

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Ahmed v. Naseem*, 2016 NSSC 74

Date: 2016 - 03 - 23

Docket: 1206-06433; SFSN-D 082475

Registry: Halifax

Between:

Mohammed Ahmed

Petitioner

v.

Iram Naseem

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: May 7, 8, 14, 2015, June 22, 23, 24, 2015 and August 4, 5, 2015

Submissions: September 30, 2015 and October 30, 2015 by Duncan H. MacEachern
September 30, 2015 and October 10, 2015 by Diana M. Musgrave

Counsel: Duncan H. MacEachern for Mohammed Ahmed
Diana M. Musgrave for Iram Naseem

Section	Title	Paragraph
1.	Introduction	1
2.	Are Mr. Ahmed and Dr. Naseem validly married?	6
2.1	Expert evidence about Muslim family law in Pakistan	8
2.1.1	Talaq divorce	13
2.1.2	Khulla divorce	20
2.2	Documentary evidence	21
2.2.1	Pakistani Family Court documents	22
2.2.2	Divorce Certificates	25
2.2.3	Other documents	33
2.3	Mr. Ahmed's testimony and credibility	37
2.3.1	Did Mr. Ahmed lie about the basis for his divorce from Ms. Naz?	42
2.3.2	Mr. Ahmed's previous sworn Statement about his marriage to Ms. Mafooz	48
2.4	Conclusion on the validity of the Ahmed/Naseem marriage	57
3.	Did Mr. Ahmed marry Dr. Naseem in good faith?	63
4.	Parenting Muneeb	74
4.1	Is Mr. Ahmed Muneeb's guardian?	76
4.2	What parenting arrangement is in Muneeb's best interests?	82
4.2.1	Muneeb's relationship with Mr. Ahmed	90
4.2.1.1	From April 2009 until September 2011	91
4.2.1.2	From September 2011 until June 2012	93
4.2.1.3	From June 2012 until November 2013	102
4.2.1.4	Since November 2013	106
4.2.1.4.1	Did the marriage contract stop Mr. Ahmed from seeing Muneeb?	108
4.2.1.4.2	Did the threat of the police stop Mr. Ahmed from seeing Muneeb?	112
4.2.1.4.3	Did the threat of removal from Canada stop Mr. Ahmed from seeing Muneeb?	116
4.2.1.4.4	Was there something else that stopped Mr. Ahmed from seeing Muneeb?	121
4.3	Future contact between Muneeb and Mr. Ahmed	126
5.	Child maintenance	128
6.	Spousal maintenance	129
6.1	Is Mr. Ahmed entitled to spousal maintenance?	130
6.2	Is lump sum spousal maintenance appropriate?	140
6.3	How much lump sum spousal maintenance is appropriate?	145
7.	Costs	154
8.	Conclusion	155

By the Court:

1. Introduction

[1] Mohammed Ahmed and Iram Naseem took part in a wedding ceremony in Pakistan in 2006. In 2008, they began to cohabit and in 2009, they started the process of adopting a little boy, Muneeb. By March 2012 they had separated.

[2] Mr. Ahmed has requested a divorce and orders relating to parenting, support (for himself and Muneeb), and a property division. His requests are complicated by Dr. Naseem's claim that the marriage is void, and the fact that Muneeb's adoption has not been completed. Whether I can make the orders Mr. Ahmed requests and how I decide his claims depends on the legal status of the parties' relationship with each other, and Mr. Ahmed's relationship with Muneeb.

[3] The first issue I must resolve is the legal status of the parties' relationship. If they aren't married, there's no basis for a divorce or any of the corollary relief claimed under the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3. While Mr. Ahmed did not plead his claims for parenting, child support and spousal support under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, Dr. Naseem did plead relief under that legislation, so if the parties aren't married, I can still consider his claims under the *Maintenance and Custody Act*.

[4] If the parties aren't married I can only consider Mr. Ahmed's claim for a property division if he took part in the wedding ceremony in good faith: see clause 2(g)(iii) of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275. Mr. Ahmed made no other claim relating to property: he didn't claim unjust enrichment under the common law. His failure to do this was noted, but he did not seek to amend his pleadings to make this claim and he did not raise it in his closing argument.

2. Are Mr. Ahmed and Dr. Naseem validly married?

[5] Mr. Ahmed has been married three times before. If he isn't validly divorced from even one of his previous wives, then he didn't have the capacity to marry Dr. Naseem and their marriage is void.

[6] There is a legal presumption that a foreign divorce is valid. Once evidence is led challenging the presumption, it disappears and I must decide whether the foreign divorce is valid based on the evidence offered: see Chief Justice Laskin in *Powell v. Cockburn*, [1977] 2 S.C.R. 218 at page 225. Dr. Naseem has offered evidence challenging the presumption of validity, so I must consider all the evidence and decide if any of Mr. Ahmed's three earlier divorces is invalid.

[7] The evidence before me comes from three sources: testimony from two expert witnesses about Muslim family law in Pakistan; documents; and testimony from Mr. Ahmed. The experts' explanation of Muslim family law allows me to put the documents and Mr. Ahmed's testimony in context, so I begin there.

2.1 Expert evidence about Muslim family law in Pakistan

[8] Pakistani law applies when determining if Mr. Ahmed is validly divorced because he said the divorces occurred in Pakistan.

[9] I heard two experts testify about Pakistani law relating to Muslim divorces. Mr. Ahmed's expert witness was Shahid M. Khan and Dr. Naseem's expert was Muneer A. Malik.

[10] Mr. Khan was qualified as an expert regarding the requirements for obtaining a divorce in Pakistan during the period from 1978 to 1996, when Mr. Khan left Pakistan. Explicitly, Mr. Khan was not qualified to give expert evidence about the documents bearing any stamps, seals or indicia of registration in Pakistan's national computerized database, called NADRA. Mr. Khan graduated from law school in Pakistan in 1978 and was called to the bar in Pakistan that year.

[11] Mr. Malik was qualified as an expert in the law relating to divorce and proof of divorce in Pakistan. Mr. Malik graduated from law school in California and was admitted to the California bar in 1974. He was admitted to the bar in Pakistan in 1976 and has practiced law in Pakistan since then. Mr. Malik was Pakistan's Attorney General from June 2013 until January 2014 and, in that capacity, he testified that he was involved in Pakistan's recent family law reform.

[12] For Muslims in Pakistan there are two methods of divorce: talaq and khulla. Mr. Ahmed said his first marriage (to Saba Mafooz) and his third marriage (to Afsheen Ahsan) were ended by talaq divorces and his second marriage (to Fara Naz) was ended by a khulla divorce.

2.1.1 Talaq divorce

[13] A talaq divorce occurs in one of two ways: a husband can pronounce divorce on his wife or a wife may pronounce divorce on herself if her husband delegated this power to her when they married. If the husband delegated this power to his wife, it's recorded on their marriage certificate. According to his marriage certificates, Mr. Ahmed did not delegate the power to pronounce divorce on herself to any of his wives.

