

**SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Marchand v. Joyce*, 2021 NSSC 117**

ENDORSEMENT

March 31, 2021

Joseph Glen Marchand and Sara Jane Joyce (previously Marchand)

Court File No. SFH1201-066541

Joseph Marchand, on his own behalf.

Sara Joyce, on her own behalf.

Application to Vary

On January 31, 2018, Joseph Marchand filed a Variation Application pursuant to s. 17 of the *Divorce Act* seeking to suspend his payments of child support and spousal support retroactive to 2016. He was also seeking relief from payment of arrears pursuant to the Corollary Relief Order issued May 13, 2015.

Decision:

I find Ms. Joyce is entitled to spousal support indefinitely. I find that due to the parties' circumstances between August 2017 and March 2021 that Ms. Joyce is entitled to \$0 in spousal support.

Background

1. The parties were married for approximately twenty-one years. The parties had two children. There remains one adult child of the marriage born in February 1991. Both parties acknowledge that their adult child is “permanently fully disabled and dependent on others even for simple self-care for medical reasons: multiple congenital anomalies due to a chromosomal condition.”
2. Mr. Marchand claimed he has been unable to work since February 2017 and that Ms. Joyce is not in need of spousal support. Mr. Marchand noted that

Ms. Joyce has an income from employment and an income as their son's caregiver, that their son is living with her and he is receiving social assistance, and that Ms. Joyce had been living with an intimate partner who is earning an income.

3. Ms. Joyce asked the Court to order that spousal support of \$600 per month (lower than advisory guidelines due to an unequal division in favour of Ms. Joyce), in place commencing September 1, 2013, pursuant to the Corollary Relief Order granted in May 2015, continue until January 1, 2020.
4. Ms. Joyce claimed Mr. Marchand was not disclosing all his income or in the alternative, he had not proven he was unable to work and income should be imputed to him. Ms. Joyce confirmed her son was receiving income from social assistance, that she was receiving employment income and other income related to the care she provides for her adult son, and that she continues to live with her intimate partner who earns an income.

Court Involvement

5. Conferences were held on August 30, 2018 and on September 12, 2018. On September 12, 2018, Joseph Marchand agreed to continue to pay child support as outlined in paragraphs four through eight of the Corollary Relief Order issued May 13, 2018 (no special expenses; child support paid in two equal installments of fifty dollars per month on the first and fifteenth of each month for a total of \$100 per month; child support through health plan; and ongoing disclosure for child support purposes).
6. Following the conference held on September 12, 2018, a Conference Memorandum was provided to the parties detailing filing requirements to address the issue of spousal support.
7. A hearing was held on December 4, 2018. Ms. Joyce did not appear. Joseph Marchand appeared, self-represented.
 - a. The Court found Joseph Marchand was working prior to August 2017. In addition, the Court determined that given the delay in notifying

Sara Joyce of his intention to vary spousal support arrears and terminate ongoing spousal support, that the Court would only consider his request for a retroactive variation of spousal support arrears and a possible termination of spousal support from August 2017 onward.

- b. The Court found there was insufficient medical evidence to confirm Joseph Marchand was unable to work after October 31, 2017.
 - c. The Court found Ms. Joyce had not provided full financial information for herself, for her adult son who resides with her, or for the adult male companion “of about a year”, who had been residing with her since approximately September 2017 based on her Affidavit filed September 11, 2018.
8. On December 4, 2018, the issue of Ms. Joyce’s entitlement to spousal support from November 2017 onward was adjourned without date due to insufficient evidence from Ms. Joyce and Mr. Marchand.

Final Order granted December 4, 2018

9. An Order was granted on December 4, 2018 finalizing ongoing child support and confirming a retroactive reduction of spousal support for the months of August, September and October 2017, specifying arrears owing up to October 2017 and how those arrears were to be paid.

Interim Order granted December 4, 2018

10. An Interim Order was granted on December 4, 2018 suspending the payment of spousal support by Joseph Marchand as of November 1, 2017. The matter of retroactive and ongoing spousal support from November 1, 2017 onward was suspended.
11. The matter was adjourned without date until at least one party had filed the necessary information. A further Conference Memorandum was provided to the parties detailing filing requirements in relation to the issue of spousal support.

