could secure a better life for herself and their child in Lebanon. He says that Ms. Hajjar should be expected to support herself without financial support from him. I've addressed that argument above. Ms. Hajjar needs support in re-establishing herself, pursuing her education, and to overcome the financial consequences of the marriage breakdown and her sole custody of their dependent child.

[84] Secondly, he argues that Ms. Hajjar is responsible for the breakdown of the marriage, alleging that she cheated on him while he was serving time in jail. He says that allowing a spouse who has cheated to claim support tells them it's "ok to cheat on your partner" and "it's ok to destroy your marriage".

[85] Section 15(5) of the *Divorce Act* precludes consideration of spousal misconduct during the marriage in making orders for support. However, I will address Mr. Youssef's allegation of spousal misconduct, as it was raised in his brief.

[86] In accusing Ms. Hajjar of "cheating" on him while he was incarcerated, Mr. Youssef ignores the fact that both parties claim a separation date of May 2, 2016. This is the date he was sent to prison. So, Ms. Hajjar can't have "cheated" on Mr. Youssef while he was incarcerated, because by then, they were separated.

[87] Secondly, Mr. Youssef conveniently ignores the fact that he was serving federal prison time for arson. He burned one store and jeopardized the viability of the other. He was also charged with burning two vehicles, for which the insurance company paid monies and now seeks reimbursement. If anything "destroyed" their marriage, it was his criminal actions.

[88] Mr. Youssef further says that, even if Ms. Hajjar is entitled to spousal support, he doesn't have the financial ability to pay. In this respect, he says that Ms. Hajjar can't distinguish between wants and needs, and that he shouldn't be expected to underwrite her chosen lifestyle. In his post-trial submissions, he characterizes her claim to need support as "B.S.". It's clear from the evidence and

his submissions that Mr. Youssef has little respect for Ms. Hajjar, her role as a mother, and her contributions to the marriage.

[89] I find that Ms. Hajjar is entitled to spousal support on a compensatory and non-compensatory basis. Hers is a time-limited claim, as the parties weren't married long. But she does have childcare responsibilities that impact her ability to seek self-sufficiency, and she clearly faces economic fall-out from the breakdown of the marriage. She will not achieve self-sufficiency anytime soon.

Lump sum spousal support

[90] Lump sum orders are usually granted where there is an immediate need to be addressed. Things like pursuing an education, facilitating the purchase of a home or automobile, or providing the spouse with the opportunity to re-establish themselves in another community, are some of the factors which might give rise to a lump sum order. In a case where payment is unlikely, a court can also exercise its discretion in granting a lump sum spousal support award.

[91] I find that a lump sum is appropriate in this case. Mr. Youssef is unlikely to pay spousal support, and Ms. Hajjar needs money to re-establish herself and A.Y. Based on the income I've imputed and finding that support would otherwise be time limited, I award a lump sum of \$26,000.00 to Ms. Hajjar. This figure represents six years of net support. This reflects the period of the marriage and the non-taxable status of a lump sum.

Retroactive spousal support

[92] Mr. Youssef didn't pay any spousal support after separation.

[93] I decline to grant retroactive spousal support for a number of reasons:

- Mr. Youssef reported no income in 2016 due to his incarceration;
- He has a student loan and vehicle loan to pay;
- He has debt to his family that must be repaid;
- Ms. Hajjar had access to funds in their bank account to help her with living expenses, as well as the insurance proceeds, and money from the RBC account;

- She had some income of her own after separation;
- She had exclusive occupation of the matrimonial home;
- Child support takes priority over spousal support and will be paid in a lump sum. Any further payments will cause hardship to Mr. Youssef.
- A *DBS* analysis does not support it.

Summary

[94] After credit for items outlined above, including the insurance monies, Mr. Youssef will pay a total of \$118,984.70 to Ms. Hajjar. His share of the house proceeds will be used to pay this sum, with the balance to be paid through the Director of Maintenance Enforcement. Ms. Hajjar will be entitled to receive 100% of the house proceeds as a result.

[95] Mr. Hajjar's counsel will prepare an order for the other relief granted. Submissions on costs are due on or before January 24, 2020.

Justice MacLeod-Archer