[14] A husband pronounces talaq on his wife by saying three times that he divorces her. He must communicate to her, verbally or in writing, that he's made this pronouncement. This would be sufficient to achieve a divorce but for section 7 of the *Muslim Family Laws Ordinance, 1961* which requires that after pronouncing and communicating the divorce, the husband must give written notice to the local Union Council that he has pronounced divorce on his wife and communicated this to her, and provide his wife with a copy of this notice. Talaq is not effective until ninety days have passed from the date when written notice is given to the Union Council or, if the wife is pregnant, until her pregnancy has ended.

[15] When notified that a talaq divorce has been pronounced and communicated, the Union Council issues notices to both spouses to appear in person or to appoint a representative to appear at meetings for reconciliation. If both parties or their representatives do not attend or if

the meetings are unsuccessful, Union Council will declare that there has been no reconciliation. Union Council cannot declare whether a divorce has been validly pronounced and communicated: it can only declare whether reconciliation has occurred.

[16] Before the divorce is effective, a husband can withdraw it, expressly or otherwise, or a wife can reconcile.

[17] Talaq divorce is proven by primary evidence: the husband submits on oath that he pronounced divorce on his wife. He proves he communicated it to her. When this is done, the divorce is valid under Muslim law, subject to compliance with the requirements of section 7 of the *Muslim Family Laws Ordinance, 1961*.

[18] Mr. Malik was clear that Union Council cannot comment on whether the required elements of a divorce (the pronouncement of divorce and its communication to the wife) exist. Union Council can only state whether reconciliation has occurred.

[19] It would be for Mr. Ahmed and his then-wife to say whether there had been pronouncement and communication and whether he withdrew the divorce.

2.1.2 Khulla divorce

[20] Divorce by khulla is available exclusively to wives. Under Muslim law, marriage is a civil contract between the spouses and consideration for this contract is the dower amount paid by the husband to the wife. The wife can seek rescission of the contract by giving up the dower amount and proving that she's developed a fixed mental aversion to her husband. A divorce by khulla occurs in the Family Court which dissolves the marriage. The Court's decree is sent to Union Council and, again, the parties have a ninety day period during which they may reconcile. If they do not reconcile, the divorce becomes effective. As was the case with a talaq divorce, the Union Council can only comment on whether reconciliation has occurred. The Family Court is responsible for dissolving the marriage.

2.2 Documentary evidence

[21] There is no documentation that must be provided to parties once they have effectively divorced, according to Mr. Malik. As a result, there is no single definitive document which will prove Mr. Ahmed is divorced from his previous wives. I was provided with Family Court documents, Divorce Certificates and other documents.

2.2.1 Pakistani Family Court documents

[22] Evidence of court proceedings in a foreign country may be given by a "certified copy of the proceeding or record, purporting to be under the seal of the court or under the hand or seal of the justice" without any proof of the authenticity of the seal or the justice's signature, according to subsection 23(1) of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 and section 20 of the *Evidence Act*, R.S.N.S 1989, c. 154. Regardless of whether I am dealing with a divorce or a

proceeding under provincial legislation, the circumstances are the same for evidence of court proceedings in a foreign country.

[23] Only khulla divorces involve courts according to Muslim family law in Pakistan. This means that only the Naz/Ahmed divorce would result in any sort of court document. Exhibits 7 and 35 are certified copies of the khulla divorce proceeding. A decree was issued on April 11, 2002 dissolving the Naz/Ahmed marriage and was to be sent to the “concerned authority” for confirmation as required by section 21 of the *Family Court Act, 1964*. Once sent to the “concerned authority” (Union Council), there is a ninety day period for reconciliation.

[24] Considering the Naz/Ahmed divorce, Exhibits 7 and 35 are proof that Ms. Naz’s suit for khulla divorce was granted. This divorce would be effective if the parties did not reconcile.

2.2.2 Divorce Certificates

[25] Mr. Ahmed said the Divorce Certificate (Exhibit 26) is proof of his effective divorce from Ms. Naz. I don’t accept the Divorce Certificate as proof of an effective divorce because the information contained in the Divorce Certificate doesn’t fulfil the requirements of Pakistani law in at least two regards.

[26] First, the Divorce Certificate states that the “authority granting the divorce” is Mr. Ahmed (“Husband”). The Naz/Ahmed divorce is a khulla divorce: the divorce initiated by wives. While a husband or wife may pronounce a talaq divorce, a husband can never seek a khulla divorce. The statement in the Divorce Certificate that Mr. Ahmed was the authority granting the divorce is inconsistent with the requirements of Pakistani law.

[27] Second, the Divorce Certificate states October 13, 2001 is the date when notice for the divorce was given **and** the date when reconciliation failed **and** the date of the effectiveness of the divorce. This is not possible. Ms. Naz filed her suit for dissolution on October 13, 2001 (Exhibit 35). However, the Family Court judgment was not given until almost five months later on April 11, 2002 (Exhibits 7, 11 and pages 12 to 14 of Exhibit 35). A further three months would need to pass without reconciliation before the divorce would be effective. Here again, the information contained in the Divorce Certificate is not consistent with the parties fulfilling the requirements of Pakistani law for an effective divorce.

[28] According to Mr. Malik, the decree of divorce by khulla provided by the Family Court, as an official document, is presumptive evidence of the divorce between Mr. Ahmed and Ms. Naz. Mr. Malik’s opinion was that the “dissolution of marriage [to Fara Naz] would appear to be valid if no reconciliation was effected”. The emphasis is mine.

[29] I must accept Mr. Ahmed’s testimony about reconciliation to conclude that the Naz/Ahmed divorce became effective. I will return to this point later in section 2.3 - Mr. Ahmed’s testimony and credibility.

[30] Mr. Ahmed provided similar Divorce Certificates for his marriage to Saba Mafooz (Exhibit 25) and his marriage to Afsheen Ahsan (Exhibit 28). The information on these Divorce

Certificates indicates the parties failed to fulfil the requirements of Pakistani law because again the date of notice for divorce and the date of failed reconciliation and effectiveness of divorce are all the same. According to the Divorce Certificates, there was no ninety day period for reconciliation.

[31] Mr. Ahmed characterized the problems with the Divorce Certificates as “irregularities” and said I should overlook them.

[32] I reject his request because these are not irregularities. The documents’ contents demonstrate a direct failure to fulfil the requirements of Pakistani law.

2.2.3 Other documents

[33] Union Council can only comment on whether reconciliation has occurred. Union Council cannot comment on whether the other required elements of a divorce (the pronouncement of divorce, its communication to the other spouse) exist or whether the divorce has been withdrawn.

[34] I have been provided with a copy of Mr. Ahmed’s pronouncement of divorce to Saba Mafooz, Ms. Mafooz’s notice to Union Council that divorce had been pronounced upon her, and her appointment of her father as her representative at reconciliation proceedings. These documents are at page 379, tab 37, Exhibit 3, at page 377, tab 37, Exhibit 3, and at page 371, tab 37, Exhibit 3, respectively. These copies have not been challenged by Dr. Naseem. They are documentary confirmation of Mr. Ahmed’s pronouncement of divorce and communication to Saba Mafooz. The Union Council “Divorce Confirmation Certificate” notes three dates for reconciliation meetings over a three month period and states that reconciliation has failed (page 370, tab 37, Exhibit 3, also entered separately as Exhibit 8). Together, these documents confirm the requirements of an effective divorce have been fulfilled, assuming that Mr. Ahmed did not withdraw his divorce.