Conferences/Pre-trials

12. The parties appeared for conferences on July 19, 2019 and on September 12, 2019. The Court reinforced previous directions for the parties to file all necessary documents and the Court's direction that each party provide copies of all their documents to the other party.
13. A pre-trial conference was held on January 31, 2020. Sara Joyce advised the Court she did not yet have Joseph Marchand's address and had not provided him copies of her materials. Neither party brought their file material to the conference and the Court was unable to determine what materials the parties would be relying upon. The parties were advised that the court file would be available for the parties' review following the appearance. The matter was adjourned to a further conference on March 30, 2020. The appearance was subsequently removed from the docket due to Covid 19 related concerns.
14. On June 9, 2020, the parties participated in a conference via telephone. Joseph Marchand was directed to update his financial information by filing his 2018 and 2019 income information together with all attachments and he was directed to file copies of his physicians' letters outlining any disability and how that disability might impact his ability to work now, and in the future. Joseph Marchand was advised that a failure to file the above noted information may result in a dismissal of his application and that the suspension of collection of spousal support arrears would be lifted.

Other form of relief raised by Sara Joyce but not pled (custody / parenting)

15. In June 2020, Sara Joyce advised the Court she was seeking to change the custodial arrangements for the child from joint custody to sole custody giving her sole decision-making power. Joseph Marchand expressed concern about his ability to spend time with his son.

Reasons

16. Considering the length of time the parties cohabited, the function performed by each spouse during cohabitation, the circumstances which existed when the Corollary Relief Order was granted in May 2013, and circumstances

between February 2017 and March 2021, I find Ms. Joyce is entitled to indefinite child support of \$100, spousal support of \$600 until July 2017, and indefinite spousal support of \$0 beginning August 1, 2017. This outcome recognizes the economic advantage Mr. Marchand had after separation, an advantage which arose out of the marriage and its breakdown.

17. The Corollary Relief Order granted in May 2013 apportioned between the spouses the financial consequences of Ms. Joyce caring for the children of the marriage and in particular caring for a high needs child who continues to be an adult child of the marriage requiring care 24/7, 365 days of the year. Specifically, the financial consequences were apportioned through an unequal division of property in favour of Ms. Joyce, indefinite child support of \$100 per month paid to Ms. Joyce and spousal support of \$600 per month paid to Ms. Joyce until she became self-sufficient in or around August 2017.

18. Following review of Sara Joyce's evidence including certain documents filed with the Court on March 6, 2019 including:

- a. A Statement of Income prepared on February 20, 2019 indicating she expected to earn approximately \$35,299.20, including employment income, caregiver's allowance, and a companion contribution;
- b. A letter from the son's doctor confirming that he "requires 24 hour a day, 365 days per year supervision. The workers that provide supervision when his mother can leave home require her to be able to immediately respond especially for his choking episodes and seizures";
- c. Financial information indicating that in 2017 the parties' son received social assistance payments in the amount of \$5,976 and in 2016 he received \$5,896.00;
- d. A T4 indicating that in 2018 Ms. Joyce's live-in partner received \$52,798 in employment income; and

- e. A Statement of Expenses indicating Ms. Joyce has a slight surplus without accounting for the \$100 she receives monthly from Mr. Marchand.

I find that although Ms. Joyce is entitled to spousal support, that she does not currently have a need.

19. I find Ms. Joyce is entitled to spousal support indefinitely. I also find that due to the parties' circumstances she is entitled to \$0 in spousal support after August 2017.

20. I have considered the direction that, in so far as practicable, the Court must promote the economic self-sufficiency of each spouse within a reasonable amount of time.

- a. I find Ms. Joyce's circumstances have changed since May 2013 in that she has managed to secure some part-time employment which allows her to be available to care for the parties' adult son if necessary. In addition, in September 2017 Ms. Joyce began cohabitating with an intimate partner who is employed and shares expenses with her.
- b. I find that based on Ms. Joyce's current circumstances she has not proven a need for spousal support. Ms. Joyce's Statement of Expenses shows a surplus of \$179.48, without accounting for spousal support of \$600 per month (which was suspended in December 2018) or child support of \$100 which she continues to receive.
- c. However, I also find Ms. Joyce's ability to be self-sufficient is vulnerable due to her part-time employment status, her son's care requirements, and her reliance on a third party to share expenses. This vulnerability is a direct result of the economic disadvantage which arose out of the marriage and its breakdown and therefore Ms. Joyce is entitled to make an application for spousal support should her circumstances change. Any award will depend on Mr. Marchand's ability to pay.