[35] Mr. Ahmed said that a Verification Letter Arbitration Council for Confirmation of Divorce confirms he is divorced from Afsheen Ahsan (Exhibit 6). This document does not confirm pronouncement and communication of the divorce, nor does it confirm that there has been no reconciliation within ninety days. Curiously, it states the parties were divorced on December 7, 2004 while the Divorce Certificate said the divorce occurred on December 20, 2004 (Exhibit 28). In direct contradiction with both these documents, I was provided with a copy of Afsheen Ahsan’s national identity card, notarized in 2012, which states she is married to Mr. Ahmed (Exhibit 14).

[36] To conclude that there was an effective divorce from Afsheen Ahsan I must accept Mr. Ahmed’s testimony about pronouncement, communication, no withdrawal of the divorce and reconciliation and to reject Ms. Ahsan’s national identity card (Exhibit 14). I will return to this below in section 2.3 - Mr. Ahmed’s testimony and credibility.

2.3 Mr. Ahmed's testimony and credibility

[37] As Mr. Malik said, Union Council can confirm whether there has been reconciliation, but only the spouses can confirm whether there had been pronouncement, communication and no withdrawal of the divorce in a talaq divorce. The Mafooz/Ahmed divorce and the Ahsan/Ahmed divorce were both talaq divorces. There is documentary evidence of pronouncement and communication in the Mafooz/Ahmed divorce, but not in the Ahsan/Ahmed divorce. There is documentary evidence of failed reconciliation in the Mafooz/Ahmed divorce, but not in the Ahsan/Ahmed divorce.

[38] In the khulla divorce (Naz/Ahmed), there is satisfactory documentary evidence of the Family Court decree. There is no satisfactory documentary evidence of failed reconciliation.

[39] In order to conclude that Mr. Ahmed was single and had the capacity to marry Dr. Naseem, I must rely on his testimony proving pronouncement, communication, no withdrawal of the divorce and failed reconciliation in the talaq divorce from Afsheen Ahsan, and failed reconciliation in the khulla divorce from Fara Naz. None of Mr. Ahmed's earlier wives offered evidence, so Mr. Ahmed's credibility is critical.

[40] Assessing credibility is not a science and decisions about credibility cannot always be precisely and completely explained. In assessing Mr. Ahmed's credibility, I have considered his interest in the outcome of this litigation, the level of consistency between his testimony and documentary evidence, and his capacity to make admissions against his interest. English is not Mr. Ahmed's first language, though he spoke well and did not require frequent assistance in understanding questions. I have not made any judgments based on his particular choice of words and whether these might suggest lack of candour or evasion. My conclusions about his credibility don't need to be universally applicable to Mr. Ahmed's testimony: while I may believe him in some instances, this does not compel me to believe everything he said. Similarly, if I disbelieve some aspects of his testimony, I am not required to disbelieve all of his testimony.

[41] Dr. Naseem said that I should not believe Mr. Ahmed because he lied about the basis for his divorce from Ms. Naz, and he has previously sworn that he remains married to Ms. Mafooz.

2.3.1 Did Mr. Ahmed lie about the basis for his divorce from Ms. Naz?

[42] Mr. Ahmed specifically denied being aggressive or violent toward any woman to whom he was married. When asked if he was ever divorced based on violence, he denied it. He denied that any divorce was obtained because he was violent toward his wife. He said "anyone can make any reason [for divorce], but I wasn't [violent]." He testified that Ms. Naz's reason for divorcing him was that she didn't want to live with him and that she had wanted to marry someone else, but her parents had wanted her to marry Mr. Ahmed. He said "she wasn't happy with me". When pressed, he said he couldn't remember her specific reason for divorce and said "anyone can make any reason" for divorce.

[43] Mr. Ahmed was shown Ms. Naz's suit for dissolution of marriage by khulla (exhibit 35). In the suit, Ms. Naz swore Mr. Ahmed was "short tempered", "cruel" and he used to beat her

“mercilessly even on minor matters”, beating her “mercilessly with legs and mukkas [fists] and also with whatever available on the spot.”

[44] Mr. Ahmed said he had never seen Ms. Naz’s suit for dissolution by khulla before. If this is true, it would have been correct for him to say that he didn’t know her specific reason for divorcing him, rather than say he couldn’t remember it or that it was that “she doesn’t want to live with me”.

[45] The documents relating to the Naz/Ahmed divorce confirm it was granted on an *ex parte* basis which is consistent with Mr. Ahmed’s testimony that he hadn’t seen the documents before (Exhibit 35). The address for service on Mr. Ahmed was his mother’s home. When asked why service would not have been effected there, Mr. Ahmed suggested that a bribe was paid so that he wasn’t required to be served with this lawsuit: “if you give money you can avoid service”.

[46] Even if I reject Mr. Ahmed’s suggestion that someone was bribed to say he was evading service, I acknowledge that when the khulla divorce was started he was not in Pakistan, but was working in Qatar. I’m not persuaded that Mr. Ahmed was lying when he denied that a divorce was granted because he was violent.

[47] Mr. Ahmed’s statement that he was never divorced because he was violent is consistent with the fact he was not served with documents relating to that divorce and he did not participate in it. However, his explanation that he couldn’t remember Ms. Naz’s basis for divorcing him and the reasons he offered for her divorcing him are not consistent with never having seen the suit for dissolution of marriage. There is some untruth in Mr. Ahmed’s statements.

2.3.2 Mr. Ahmed’s previous sworn Statement about his marriage to Ms. Mafooz

[48] In direct contrast with his testimony that he and Saba Mafooz are divorced, Mr. Ahmed acknowledged his signature on a Statement verified on oath in January 1996 (Exhibit 36). In this Statement, Mr. Ahmed swore:

- He had not divorced Saba Mafooz
- Saba Mafooz was still his wife
- He was willing to swear that he had no knowledge of this divorce
- The divorce document was forged
- He was never notified of reconciliation proceedings at the Union Council office
- He and Ms. Mafooz had much love and affection toward each other
- He never said divorce to Ms. Mafooz, and he never divorced her

[49] In addition to acknowledging his own signature, Mr. Ahmed acknowledged that the lawyer who signed the Statement was his lawyer.

[50] In the Statement, Mr. Ahmed asked the court to dismiss Ms. Mafooz’s suit and to “declare the so-called divorce as null and void”, to declare the improper documents to be illegal, and to direct Ms. Mafooz to return to his home with the baby and to fulfil her marital obligations as his wife.

[51] Mr. Ahmed addressed this direct contradiction in two ways. He said the Statement (Exhibit 36) was meaningless because it had never gone to court and he said that he was threatened and pressured into signing the Statement.

[52] Mr. Ahmed's assertion that there hadn't been a court proceeding is contradicted by Exhibit 8, the Union Council proof of failed reconciliation. Mr. Ahmed introduced the Union Council proof of failed reconciliation to prove his divorce from Saba Mafooz. It is actually marked as an exhibit in a 1996 proceeding: in the lower right corner of the document the date "20-10-96" is written under the notation "Ex P 5". Between these notations appear initials which have been circled. While Mr. Ahmed testified there was no court proceeding in 1996, he provided this document which was marked as an exhibit in a 1996 court proceeding. As well, Mr. Ahmed testified that in 1996 Ms. Mafooz sought maintenance from him. His sworn Statement shows he was the defendant in a claim by Ms. Mafooz. His sworn Statement that they were still married would refute her claim for maintenance.

[53] Mr. Ahmed was cross-examined about why he would sign the Statement if it wasn't true. He made repeated references to "when somebody keeps a gun to your head" and "political pressure". He twice said it was a "very long story, we haven't got time". At this point, the hearing was in its seventh day and two further days were scheduled. Counsel had originally requested the case be scheduled for two days, Justice Forgeron scheduled it for three. Once it began, the case was twice adjourned: each time, three more days were added. There was no reason for Mr. Ahmed to believe there was insufficient time for him to tell his story.

[54] Mr. Ahmed was questioned by his own lawyer about his sworn Statement. He was asked why he would sign the Statement, why someone would pressure him to sign it, who pressured him to sign it and who would benefit from the Statement being signed. Mr. Ahmed was explicitly directed to "provide specifics". His answers were completely unsatisfactory.

[55] Mr. Ahmed did not identify who pressured him to sign the Statement: he repeatedly said it was "some person". He did not explain why he believed someone would want him to do this: he repeatedly said there would be "some benefit". He did not explain what this benefit would be. Once, he said that the people who pressured him were sent by his in laws. He could not explain why Ms. Mafooz's family would want him to do something which would challenge her divorce from him or refute her claim for maintenance from him.

[56] If Mr. Ahmed's 1996 Statement is true, he was not divorced from Ms. Mafooz and cannot be validly married to Dr. Naseem. If I accept his testimony that the sworn Statement is a lie, then his credibility is compromised because his explanation for why he lied is not at all persuasive. The more reasonable explanation for why he would lie in 1996 about his divorce from Ms. Mafooz is that the lie would absolve him of the obligation to pay maintenance.

2.4 Conclusion on the validity of the Ahmed/Naseem marriage

[57] Mr. Ahmed has not proven on a balance of probabilities that he is validly divorced from each of his previous wives. The documentary evidence is not sufficient to prove on a balance of probabilities that the requirements of talaq and khulla divorces have been fulfilled. In the

absence of testimony from his earlier wives, I have only Mr. Ahmed's testimony which I do not believe.

[58] Mr. Ahmed has significant financial motivation to lie. Mr. Ahmed may claim a division of property under the *Matrimonial Property Act* only if he is validly married to Dr. Naseem or if he married her in good faith, though their marriage is void. Mr. Ahmed has made no claim for unjust enrichment: he must succeed in a claim under the *Matrimonial Property Act* if he is to share in Dr. Naseem's property. To put this in context, Dr. Naseem owns a home which she values at \$200,000.00, an RRSP valued at \$153,633.44, bank accounts valued at approximately \$10,000.00 and professional corporate interests (against which Mr. Ahmed has made a claim) valued at almost \$1,500,000.00.

[59] In his sworn Statement (Exhibit 36), Mr. Ahmed he said that he was not divorced from Saba Mafooz. If he was not validly divorced from her, all his subsequent marriages are invalid.

[60] Mr. Ahmed said he was validly divorced from Ms. Mafooz and explained that he was coerced into swearing the Statement. I reject this explanation. Mr. Ahmed could not explain why this would happen in anything but the vaguest terms, saying it was "political" and "his in laws". Mr. Ahmed refused every opportunity to tell the "very long story". His explanation does not make sense. He offered no reason why political interests would want him to deny his divorce or why Ms. Mafooz's family would want this. I conclude that he was willing to – and did – swear that he was not divorced to advance his financial interests by refuting Ms. Mafooz's claim for maintenance.

[61] Where I conclude that Mr. Ahmed has lied to advance his financial interests, I find that his testimony - which is essential to prove that he and Fara Naz failed to reconcile and that he pronounced divorce on Afsheen Ahsan, communicated this to her, did not withdraw the divorce, and they failed to reconcile – is not credible.

[62] Mr. Ahmed has not proven on a balance of probabilities that he is effectively divorced from each of his prior wives. I conclude that the marriage between Mohammed Ahmed and Iram Naseem is void. I dismiss Mr. Ahmed's petition for divorce and his claims for corollary relief under the *Divorce Act*.

3. Did Mr. Ahmed marry Dr. Naseem in good faith?

[63] Parties to a void marriage may qualify as spouses who are eligible for a division of property, if they married in good faith: see clause 2(g)(iii) of the *Matrimonial Property Act*.

[64] The burden is on Mr. Ahmed to prove he married Dr. Naseem in good faith: *Guptill v. Wilfred*, 2009 NSSC 44 at paragraph 35.

[65] Dr. Naseem said that Mr. Ahmed didn't act in good faith in marrying her.

[66] Mr. Ahmed's only evidence of his good faith is his testimony. Again, his credibility is critical and wanting.

[67] Mr. Ahmed and Dr. Naseem married in Pakistan. The expert witnesses were not qualified to offer evidence about the requirements of a valid marriage in Pakistan. From testimony I heard about Mr. Ahmed's marriage certificates, I know that it is possible for a Muslim man to have more than one wife. The English translation of Urdu marriage certificates specifically notes whether the husband has another wife, and if so, whether the husband has permission to contract another marriage. If the Arbitration Council has given permission to a husband to contract another marriage while he is already married, the "number and date" of the Arbitration Council's communication of permission to the husband must be provided.

[68] According to the Naseem/Ahmed marriage certificate, Mr. Ahmed did not have permission to contract another marriage. So Mr. Ahmed would need to be single to marry Dr. Naseem.

[69] The Pakistani marriage certificate requires the wife to indicate her status (a virgin, a widow or a divorced wife) but it doesn't require the husband to do the same. The Naseem/Ahmed marriage registration doesn't indicate Mr. Ahmed's status.

[70] As I've reviewed in section 2.2 Documentary evidence above, the available documentary evidence does not prove that all the requirements of an effective divorce (pronunciation, communication and failed reconciliation) were fulfilled in the Naz/Ahmed and Ahsan/Ahmed divorces. Ms. Ahsan's 2012 identify card is credible documentary evidence which calls into question Mr. Ahmed's testimony that he was divorced from her (Exhibit 14). Mr. Ahmed said they divorced in 2004, yet Ms. Ahsan's 2012 identity card still showed her married to him.

[71] Mr. Ahmed has not offered a credible explanation for Ms. Ahsan's 2012 national identity card which stated she was married to him. He has shown himself not to be credible with regard to his explanation for his sworn Statement saying that he was still married to Saba Mafooz (Exhibit 36).

[72] I do not accept Mr. Ahmed's testimony that he married Dr. Naseem in good faith, believing he was divorced from each of his previous wives.

[73] Mr. Ahmed has not proven on a balance of probabilities that he married Dr. Naseem in good faith. I dismiss his application for a division of property under the *Matrimonial Property Act*.

4. Parenting Muneeb

[74] Because I have found that Mr. Ahmed and Dr. Naseem are not married, I must address parenting claims in the context of section 18 of the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160. Parenting claims may only be made by: a parent, a guardian, or another person who has leave to make the claim.