21. On the day of trial Mr. Marchand filed some financial information by electronic mail including his 2018 Tax Assessment with line 150 income of \$429 providing no explanation for his income and his 2019 Tax Assessment with line 150 income of \$27,990.00. He also re-filed a Manulife Financial document addressed to a Joseph Marchand at a different address for the period June 1, 2019 to June 30, 2019 (previously filed with the Court August 26, 2019).

22. Following review of Joseph Marchand's evidence I find he has not filed sufficient evidence to prove he was unable to work due to illness and he has failed to explain the decrease in his income.

Relief Granted

Decision Making/Custody

23. In June 2020, Sara Joyce requested the Court vary the custodial arrangement in place for the parties' adult son. Ms. Joyce did not prove a change of circumstances and her request is dismissed. The terms for joint custody and Mr. Marchand's access at paragraphs two and three of the Corollary Relief Order issued May 13, 2015 are continued and may be relied upon to enforce his rights.

Child Support

24. As agreed on September 12, 2018, Joseph Marchand will continue to pay child support as outlined in paragraphs four through eight of the Corollary Relief Order issued May 13, 2018 (no special expenses; child support paid in two equal installments of fifty dollars per month on the first and fifteenth of each month for a total of \$100 per month; child support through health plan; and ongoing disclosure for child support purposes).

Spousal Support

25. Sara Joyce is entitled to spousal support indefinitely due to the length of the parties' marriage and the responsibilities associated with caring for the parties' son. However, given Ms. Joyce's current income and the incomes of the other adults living in her home, the quantum she is entitled to at this time is \$0.

Arrears of Child Support and Spousal Support

26. As determined by the Court in December 2018, there is no spousal support owing by Joseph Marchand to Sara Joyce from August 1, 2017 to October 31, 2017 ($\$600.00 \times 3 = \$1,800.00$).
27. As determined by the Court in December 2018, the arrears of child support and spousal support were \$23,808.85, as of October 31, 2017 - \$1,800.00 (August, September and October 2017) = \$22,000.85.
28. As determined by the Court in December 2018 and confirmed following the hearing on March 30, 2021, Joseph Marchand shall pay **\$200.00 per month, one payment on the 1st of each month and the other on the 15th of each month** on the global amount of arrears of spousal support and/or child support of **\$22,000.85**, owing up to October 31, 2017, until arrears are paid in full.

Total monthly payments

29. The total monthly payment by Joseph Marchand to Sara Joyce shall be \$100 per month in child support for their son paid in equal installment of \$50 twice per month indefinitely, and \$200 toward arrears of spousal and child support paid in equal installments of \$100 twice per month until arrears are paid in full.

Ongoing Financial Disclosure

30. No later than June 1st of each year, Joseph Marchand must provide Sara Joyce with a copy of his income tax return, completed with all attachments, even if the return is not filed with the Canada Revenue Agency, and also provide all notices of assessment prepared by the Canada Revenue Agency for that return immediately after the notice is received.
31. No later than June 1st of each year, Sarah Joyce must provide Joseph Marchand with a copy of her income tax return, completed with all attachments, even if the return is not filed with the Canada Revenue Agency, and also provide all notices of assessment prepared by the Canada Revenue Agency for that return immediately after the notice is received.

- 32.If Sarah Joyce intends to seek prospective spousal support from Joseph Marchand, before the matter is heard by this Court, she must disclose, for all adult persons living in her home, the tax returns, completed with all attachments, even if the return is not filed with the Canada Revenue Agency, and provide all notices of assessment prepared by the Canada Revenue Agency for that return immediately after the notice is received.
- 33.The Order was prepared by the Court and has been circulated with this Endorsement.

Cindy G. Cormier, J.S.C.(F.D.)