[75] Muneeb's adoption was not finalized. Mr. Ahmed is not Muneeb's parent. Mr. Ahmed does not have leave to seek a parenting order, so his claim can only proceed if he is Muneeb's guardian. Dr. Naseem said that Mr. Ahmed is not Muneeb's guardian.

4.1 Is Mr. Ahmed Muneeb's guardian?

[76] A guardian includes a “head of a family and any other person who has in law or in fact the custody or care of a child”: see subsection 2(e) of the *Maintenance and Custody Act*.

[77] For the following three reasons, I conclude that Mr. Ahmed was Muneeb's guardian and may make a parenting claim.

[78] First, Mr. Ahmed was appointed Muneeb's guardian by the Pakistani court. The guardianship appointment documents have been provided: pages 403 to 409, Tab 40, Exhibit 3.

[79] Within weeks of being appointed Muneeb's guardian, Mr. Ahmed gave an authorization letter to his mother-in-law, Farida Khatoon. The letter said that because he lived in Canada, Mr. Ahmed was not able to look after Muneeb in Pakistan. The letter authorized Ms. Khatoon to be Mr. Ahmed's legal representative with regard to retaining custody of Muneeb and said that Ms. Khatoon's actions would have the same effect as if done by Mr. Ahmed. If Mr. Ahmed wasn't Muneeb's guardian, this letter would not be necessary.

[80] Second, a few months after the parties separated and before either started any legal action, Dr. Naseem asked Mr. Ahmed's permission for Muneeb to travel to Pakistan with Ms. Khatoon. Through counsel, Mr. Ahmed was asked to sign a Consent to Travel which said that Ms. Khatoon and Muneeb would leave on June 17, 2012 and return “in early September 2012”. The Consent also authorized Ms. Khatoon to “consent or authorize medical treatment” for Muneeb while he was in her care. The only reason that Mr. Ahmed would be required to provide this permission letter was because he was Muneeb's guardian.

[81] Third, Muneeb and Ms. Khatoon remained in Pakistan until late 2013. On November 13, 2013, a Court in Pakistan granted Dr. Naseem's application to be appointed Muneeb's guardian. Muneeb could only be removed from Pakistan by his guardian. If Dr. Naseem or Ms. Khatoon had been Muneeb's guardian, the new guardianship appointment would not have been required. Dr. Naseem gave notice of this application to Mr. Ahmed through his “attorney”, Farida Khatoon. Mr. Ahmed was entitled to notice because he was Muneeb's guardian.

4.2 What parenting arrangement is in Muneeb's best interests?

[82] Parenting arrangements must be in the child's best interests: see subsection 18(5) of the *Maintenance and Custody Act*. The *Act* lists ten factors to be considered in determining a child's best interests. This list isn't exhaustive.

[83] The list in subsection 18(5) requires me to consider Muneeb's physical, emotional, social and educational needs, including his need for stability and safety, his age and stage of development. I am to consider each party's willingness to support the development and maintenance of Muneeb's relationship with the other party, and the history of his care. I am to consider the plans each offers and Muneeb's cultural, linguistic, religious and spiritual upbringing and heritage. I am to consider the nature, strength and stability of the relationship between Muneeb and each party, and other significant individuals in his life. I am to consider

each party's ability to communicate and cooperate on issues affecting Muneeb and the impact of family violence, abuse or intimidation.

[84] In subsection 18(8), I am instructed to give effect to the principle that Muneeb should have as much contact with each party as is consistent with his best interests.

[85] Mr. Ahmed said a shared parenting arrangement is in Muneeb's best interests. Dr. Naseem said it's in Muneeb's best interests that he have no contact with Mr. Ahmed.

[86] Dr. Naseem's position requires me to consider the preliminary question, seldom asked, of whether any contact with Mr. Ahmed is in Muneeb's best interests. The question is a valid one in the circumstances of this case, both factually and legally.

[87] Muneeb was a just a few months past his third birthday when he last saw Mr. Ahmed in 2012. Muneeb and Mr. Ahmed had daily contact for approximately nine months when Muneeb was between two and three years of age. I have no information that Muneeb remembers this contact, or that he remembers Mr. Ahmed.

[88] The concept of best interests has developed through a series of judgments which upended traditional thinking about parents' rights. In the 1950s, decisions from the Supreme Court of Canada continued to affirm the paramountcy of parents' wishes, unless the wishes were outweighed by the child's best interests: *Re Baby Duffell*; *Martin v. Duffell*, 1950 CanLII 11; *Hepton et al. v. Maat et al.*, 1957 CanLII 18 and *Re Agar*, 1957 CanLII 22. Three decades later, a child's best interests were clearly the paramount consideration and parents' wishes were subordinate: *Beson v. Director of Child Welfare (NFLD)*, 1982 CanLII 32, *Racine v. Woods*, 1983 CanLII 27 and *King v. Low*, 1985 CanLII 59.

[89] Whether contact is to be limited or rejected depends on the child's best interests, the benefits which might accompany contact and the risk of any harm: *Young*, 1993 CanLII 34 (SCC) *per* Justice McLachlin at paragraphs 21 and 22 of her reasons.

4.2.1 Muneeb's relationship with Mr. Ahmed

[90] There are four distinct time periods in Muneeb's life: from his birth in 2009 until he came to Canada in 2011; while he was in Canada in 2011 and 2012; while he was in Pakistan from 2012 until 2013; and following his return to Canada in 2013.

4.2.1.1 From April 2009 until September 2011

[91] Muneeb was born in April 2009. He remained in Pakistan until he was twenty-nine months old. While he was in Pakistan, he was cared for by Farida Khatoon and an aunt. Mr. Ahmed made three or four trips to Pakistan to see Muneeb and to work on the adoption. The longest trip was one and one-half months long.

[92] Muneeb was very young during this period: he was not quite two and one-half when he came to Canada. His contact with Mr. Ahmed was insignificant in light of his age and the

limited time the two spent together. No one testified that Muneeb had any recollection of Mr. Ahmed from this time.

4.2.1.2 From September 2011 until June 2012

[93] On September 4, 2011 Muneeb came to Canada. He lived with Mr. Ahmed and Dr. Naseem in Sydney for nine months until June 2012 when he returned to Pakistan with Farida Khatoon. Muneeb was between the ages of two and three during this time.

[94] The parties' evidence about Muneeb during this time is in considerable conflict. Mr. Ahmed said he was Muneeb's primary caregiver during these months. He said he cared for Muneeb (dressed him and changed diapers) while Dr. Naseem got ready for work in the morning, and Muneeb would accompany him as he drove Dr. Naseem to work. When they got home, Muneeb would have a snack with his grandmother and watch cartoons. Lunch would be at 11:30: Mr. Ahmed would make peanut butter and jam sandwiches or soft rice and lentils.

[95] Mr. Ahmed said that sometimes he would take Muneeb to the mall to run in the hallway. Other times they would go to Wentworth Park for children's activities or to the community activities at Exit 7. Mr. Ahmed said that after Dr. Naseem's brother arrived in January 2012, his contact with Muneeb was restricted.

[96] Dr. Naseem testified that her mother, who travelled with Muneeb to Canada in September 2011, was primarily responsible for caring for Muneeb and Muneeb was very attached to his grandmother. She said that Muneeb stayed in bed in the morning while she was taken to work and that her mother would care for him. Muneeb attended a Montessori daycare for half-days. Dr. Naseem testified that Mr. Ahmed was upset with Muneeb most of the time and would slap him on the hand, face and shoulder and shout at him.

[97] Dr. Naseem testified that Mr. Ahmed was inattentive when he cared for Muneeb: he left Muneeb alone while he was at the Mosque and Muneeb fell from a chair. She said she was phoned at the hospital and took a cab to the Mosque to collect Muneeb and take him home. She said she wasn't able to reach Mr. Ahmed by phone and was only able to talk to him about this when he returned home later that afternoon. According to Dr. Naseem, Mr. Ahmed said Muneeb was "okay" and he didn't give an explanation for what had happened. She also said that Mr. Ahmed left Muneeb alone at the YMCA.

[98] Mr. Ahmed described Muneeb's fall as part of normal play. Mr. Ahmed didn't admit leaving Muneeb alone in the Mosque, yet he said that he was outside when the fall happened. I conclude that Mr. Ahmed was not properly supervising Muneeb. Mr. Ahmed denied leaving Muneeb alone in the YMCA pool: he said he was making a video of Muneeb swimming. To do this, Mr. Ahmed would not be in the pool and Muneeb, then between two and three years of age, would be in the pool unsupervised.

[99] Dr. Naseem testified that traditionally when there are problems, they are resolved by bringing the head of each family together. She said that because of Mr. Ahmed's treatment of her (she said he swore at her all the time, called her at work and threatened her and once tried to

beat her), she called her brother and, in January 2012 her brother, Mohamad Nadeem Usani, came to Sydney and stayed in the home for approximately four months. Mr. Nadeem testified that Mr. Ahmed “hardly” interacted with Muneeb and that if the boy was sent to Mr. Ahmed, Mr. Ahmed would send him back. Mr. Ahmed said that his contact with Muneeb was restricted once Mr. Nadeem arrived.

[100] Though Mr. Nadeem is Dr. Naseem’s brother, he is the only person other than the parties to testify about Mr. Ahmed’s involvement with Muneeb. Though Mr. Ahmed said he took Muneeb to the Mosque, YMCA and community activities, he called no witnesses to testify about this. Dr. Naseem corroborated some of what Mr. Ahmed said, by confirming that he took Muneeb to the Mosque and the YMCA.

[101] I accept that Mr. Ahmed was involved in caring for Muneeb in the period from September 2011 until June 2012. By Mr. Ahmed’s own evidence, his involvement was greater in the time from September 2011 until January 2012 when Mr. Nadeem came to stay with the family.

4.2.1.3 From June 2012 until November 2013

[102] Muneeb was in Pakistan for seventeen months from June 2012 until November 2013. When Dr. Naseem went to collect Muneeb in September 2012, he was sick with typhoid and was not permitted to leave Pakistan. Muneeb was cleared for return to Canada two months after he became ill. However, Dr. Naseem said her vacation schedule did not permit her to travel to Pakistan again to collect Muneeb until November 2013 and then, in order to travel with him, it was necessary that she be appointed his guardian.

[103] During this seventeen month period, Muneeb had no contact with Mr. Ahmed.

[104] Correspondence between counsel in September 2012 suggests that Dr. Naseem considered having Mr. Ahmed bring Muneeb back to Canada. Mr. Ahmed’s then-lawyer rejected this option: “My client is unable to travel to Pakistan, as I previously explained to you during our telephone conversation, out of fear for his safety” (Exhibit 21). Dr. Naseem brought Muneeb back to Canada.

[105] From June 2012 until November 2013, Muneeb had no contact with Mr. Ahmed.

4.2.1.4 Since November 2013

[106] Muneeb has lived with Dr. Naseem since returning to Canada in November 2013. Muneeb has had no contact with Mr. Ahmed since June 2012.

[107] Mr. Ahmed offered three reasons to explain why he hasn’t seen Muneeb for so long. He said that he couldn’t see Muneeb because of the marriage contract; because Dr. Naseem would call the police; and because Dr. Naseem would try to have him removed from Canada. I do not accept that Mr. Ahmed was stopped from seeing Muneeb for any of these reasons.

4.2.1.4.1 Did the marriage contract stop Mr. Ahmed from seeing Muneeb?

[108] Muneeb was in Pakistan from June 2011 until November 2013. He has been in Sydney since then. Mr. Ahmed visited Pakistan twice while Muneeb was there. He didn't make efforts to visit Muneeb on either occasion while in Pakistan. Mr. Ahmed explained that he didn't try to see Muneeb while he was in Pakistan because of the marriage contract. This explanation is not credible.

[109] In April 2012, Dr. Naseem's lawyer prepared a marriage contract for the couple. With regard to Muneeb, the contract provided:

AND WHEREAS the Wife is in the process of adopting a child, Muneeb Ahmed, born April 11th, 2009, and she is presently the *de facto* custodian of the child who now resides with the parties in the matrimonial home;

[. . .]

SPOUSE NOT TO BE PARENT

Husband Not *In Loco Parentis*

The Husband has not and will not be expected to act as a parent to the Wife's child, Muneeb Ahmed even though the child may reside in the matrimonial home. The Wife shall at all times be the primary caregiver of the child and shall be primarily responsible for all aspects of the child's care. The Husband is expected to assist with childcare if the Wife is called to work during the night or if the Wife must work and no other childcare is readily or reasonably available.

Waiver of Custodial Rights and Child Support

The parties agree that the Husband does not and shall not stand in the place of a parent, or *in loco parentis*, to the Wife's child, Muneeb Ahmed, or any subsequent children, in the event:

- (i) separation of the parties occurs;
- (ii) divorce is granted;
- (iii) declaration of nullity of the marriage is made; or
- (iv) either party dies

the Wife shall have sole custody of the child or children and shall not seek child support from the Husband.

[110] Mr. Ahmed took the contract to a lawyer to obtain legal advice. He described his

understanding of the legal advice he was given: “If I sign, my rights are like garbage.” He refused to sign the contract.

[111] Neither party ever signed the marriage contract. The unexecuted marriage contract does not explain why Mr. Ahmed didn’t try to see Muneeb when he was in Pakistan or in Canada.

4.2.1.4.2 Did the threat of the police stop Mr. Ahmed from seeing Muneeb?

[112] Mr. Ahmed said that he didn’t try to see Muneeb because Dr. Naseem threatened to call the police.

[113] In April 2013, Dr. Naseem’s lawyer emailed a letter to Mr. Ahmed’s lawyer which said Dr. Naseem “will contact the police if Mr. Ahmed does not respect her wishes [to communicate with her exclusively through counsel] and continues to bother her with unwanted contact and communication.” (Exhibit 22). As Dr. Naseem explained it, Mr. Ahmed was repeatedly calling her at home and at work.

[114] This letter was sent to Mr. Ahmed’s counsel in April 2013. So, this “threat” didn’t even arise until April 2013: Mr. Ahmed visited Pakistan twice before this letter was written. Regardless, while Mr. Ahmed was in Pakistan, he didn’t make efforts to see Muneeb.

[115] The threat that the police would be called if Mr. Ahmed continued to contact Dr. Naseem at home and at work is not a credible explanation for Mr. Ahmed’s failure to seek contact with Muneeb after he returned to Canada. There was no evidence that Mr. Ahmed attempted to arrange personal or electronic contact with Muneeb through counsel or that he sent cards, letters or gifts to Muneeb at any time after June 2012.

4.2.1.4.3 Did the threat of removal from Canada stop Mr. Ahmed from seeing Muneeb?

[116] According to Mr. Ahmed, Dr. Naseem advised him on how to complete his application to come to Canada and she told him to say that he was single (rather than divorced) on the application. Dr. Naseem denies this. In an affidavit Mr. Ahmed swore in October 2014 (Exhibit 19), he said that he had reason to believe Dr. Naseem was attempting to have him removed from Canada to thwart his claims for custody, spousal support and a share of matrimonial property. He cited this as his reason for refusing to disclose documents relating to his earlier divorces to Dr. Naseem: he feared she would provide these to immigration authorities as proof he had lied when he applied to come to Canada.

[117] Mr. Ahmed swore two affidavits in October 2014 expressing his fear that Dr. Naseem would report him to Canadian immigration authorities (Exhibits 19 and 34). Mr. Ahmed’s second affidavit attaches correspondence from Dr. Naseem’s counsel where this is explicitly denied and Mr. Ahmed was encouraged to request a copy of his immigration file. It also attaches a copy of an unsigned letter dated August 14, 2012 from Dr. Naseem to the federal minister of Citizenship and Immigration which Mr. Ahmed said came into his possession. He swore that Dr. Naseem told him she had sent this letter.

[118] Dr. Naseem denied writing this letter. It was not signed. The letter is dated August 14, 2012. Within two months of this letter coming into his possession, Mr. Ahmed made a trip to Pakistan.

[119] Other documents attached to his affidavits show that Mr. Ahmed travelled to Pakistan in September 2014. His fear that he might be removed from Canada did not prevent him from leaving Canada on his own. His trip to Pakistan in September 2014 was his third trip outside Canada while he said he was afraid he might be forced to leave. Since then, he has made two further trips to Pakistan.

[120] Mr. Ahmed testified that he made five trips to Pakistan in the period from September 2012 to June 22, 2015. Repeatedly leaving and entering Canada are not the actions of someone who is afraid that he will be removed from the country.

4.2.1.4.4 Was there something else that stopped Mr. Ahmed from seeing Muneeb?

[121] The April 2013 letter to Mr. Ahmed's counsel (Exhibit 22) referred to the possibility that, if Mr. Ahmed believed he was entitled to spousal support, that motion could be heard with an anticipated motion for interim exclusive possession of the matrimonial home. This highlights the fact that, if Mr. Ahmed wanted interim access with Muneeb or if he felt that Muneeb's primary or shared home should be with him, he could have filed an interim motion at some point. He did not.

[122] Mr. Ahmed explained that he was waiting for the final hearing to deal with Muneeb's parenting. Throughout this proceeding, Mr. Ahmed has been represented by counsel. On January 13, 2014 hearing dates were assigned for September 2014. These were twice adjourned, first to November 2014 and then to May 2015.

[123] During the motion to adjournment the November hearing dates, Mr. Ahmed did not express any concern about his relationship with Muneeb nor did he ask Justice Forgeron to address the issue of further delay in his efforts to have contact with Muneeb: transcript of the adjournment request Tab 47, Exhibit 4.

[124] Civil Procedure Rule 59.40(4) provides that "after an application is scheduled for hearing, no party may initiate or continue a motion or a discovery, unless a judge permits otherwise." From August 2012 until January 2014, Mr. Ahmed was able to file an interim motion dealing with Muneeb's parenting. He did not do so. After January 2014, he was still able to file an interim motion, however he would have required leave to do so. He didn't request leave to file a motion.

[125] Muneeb and Mr. Ahmed lived together for nine months when Muneeb was two and three years old. Mr. Ahmed said his contact with Muneeb was limited during the last five months of this period. Muneeb was six when the trial began.

4.3 Future contact between Muneeb and Mr. Ahmed

[126] Reviewed in this detail, there is little evidence of any relationship between Muneeb and Mr. Ahmed. Their last contact was in 2012 and Mr. Ahmed has done nothing to further or renew the relationship since then. I have considered his reasons for why he has had no contact Muneeb and I reject them. His reasons do not make sense in the context of his other actions or the circumstances.

[127] There is no evidence of benefit to Muneeb from a renewed relationship with Mr. Ahmed and there is some evidence of risk, in light of the testimony of Mr. Nadeem and Dr. Naseem. I order that there be no contact between Mr. Ahmed and Muneeb.

5. Child maintenance

[128] Dr. Naseem makes no claim for maintenance for Muneeb. I order Mr. Ahmed to pay no maintenance for Muneeb.

6. Spousal maintenance

[129] Because of their unmarried status, Mr. Ahmed's application for spousal maintenance is determined under sections 4 and 5 of the *Maintenance and Custody Act*. Mr. Ahmed and Dr. Naseem cohabited in a conjugal relationship from 2008 until 2012: he is a common law partner entitled to seek spousal maintenance under the *Act*.

6.1 Is Mr. Ahmed entitled to spousal maintenance?

[130] There are thirteen factors to be considered in determining whether to order spousal maintenance: see section 4 of the *Maintenance and Custody Act*. The *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3, lists three factors and four objectives to be considered when ordering spousal support in subsections 15.2(4) and 15.2(6), respectively. While the statutes differ in their formulation, they share the goal of equitably apportioning the economic consequences of the relationship and its breakdown, and accounting for the disadvantages experienced by a partner who makes sacrifices and for the advantages conferred on the other partner.

[131] Spousal maintenance may be payable in periodic amounts or in a lump sum. Either way, the award must reflect the principles I've identified in paragraph 130: *per* Justice McLachlin at paragraph 58 in *Young v. Young*, 1993 CanLII 34 (SCC). If I determine that lump sum maintenance best serves these principles, I must weigh the advantages and disadvantages of a lump sum award: *Davis v. Crawford*, 2011 ONCA 294 at paragraphs 66 to 68.

[132] Lump sum maintenance may be appropriate because the relationship has few lasting effects: it was brief, childless or entered into when the parties were established in their careers. In these circumstances, the economic consequences of the relationship and its breakdown can be apportioned and a clean break effected. Lump sum maintenance may be inappropriate where a clean break is impossible and either party should be able to vary the award if circumstances change.

[133] Mr. Ahmed seeks spousal maintenance, but he has not identified an amount or the duration of the award he seeks. Dr. Naseem argues that he is not entitled to spousal maintenance.

[134] I conclude that Mr. Ahmed is entitled to spousal maintenance because he sacrificed his job in Qatar to come to Sydney. In doing this, he gave up his self-sufficiency and became financially dependent on Dr. Naseem.

[135] Following the wedding ceremony in 2006, the parties visited with each other a few times each year until 2008. During his visits to Canada, Mr. Ahmed wasn't able to find a job. Mr. Ahmed said he wanted Dr. Naseem to move. He testified she could work for a hospital in Delhi though he didn't live in Delhi. Given the parties wanted a family, it's likely they expected to cohabit and to do that, one party had to move.

[136] Mr. Ahmed said that Dr. Naseem told him he could stay home and look after the home in Sydney. Dr. Naseem denies saying this. She said she didn't ask Mr. Ahmed to leave his job in Qatar and once he moved to Sydney she expected he would look for work. She paid his tuition so that he could study business or computer engineering at the university, but he only attended briefly. Regardless of whether she asked Mr. Ahmed to leave his job, he did. Her actions in paying his university tuition are consistent with her desire that he work.

[137] Mr. Ahmed testified that he contributed to Dr. Naseem's career and professional development. I find that this claim is exaggerated. Mr. Ahmed said he took care of the home. The home was occupied by two adults who had the assistance of a maid every two weeks, so caring for the home wouldn't be onerous.

[138] Mr. Ahmed said he cared for Muneeb. I've reviewed this in section 4.2.1.2 - From September 2011 until June 2012: Mr. Ahmed said that was that once Mr. Naseem arrived in January 2012, his contact with Muneeb was limited. If I accept Mr. Ahmed's evidence, his primary involvement with Muneeb occurred during the four months from September 2011 until January 2012. Taken with Dr. Naseem's testimony that her mother was primarily responsible for Muneeb's care, I conclude that Mr. Ahmed's involvement with Muneeb did not contribute to Dr. Naseem's career. Mr. Ahmed said that while Dr. Naseem was studying for her professional exams, he accompanied her to conferences where he would record lectures and make videos for her, and he researched notes on the internet for her. Dr. Naseem denied that he assisted her in her studies. I have no information about the number of conferences which Mr. Ahmed attended or the time he spent researching notes for her.

[139] Dr. Naseem testified that she was qualified as a radiologist before she came to Sydney in 2005. She had employment with the health authority before completing her Royal College exam in 2012.

6.2 Is lump sum spousal maintenance appropriate?

[140] I conclude that lump sum spousal maintenance is appropriate for three reasons.

[141] First, the parties' cohabitation is brief. The wedding ceremony was in 2006. Mr. Ahmed

came to Sydney in 2008 and the parties separated four years later.

[142] Second, Mr. Ahmed was self-sufficient prior to this relationship and he should be able to return to self-sufficiency. From 2000 until 2008, when he came to Canada, Mr. Ahmed was an instrument technician working for the Qatar General Petroleum Corporation (Tab 41, Exhibit 3). His employment provided him with a furnished apartment, transportation to and from his workplace, and free medical treatment. He had twenty-four days of paid vacation each year and was entitled to airfare to his home base for his vacation. Mr. Ahmed said he earned the equivalent of \$4,000.00 CDN monthly.

[143] Third, Mr. Ahmed is able to relocate to any place where work is available. His circumstances don't compel him to stay in Cape Breton. He has no family ties in Cape Breton. He has a sister in Toronto with whom he lived for a period of time after the separation. He has two sons in Pakistan. He has worked in Qatar. Mr. Ahmed said he's been unable to find work in Cape Breton with earnings commensurate with his Qatar earnings.

[144] A clean break is possible for these parties. A lump sum payment of spousal maintenance will assist Mr. Ahmed in re-establishing himself.

6.3 How much lump sum spousal maintenance is appropriate?

[145] In quantifying Mr. Ahmed's spousal maintenance I am to determine an amount that will achieve the goals of spousal maintenance: equitably apportioning the economic consequences of the relationship and its breakdown, and accounting for the disadvantages experienced by a partner who makes sacrifices and the advantages conferred on the other partner. The economic consequence of this relationship follows Mr. Ahmed's decision to leave his job in Qatar.

[146] Mr. Ahmed didn't quantify his claim for spousal maintenance. He did testify that if he had remained with his Qatar employer, he would receive a pension when he retired. However, his employment contract does not mention any entitlement to a pension (Tab 41, Exhibit 3).

[147] I know that while cohabiting with Dr. Naseem, Mr. Ahmed received dividends from Dr. Naseem's family trust. The exact amount is in dispute. His tax returns (Tab 31, Exhibit 3) show the grossed up amount of the dividends as follows:

- 2008 \$50,815.00
- 2009 \$47,226.00
- 2010 \$60,095.00
- 2011 \$86,250.00

[148] Dr. Naseem said that Mr. Ahmed took control of dividends that were intended to be paid her mother. Dr. Naseem's accountant, John Anderson, testified the dividends actually paid to Mr. Ahmed in various years were less than the amounts declared on Mr. Ahmed's tax returns, though – strangely – Mr. Anderson's office prepared some of Mr. Ahmed's tax returns. As a result, I can't conclude how much Mr. Ahmed received as dividends.

[149] Mr. Ahmed said he's used money he acquired during the marriage (whether dividends or funds from a joint bank account) to support himself since the separation. Dr. Naseem has not provided him with interim maintenance payments. Mr. Ahmed has worked since 2013, but at modest jobs paying little more than minimum wage: he has been employed at Value Village and at Burger King. He earns an hourly wage of \$11.00.

[150] Mr. Ahmed testified that during the eight years he worked for the Qatar General Petroleum Corporation he saved approximately \$153,000.00 CDN which he brought to Canada. When he moved to Canada, he transferred \$152,366.00 to Royal Bank of Canada in May and July 2008 (Exhibit 24).

[151] While cohabiting in Sydney, Mr. Ahmed was supported by Dr. Naseem's earnings. The annual gross professional revenue of Iram Naseem Medicine Inc., was \$676,000.00 in 2009 and \$762,793.00 in 2012 (Tabs 21 and 22, Exhibit 2). These are the only two years when the parties cohabited for which I have the professional corporation's financial statements.

[152] After the couple separated, Iram Naseem Medicine Inc. had annual gross professional revenue of \$731,368.00 in 2013 and \$661,977.00 in 2014 (Tabs 22 and 24, Exhibit 2). Typically, Dr. Naseem took less than \$250,000.00 as her annual income.

[153] Mr. Ahmed has lost, at most, eight years of employment as a result of this relationship. The relationship has spared him the cost of supporting himself for the four years of cohabitation. The money he took from the relationship has supported him to date. The only remaining consequence is his lost opportunity to save as he did in the past and this requires that Dr. Naseem pay him the same amount that he was able to save during his years of employment by the Qatar General Petroleum Corporation. I order Dr. Naseem pay Mr. Ahmed lump sum spousal maintenance of \$152,366.00 by June 30, 2016.

Costs

[154] Dr. Naseem seeks costs relating to various motions argued before and during the trial. I will deal with all claims for costs at once and direct counsel to file their submissions by April 22, 2016. Dr. Naseem need not repeat the submission contained in her September 30, 2015 brief.

Conclusion

[155] The marriage between Mohammed Ahmed and Iram Naseem is void. Mr. Ahmed did not marry Dr. Naseem in good faith, so he has no claim for a property division under the *Matrimonial Property Act*. I dismiss Mr. Ahmed's claim for parenting time with Muneeb. He is not ordered to pay child maintenance for Muneeb. Dr. Naseem shall pay Mr. Ahmed lump sum spousal maintenance of \$152,366.00 by June 30, 2016.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia