IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Jon v. Jon, 2011 NSSC 419

Date: 20111110
Docket: 1201-064066
Registry: Halifax

Between:

Kyungwon (Kim) Jon

Applicant

and

Daechol Jon

Respondent

Judge: Associate Chief Justice Lawrence I. O'Neil

Heard: March 7, 8, 10 and May 25, 2011, in Halifax, Nova Scotia

Counsel: Tanya Nicholson, for the Applicant
Graydon Lally, for the Respondent

By the Court:

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Introduction

[1] The parties were married in British Columbia in 1995. They have two children, born in 1997 and 2004.

[2] The parties moved to Halifax in 2003. They purchased a Sushi Bar in Bedford in July of 2004. They opened a second Sushi Bar in downtown Halifax in the fall of 2005. The businesses were operated as sole proprietorships. The Bedford Sushi Bar was sold in July 2006 and the downtown Halifax bar was sold in July 2007.

[3] Proceeds from the sale of the Sushi Bars enabled the couple to open a full restaurant on Dresden Row, Halifax in August 2007. It was owned by Atlanadian Holdings Inc., whose shares were held equally by the parties (see tab 13 of Exhibit 5).

[4] The couple separated on March 1, 2008.

[5] Mr. Jon's business activities and decisions leading up to and subsequent to the parties' separation are the subject of significant disagreement between the parties. His income from these businesses and Ms. Jon's interest in them is at issue.

[6] By November 2008 Mr. Jon had established a second limited company, Jon and Family Holdings Inc. Its initial asset was 100% of the shares in the Dresden Row restaurant i.e. all of the shares of the first company, Atlanadian Holdings Inc. (see tab 13 of Exhibit 5). Ms. Jon was unaware of this "restructuring". Mr. Jon retained ownership of 40% of the shares and Ms. Jon 30% of the shares in Jon and Family Holdings Inc. The remaining shares in Jon and Family Holdings Inc. were purportedly then sold to several investors.

[7] A second restaurant was opened in 2009, in the Clayton Park area of Halifax. The second restaurant is owned by Sushi Nami Clayton Park Restaurant Inc. The court is told the shares of this company are also owned by Jon and Family Holdings Inc. (Exhibit 5 at paragraph 90 and Exhibit 20 at paragraph 20).

[8] The ownership of the shares of Jon and Family Holdings Inc., which Mr. Jon or Ms. Jon do not own, changed between incorporation and the date of the hearing. The court is told that initially Jon and Family Holdings Inc. had three outside shareholders (see paragraph 84 and tab 15 &16 of Exhibit 5):

> Mr. Dae Jon 40%
> Ms. Kim Jon 30%
> Ms. Stella Yang 10%
> Mr. Joonhong Ahn* 10%
> Mr. Mim Lu** 10%
> *Ms. Joonhong Ahn (transferred his shares to John Sam June 23, 2009 - see Exhibit 5 at tab 17)
> **Mr. Mim Lu (transferred his shares to Stella Yang February 17, 2010 - see tab 18 of Exhibit 5)

[9] A third restaurant was opened in March 2010 by Mr. Jon at Dartmouth Crossing. This restaurant is not owned by Jon and Family Holdings Inc., nor Atlanadian Holdings Inc. Mr. Jon testified that his family lent him money for this start up and he is the sole owner. However there is also evidence of an arrangement with John Sam and Stella Yang for Mr. Jon to hold an interest in the third restaurant for them (see Exhibit 6 paragraphs 40-41).

History of Litigation

[10] Ms. Jon filed a Petition for Divorce on November 16, 2009. An interim application was filed by Ms. Jon on December 4, 2009. Mr. Jon filed documents in response on December 18, 2009. An interim hearing was scheduled for January 12, 2010. A consent order flowed from that appearance.

[11] Mr. Jon was ordered to pay child support of $786 per month based on an income of $51,600 and to pay $450 per month for the older child's attendance at a private school. He was also ordered to pay $2,814 per month as spousal support. The order also provided for ongoing adjustments in these amounts with the combined amount not to exceed $4,000 per month. (On a voluntary basis, Mr. Jon paid Ms. Jon $4,000 per month between July and September 2009- see paragraph 30 of Exhibit 4).

[12] In February 2010 the matter was scheduled for a settlement conference to be held in June 2010 and for a trial in September 2010. The September 2010 trial dates were released pending further disclosure. Pre-trials were held in November 2010 and January 2011 to determine compliance with disclosure obligations. The hearing herein was held March 7, 8, 10, 2011. Summation occurred May 25, 2011.

[13] The parties are agreeable to equally dividing their R.R.S.P.s. I am not asked to comment further on that. The main asset of the parties is shares in Jon and Family Holdings Inc. or more precisely, the interest of each in the two restaurants operated by this company.

[14] **Issues**

Income

1. Should a divorce order issue?

2. What is Mr. Jon's income received as salary, gratuities, draws and cash from all sources?

3. What is the quantum of child support and spousal support, if any, to be paid by Mr. Jon?

4. Should Mr. Jon be required to contribute to the cost of private school for the younger child and the cost of braces for the older child?

Property Division

5. Are the restaurants matrimonial assets or business assets?

6. If they are business assets, what is the appropriate division of ownership of the restaurants, after considering s.13 of the *Matrimonial Property Act*, R.S.N.S. 1989, c 275?

7. Does s.18 of the *Matrimonial Property Act*, R.S.N.S. 1989, c 275 have application to ownership of the restaurants?

Divorce

[15] There are no bars to the issuance of the Divorce Order; there is no prospect of reconciliation and the Court's jurisdiction has been established. The parties' divorce will be granted upon issuance of a Divorce Order to be presented to the Court by Ms. Jon, the Petitioner. It is issued on the basis of the parties having lived separate and apart for more than one year and a permanent breakdown of the marriage as provided by s.8 of the *Divorce Act*, R.S.C. 1985, c.3 (2nd Supp.).

Private School

[16] Section 7 of the *Federal Child Support Guidelines* SOR/97-175, as amended, enumerates expenses that may be covered in whole or in part by a child support order. Extraordinary expenses for primary or secondary school education that meet the child's particular needs may be deemed an extraordinary expense. Prior to ordering that the expense be covered in a child support order, however, the court must consider (1) the necessity of the expense in relation to the child's best interests; (2) the reasonableness of the expense in relation to the parents' needs; and (3) the family's spending pattern prior to their separation.

[17] Our Court of Appeal reviewed the law in this area in *L.K.S. v. D.M.C.T.*, 2008 NSCA 61.

[18] I am satisfied that Mr. Jon should be required to contribute to the cost of the younger child's attendance at a private school in Halifax. I am satisfied that he supported the registration of the child in the school prior to separation and as more fully explained in the following, he has an income level to support the expense.

The parties shall share this expense on a proportionate basis. Mr. Jon's income, net of spousal support and Ms. Jon's income, after receipt of spousal support, shall be used for this calculation. The cost to be shared is $450 per month (Exhibit 12).

[19] I am also satisfied that the continuation of the child's attendance in the school provides a level of stability that is in her best interests, particularly during the parents' continuing transition to independent lives.

[20] For the same reasons I direct that the parties are to share the uninsured dental expenses for their children on a proportionate basis. Ms. Jon's proportionate share will reflect her receipt of spousal support in the calculation of her contribution.

Access

[21] The parties have agreed that they will have joint custody of the children; that Ms. Jon will have primary care of the children and they have agreed on Mr. Jon's parenting time. They must consult each other on major issues pertaining to the children. These include health, educational and recreational issues.

[22] In the event of disagreement between the parties, Ms. Jon will have the final decision on matters pertaining to the health, education and recreation needs of the children. I have come to this conclusion because Mr. Jon's lifestyle will result in his absence from the Province for extended periods of time. Mr. Jon, however, is not precluded by this directive from seeking a variation of this direction should his lifestyle result in his being in this Province on a more predictable basis.

Imputing Income

[23] The *Federal Child Support Guidelines, supra*, at s.15-20 outline the principles to be applied to determine a payor's income. Typically parties rely upon a payor's "line 150 income" as shown on a payor's annual tax return. However, there are a range of circumstances where a spouse's annual income can not be determined in that way.

[24] Herein, counsel for Ms. Jon is arguing that Mr. Jon's income far exceeds that declared on his most recent tax returns. She asks that income be imputed to Mr. Jon as provided by s.19 of the *Federal Child support Guidelines*. She is

relying upon s.19(1)(d), (f) and (h). Her argument also forces a consideration of s.18(1) and (2) of the same *Guidelines*. The provisions provide:

> 18. (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include
>
> > (a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or
> >
> > (b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.
>
> Adjustment to corporation's pre-tax income
>
> (2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.
>
> . . . . . .
>
> 19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
>
> . . . . .
>
> > (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
> >
> > . . . . .
> >
> > (f) the spouse has failed to provide income information when under a legal obligation to do so;
> >
> > . . . . .
> >
> > (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
> >
> > . . . . .

[25] The burden of proof is upon Ms. Jon to establish on a balance of probabilities that income should be imputed to Mr. Jon (*Codiac v. Codiac* 2005 NSSC 291 (CanLII), (2005), 237 N.S.R. (2d) 362 (SC) and *McCarthy v. Workers' Compensation Appeals Tribunal (N.S.) et al* 2001 NSCA 79 (CanLII), (2001), 193 N.S.R. (2d) 301 (C.A.) at para 574).

Disclosure of Income Information

[26] A payor is subject to important disclosure obligations when served with an application for a child support order. Section 21(2) of the *Guidelines* incorporates the filing requirements of s.21(1).

[27] Sections 21(1)(d) and (f) provide as follows:

> 21. (1) A spouse who is applying for a child support order and whose income information is necessary to determine the amount of the order must include the following with the application:
>
> . . . . .
>
> (d) where the spouse is self-employed, for the three most recent taxation years:
>
> (i) the financial statements of the spouse's business or professional practice, other than a partnership, and
>
> (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length;
>
> . . . . .
>
> (f) where the spouse controls a corporation, for its three most recent taxation years:
>
> (i) the financial statements of the corporation and its subsidiaries, and
>
> (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;

. . . . .

[28] The Court may draw an adverse inference against a spouse who does not disclose income information as required. (s.23 of the *Guidelines*)

[29] A determination of Mr. Jon's income is necessary to determine his child support and spousal support obligations. Determining Mr. Jon's income is challenging for a number of reasons, expanded upon in the following.

Income of Mr. Jon

[30] Mr. Jon's income as reflected on his 2010 T4, is approximately $70,000 (Exhibit 24). To this he adds $300 per month as gratuity income.

[31] His statement of income filed January 25, 2011 (Exhibit 21), sets out an income of $76,800, consisting of $72,000 in employment income and $4,800 in tip income.

[32] Mr. Jon argues that his child and spousal support obligation should be determined by reference to his income as declared for 2009 and 2010.

[33] Ms. Jon argues the court should impute income "in the range of $150,000" (oral summation of Ms. Nicholson).

[34] The task of determining Mr. Jon's income is made very difficult because the court was not provided with complete financial information for the three restaurants. I draw an adverse inference as provided by s.23 of the "Guidelines" because Mr. Jon has not provided this information.

[35] The Petitioner (and the court) did receive financial documents generally described as Mr. Jon's personal income tax returns; bank statements; and journal entries. The court heard extensive *vive voce* evidence on the subject of the financing of the restaurants; their ongoing financial management and operation.

[36] In the case of self employed persons or persons who control a corporation, the *Child Support Guidelines* require disclosure of a breakdown of all salaries, wages, etc. (s.21(1) and s.21(21)). It is clear that Mr. Jon has not complied with this obligation.

Arm's Length

[37] Mr. Jon does not deal at arm's length with any of the corporate entities he established. He unilaterally effected the transfer of all shares in Atlanadian Holdings Inc. to Jon and Family Holdings Inc. This was done without Ms. Jon's knowledge or consent. Mr. Jon also testified that he decided to "sell/issue" shares in Jon and Family Holdings Inc. to several new investors. Again, Ms. Jon was not aware of these decisions, nor the processes that permitted this to happen.

[38] The revenue generated from the sale/issuance of these shares was received by and managed by Mr. Jon.

[39] The court was provided with some corporate records to trace the corporate organizations and associated share issues. Documents showing how Jon and Family Holdings Inc. own the Clayton Park restaurant were not provided.

[40] Mr. Jon is regularly in receipt of funds from the corporate entities, notwithstanding his extended absences from Canada, purportedly to pursue business opportunities in China. He could only make these generous arrangements because he is not dealing at arm's length. I do not accept that his being in China has a business purpose. He is directing income from these restaurants for his personal use, including travel and unearned salary.

Credibility

[41] Justice Forgeron in her recent decision, *Parsons v. Parsons*, 2011 NSSC 347 thoroughly discussed principles to be applied by a court when assessing credibility. I adopt the following passages from her decision:

> [19] How do burden of proof and credibility principles impact upon the decision?
>
> [20] In C.®. v. McDougall, 2008 SCC 53 (CanLII), 2008 SCC 53, Rothstein J. confirmed that there is only one standard of proof in civil cases - that is, proof on a balance of probabilities. In every civil case, the court must scrutinize the evidence when deciding whether it is more likely than not that an alleged event occurred. The evidence must not be considered in isolation, but must be based

upon its totality. The evidence must always be clear, convincing, and cogent to satisfy the balance of probabilities' test.

[21] Further, the court must assess the impact of inconsistencies on questions of credibility and reliability, which relate to the core issues. It is not necessary that every inconsistency be addressed, but rather a judge must address, in a general way, the arguments advanced by the parties: C.®.) v. McDougall, supra, paras. 40, and 45 to 49.

[22] In *Baker-Warren v. Denault* 2009 NSSC 59 (CanLII), 2009 NSSC 59, this court reviewed the factors to be considered when making credibility determinations at paras. 18 to 20. I have applied this law which states as follows:

> 18 For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" R. v. Gagnon 2006 SCC 17 (CanLII), 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" R. v. R.E.M. 2008 SCC 51 (CanLII), 2008 SCC 51, para. 49.
>
> 19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:
>
> > a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: Re: Novak Estate, 2008 NSSC 283 (CanLII), 2008 NSSC 283 (S.C.);
> >
> > b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
> >
> > c) Did the witness have a motive to deceive;
> >
> > d) Did the witness have the ability to observe the factual matters about which he/she testified;
> >
> > e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;

> f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: Faryna v. Chorney [1952] 2 D.L.R. 354;
>
> g) Was there an internal consistency and logical flow to the evidence;
>
> h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biassed; and
>
> i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?
>
> 20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: R v. Norman, 1993 CanLII 3387 (ON CA), (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in Re: Novak Estate, supra, at para 37:
>
> > There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See R. v. D.R., 1996 CanLII 207 (SCC), [1996] 2 S.C.R. 291 at 93 and R. v. J.H., [2005] O.J. No. 39, supra).

[42] The credibility of Mr. Jon is a core issue in this proceeding. Mr. Jon's evidence was troubling for a number of reasons, some of which are as follows:

- signing Ms. Jon's signature

[43] The parties may have had a practice of signing each other's "name" when they were together. However, the decision by Mr. Jon to dilute Ms. Jon's interest in the Dresden Row Restaurant from a 50% interest in the restaurant to a 30% interest in a holding company could not have reflected the trust factor that was the basis of this couple signing each other's signature when they were together. That decision was made after the parties separated and I am satisfied was designed to minimize Ms. Jon's influence in the operation of the Dresden Row Restaurant and future restaurants. It was done without her knowledge or consent.

- tips, general ledger: loans to shareholders

[44] Mr. Jon initially testified that the servers employed at the Dresden Row restaurant accounted for and settled their accounts for gratuities and that typically the accounts were reconciled at the end of each shift. His evidence on this point included the following:

> **March 8th, 2011 Evidence - 14:22:00 - 14:30:00**
>
> The Court: What was that amount again?
> Mr. Jon: $10,000.
> The Court: Tips?
> Mr. Jon: Yes, a month.
> The Court: $10,000 a month in tips?
>
> . . .
>
> (14:25:50)
>
> Ms. Nicholson: Right, ok. So for every credit card transaction that that particular waitress sees, she has to then claim cash from collective, all waitresses combined or from the cash that exists from the previous day.
> Mr. Jon: Yes, that's done by the manager.
> Ms. Nicholson: So, if I understand you correctly, these things are calculated day by day?
> Mr. Jon. Every day.
> Ms. Nicholson: So the waitress then, they get their cash tips at the end of their shift?
> Mr. Jon. Yes.
> Ms. Nicholson: Ok, so even if it is a credit card transaction, they are still assured of some flow of cash at the end of the . . .
> Mr. Jon: If there is cash, yes they get it every day, if there is not enough cash, then they just write it on their envelopes and the manager will see it and as soon as she can find cash from the previous day she gives it to them.
> Ms. Nicholson: Ok, can you estimate approximately how much of your business, the customers who are coming in and paying revenue to the restaurant. Approximately how much of that is in cash?
> Mr. Jon: I believe 10 to 20 percent of the customers that's my estimation.
> Ms. Nicholson: And we will accept it as arranged. But it makes sense that you would probably most times, you would have enough cash in the till to cover off the tips.

Mr. Jon:	Pardon me.
Ms. Nicholson:	You would have enough cash in the till, even 10 percent of your sales for that evening or that day, with cash, you would probably have enough to cover off your . . .
Mr. Jon:	Yes because there is a 15 percent of HST too but the HST is actually not included in their sales.
Ms. Nicholson:	Right.
Mr. Jon:	So, we collect and deposit to the bank but after three months we have to send it back to Revenue Canada Agency, so that is considered their cash on hand so they don't have to carry, it's just their sales.
Ms. Nicholson:	Right.
Mr. Jon:	(inaudible) cash, they have in excess of (inaudible). For example if sale is $100, lets say $100 is their sales, they have let's say $1,000 sales and then (inaudible) but let's say $100, $200 is their cash in sales. They only have this (inaudible) in their hand but they have $230 in their hands. So usually they have enough cash too. Get their tips back or (inaudible) times they can not get their tips 100 percent of it so they live it .. restaurant owes this much to me and just ...the manager gives it back to them...
Ms. Nicholson:	What we are talking about is a fairly small amount then that would be owing from one shift to the next.
Mr. Jon:	It happens quite often.
Ms. Nicholson:	But what I mean, I guess relatively speaking in dollars and cents, you are not going to come in one day and get a note from your waitress that says you owe me $600.
Mr. Jon:	(inaudible)
Ms. Nicholson:	It would be small.....
Mr. Jon:	(inaudible) $15 or $20.

[45] At another point he testified that shareholder loans, shown as a debt to him, arose because he was required to advance money to cover employee gratuities.

[46] As shown at Tab 23 of Exhibit 5, the general ledger shows an accumulating level of loans to shareholders. Mr. Jon explained that he personally reimbursed employees for gratuities collected by the company. Consequently, the company owed him money and this indebtedness of the company to him is shown as a shareholder's loan at Tab 23 of Exhibit 5.

[47] The record contains the following exchange:

March 8th, 2011 Evidence - 14:42:00 to 14:46:00

Ms. Nicholson: What I am hearing from you and I want to make sure that we all leave here with the same understanding of your evidence, what I am hearing you say is that the waitresses are paid with the cash sale. So they are not paid with money from your pocket as an individual or from your wife's pocket as an individual shareholder. You are paying your wait staff with cash revenue and calling it money that is owed back to you and that's the part I can't follow.

Mr. Jon: That's exactly what is happening. That is why it is nothing, it is deposited but we didn't take it out. The revenue goes in, it is recorded as a revenue. But tip money has nothing to do with the revenue. Do you understand. $150 would go into the bank account. No no, $100. Let's say $500 has to go to the bank account. That's a sale, but this person received $100 as a tip. The tip has nothing to do with business account for me or anybody. It is her money.

. . .

(14:43:50)

The Court: I think what Ms. Nicholson, or perhaps I am not following it correctly, she is asking, why is it a loan to a shareholder. Why don't you just say deposits and gross sales, minus gratuity equals a deposit? Then you wouldn't have to do any of that. Am I missing something?

Ms. Nicholson: That is exactly where I am headed and I am glad that you see it with clarity because when I listen to him, I don't think he is answering the question My Lord.

The Court: I am not sure he understands the question.

Ms. Nicholson: And I will, using your lead, I will try to simplify it. When the balance to shareholders is going up, it goes up according to cash that you deposit for expenses that you paid. We talked about that yesterday and we used an example of you buying utensils. We know $39,000 increases the loan shareholder because you and your wife paid expenses for the business and the business will eventually pay back to you. The case with the tips, the staff, the wait staff are being paid tip money with cash revenue from sales. It is cash that is available at the end of the shift. Why is the money owed back to you if they are being paid as cash that came in as revenue for the restaurant?

Mr. Jon: I'm confused. That is done by my accountant. (inaudible) didn't make sense to (inaudible). Let me explain you what

we, see if it makes sense. (inaudible) situation one waitress had $100 sale and she received $120.

- and -

March 8th, 2011 Evidence - 15:43:00 to 15:45:00

Ms. Nicholson: So when we look at the ones referenced tips, it is somewhat confusing because you are not the one paying out the tips.

Mr. Jon: Actually that just confused me just now. Up until now I really didn't pay attention... care about this because technically (inaudible). I have to double check with Kevin to see if that if this is the amount that was charged to the credit card or is the payment, in that case (inaudible) because I'm $10 short. I paid it first but in that case (inaudible). If it happened that way. So I have to (inaudible). If that's the case or she just took the old credit card tips charged and then (inaudible). So I have to figure out what is that amount exactly.

Ms. Nicholson: When we look at that tab 23 at Atlanadian, we saw there was three deposits that increased the balance to shareholder and they were clearly marked gratuities paid to employee by . . . Ok, 23, that was when we first started discussing this topic.

Mr. Jon: That's right. That's the same thing as one to record monthly sales as (inaudible)

Ms. Nicholson: Ok, good, that was my assumption as well. Thank you. Ok, alright. So, because that added to the balance that the company owes to you, it suggests on the face of it, suggests you as an individual paid that out. But we know from your evidence, that is not, you might pay out small bits of it but not $7,000 a month.

- and -

March 8th, 2011 Evidence - 15:56:00 to 15:57:00

Ms. Nicholson: You are saying that you do not pay out tips to your staff with money from your own personal pockets.

Mr. Jon: I don't.

Ms. Nicholson: So if you don't, that evidence is in the accounting records that we have.

Mr. Jon: At the beginning of the operation I did because of a few days. Some of the waitresses leaving early and there is more restaurant money there. So in that case, a lot of the girls come in when they are done with their shift and say (inaudible) this money. I say, ok I think I have my wallet and here you go.

Ms. Nicholson:	You are not giving out $7,000 a month are you?
Mr. Jon:	I don't think so. Maybe that is what created the confusion between me and Kevin. I explained it to him and then maybe the (inaudible). Maybe it was mixed up or maybe he has an explanation as I said again.
Ms. Nicholson:	But let's put it in perspective, you own three restaurants. Kevin Martin does your accounting program, does your bookkeeping for all three restaurants.
Mr. Jon:	Yes.
Ms. Nicholson:	You have been in business as a restaurant owner since September 2007.
Mr. Jon:	Yes.

[48] Related to this issue is Mr. Jon's deposit of $100,000 into a Royal Bank account in British Columbia and its withdrawal as a bank draft, which draft was redeposited one year later.

- the British Columbia account

[49] Ms. Nicholson, on behalf of Ms. Jon, has obviously laboured many hours in an effort to better understand the management of these restaurants and the flow of money.

[50] She argues that between August 2008 and May 2009 Mr. Jon deposited $101,268.91 in a British Columbia account. Periodic deposits were made as shown below (Tab 1 and 2 of Ms. Jon's affidavit, being Exhibit 5):

Date	Amount of Deposit
Aug. 14th, 2008	$25,000
Aug. 22nd, 2008	$ 2,000
Sept. 2nd, 2008	$ 5,000
Sept. 15th, 2008	$ 3,000
Oct. 16th, 2008	$ 3,000
Oct. 17th, 2008	$ 2,000
Nov. 15th, 2008	$ 3,000
Nov. 17th, 2008	$ 2,000
Dec. 10th, 2008	$ 3,000
Dec. 10th, 2008	$ 2,000
Jan. 13th, 2009	$ 3,000
Jan. 15th, 2009	$ 4,000

Feb. 9th, 2009	$10,000
Feb. 9th, 2009	$ 6,000
March 9th, 2009	$ 4,000
March 18th, 2009	$ 3,000
April 9th, 2009	$15,000
April 10th, 2009	$ 3,000
May 9th, 2009	$101,268.91 (Withdrawal)

[51] Ms. Jon rejects Mr. Jon's explanation that these funds reflect, in part, the payments of new investors for their shares in Jon and Family Holdings Inc. She points to Exhibit 5 at Tab 17 and three cheques deposited directly to Jon and Family Holdings Inc. for development of the Clayton Park Restaurant as evidence that the new shareholders paid for their shares in another way.

[52] Ms. Nicholson, on behalf of Ms. Jon argues that $101,000 was withdrawn from the British Columbia account in May 2009 and was deposited one year later on May 6, 2010 into Stella Yang's account as shown in Exhibit 5 at Tab 3.

[53] Ms. Nicholson argues these events when taken together are evidence that Mr. Jon was diverting money from the company Atlanadian Holdings Inc. At paragraph 31 of Exhibit 20, the affidavit of Mr. Jon he says he did in fact retain part of the earnings of some employees to finance their purchase of an interest in Jon and Family Holdings Inc. I reject this assertion.

[54] Ms. Nicholson points to Tab 3 of Exhibit 13 as showing a further $20,000 withdrawal by Mr. Jon from Atlanadian in April 2008.

[55] I am satisfied that Mr. Jon surreptitiously deposited funds received by "Atlanadian" totalling $101,268.91 into a British Columbia account between March 2008 and May 2009 (Exhibit 5, Tab 5 - Affidavit of Ms. Jon and Tab 1 and 2 of Exhibit 5).

[56] On May 5, 2009 this amount was withdrawn in the form of a bank draft. The draft was deposited almost one year later on May 6, 2010 into a Bank of Montreal account, reportedly an account of Stella Yang (Exhibit 5, Tab 3).

[57] It is worth noting that the Clayton Park Restaurant was opened in 2009 and could not have been the source of deposits that resulted in the accumulation of the sum.

[58] The parties only real asset at the time of this accumulation of funds was the Dresden Row Restaurant, owned by "Atlanadian".

[59] Mr. Jon essentially sold part of the company Atlanadian Holdings Inc. without Ms. Jon's knowledge, by transferring shares to Jon and Family Holdings Inc. Initially the shares of Atlanadian Holdings Inc. were owned equally by the parties.

[60] The cancelled cheques evidencing payment for the shares issued in November 2008 to three investors, are in the value of $30,000, $30,000 and $30,000 (Exhibit 5, Tab 15).

- financing of the Dartmouth Restaurant

[61] Mr. Jon testified that he "repaid" his father $30,000 because his father needed it. Later he agreed that the same day he paid his father $30,000, his father "paid" him $140,000. His explanation for the flow of these funds was confusing and inconsistent. The exchange with Ms. Nicholson includes the following:

March 10th, 2011 Evidence - 11:15:55 to 11:22:30

Ms. Nicholson:	It originated with his client. That would be exhibit #26. (inaudible) like to go over that make sure you are familiar with it. I believe the date is December 14th, 2009.
Mr. Jon:	Yes.
Ms. Nicholson:	And that is also the date that the cheque cleared through the account for Atlanadian, $30,000. And I believe sir, it was your evidence that that went to your dad's account, that's the statement you have there, it is from your father's account.
Mr. Jon:	Yes.
Ms. Nicholson:	And you also see on December 14th, that $140,000 was transferred out and (inaudible) transferred out.
Mr. Jon:	December 16th.
Ms. Nicholson:	Pardon.
Mr. Jon:	December 16th.

Ms. Nicholson: Oh December 16th, ok. But that's the next transaction after the deposit of $30,000.

Mr. Jon: Yes.

Ms. Nicholson: Ok, thank you. And isn't that the same deposits that went to you for the establishment of the Clayton Park restaurant.

Mr. Jon: Same deposit of what.

Ms. Nicholson: The same deposit of $140,000 that you used to establish the Clayton Park restaurant.

Mr. Jon: Dartmouth.

Ms. Nicholson: Pardon me, yes Dartmouth yes. So that $140,000 that (inaudible) on that date and that statement. Ok so really the $30,000 had nothing to do with your mother and father selling their condominium.

Mr. Jon: No, as I said what I think we talked about last time when we were in discoveries (inaudible).

Ms. Nicholson: The judge wasn't at the discovery hearing. When I see that statement, my point to you sir it flies in the face of your testimony a few moments ago, when you said that your mother and father needed $30,000 to close out their condo and in fact what we see when we look at that statement is $30,000 going in and $140,00 going out as the next transaction, which I'm suggesting is your Dartmouth investment and you have agreed with me that that is.

Mr. Jon: Yes but there some reason behind that why I paid them on this time but only reason I remember the (inaudible) but I knew that (inaudible) that is why I (inaudible) wanted him to write a cheque for his accounting (inaudible). So basically, I knew from the very beginning that this money went to him. It doesn't matter when it went to him but it went to him and then it came back to me. I know because the reason why we have to do this because we have to have a balance that he's, it's actually (inaudible). It is an investment but it's a loan from him.

Ms. Nicholson: So in the document reporting the loan that your father (inaudible)

Mr. Jon: (inaudible) as you see my habits in doing all the accounting even you can ask me where's the paper trail to cover that (inaudible) is gone to protect myself. Well, I knew it's all coming but once I decided to do this, I always my excuses, not that (inaudible) know about things regarding the money so. Especially between parents and sons in our culture. It is really not necessary to write anything, unless we need to prove it in this kind of situation.

Ms. Nicholson: Well, it looks like you gave your father money that he gave back to you.

Mr. Jon:	Yes. It is clear.
Ms. Nicholson:	But we could also conclude that you loaned it to yourself.
Mr. Jon:	Yes, I did take it out of the loan that owed to me from the company, yes for sure but it didn't mean that it loaned to me.
Ms. Nicholson:	Let me ask you this, of the $140,000 that your father loaned to you for the Dartmouth restaurant, how much of that originated with you.
Mr. Jon:	....$40,000 is donated from me giving the $140,000. $30,000 as you see, I had to give it back. I believe that $30,000 was covered by someone else when they sold the condo in Korea and then I promised something like that because I wanted to help them out. So when it was the time when they arrived to Halifax, as soon as they come, well as soon as they got the money from Korea, we discussed all this investment then and we needed $150,000 and if he had about $130,000 so clearly I told him ok, I do control the money from my business account because (inaudible) my mom and dad said can you do that. I said yes. My dad said was a loan from me and Kim and what if Kim thinks that you were just supporting your parents and I said, well I have been supporting your parents for last six, seven years so I think that's what happened.
Ms. Nicholson:	Ok, well let's just move very quickly. I am just about done Mr. Jon. You were recently away for, you said about three weeks. You went to China and then you went away for another four to five weeks.
Mr. Jon:	Yes.

[62] Mr. Jon also testified that Ms. Jon and the "new" investors would participate in the growth of the number of restaurants but, in fact, the third restaurant is solely owned by Mr. Jon. His stated reason for involving new investors and diluting Ms. Jon's interest was to create an opportunity for her and the new investors to participate in the growth in the number of restaurants (Exhibit 20 at paragraph 31, the affidavit of Mr. Jon).

- ownership of the Clayton Park Restaurant

[63] Mr. Jon testified that the change in ownership of "Atlanadian" was to permit it to have new investors for purposes of opening a second restaurant. Ms. Jon would own 30% of two restaurants instead of 50% of one by virtue of her 30%

ownership of Jon and Family Holdings Inc. Consequently he argued it was good for her. (See his affidavit dated January 24, 2011 at paragraph 31 - Exhibit 20).

[64] The evidence is confusing on this point however.

[65] Exhibit 23, Mr. Jon's statement of property, sworn December 18, 2009 under the heading business interests states Atlanadian Holdings Inc. is owned 50/50 with Ms. Jon. It also states that Sushi Nami Clayton Park Restaurant Inc. is 70% owned by him with outside investors owning the remainder. On his statement of property (Exhibit #23) he does not list Jon and Family Holdings Inc. as an asset. As stated, the ownership of the shares of Sushi Nami Clayton Park Restaurant Inc. is not confirmed by documents before the court.

- Dresden Row Restaurant

[66] The Dresden Row Restaurant was a source of revenue to fund the business activities of other restaurants. Although Jon and Family Holdings owned the shares of this restaurant the funds that flowed from it to Mr. Jon were not dividends. The funds were paid directly to him to fund the Clayton Park Restaurant, a separate corporate entity. Mr. Jon is not a shareholder of the Dresden Row Restaurant. As explained, its shares are held by Jon and Family Restaurants Inc. Mr. Jon is a major shareholder of this company but does not hold a majority interest. In reality, however, he exercises full control over its operations and cash flow. Ms. Jon has no influence over its operations or management.

[67] Mr. Jon does not act at arm's length from this corporation nor in a manner consistent with his obligation to account to the corporation or other shareholders for expenditures purportedly made on behalf of that corporation.

- Mr. Jon's level of understanding

[68] Mr. Jon frequently explained his inability to answer questions related to business accounting issues on the basis that he lacked an understanding of a matter and was relying upon the advice of others to make decisions, i.e. Mr. Kevin Martin. He also attempted to explain his poor record keeping by reference to his Korean heritage. This explanation is not accepted by the court. Mr. Martin acted as a book keeper, not a business or professional advisor.

[69] Mr. Jon has a degree in economics from a university in British Columbia. He also qualified to work as a financial adviser and he worked in that field while a resident of British Columbia. I am satisfied that he has a thorough understanding of business organizations and money management, including the elementary accounting and book keeping issues he would have the court believe he deferred to others to resolve. His pleas of ignorance when certain questions were posed to him were an attempt to avoid giving a response.

[70] I am satisfied Mr. Jon wished to minimize Ms. Jon's influence over the Dresden Row restaurant. Of course, he could also raise capital by selling a 30% interest in the then newly created holding company to several other shareholders.

[71] Mr. Jon did proceed with the second restaurant at Clayton Park. Apparently, Ms. Jon became a minority shareholder, with 30% of the shares in Jon and Family Holdings Inc. However, corporate documents transferring or evidencing ownership of the shares of Sushi Nami Clayton Park Restaurant Inc. to/by Jon and Family Holdings Inc. were not before the court. As stated, Jon and Family Holdings Inc. held all of the shares of Atlanadian Holdings Inc. ; the owner of the first restaurant. The nature of Ms. Jon's interest is in the second restaurant is unclear.

[72] Given that Mr. Jon is not a credible witness. His evidence must be suspect. I can not satisfy myself on a balance of probabilities that the so called outside investors were/are strictly investors. Nor am I satisfied that the money purportedly advanced for the investors interest in the "holding" company originated with these investors. It is clear that Mr. Jon's relationship with Stella Yang, one of the four new investors is not at arm's length and his relationship with the others is also unclear. As stated supra at paragraph 9 I am satisfied Mr. Jon had very vague arrangements with John Sam and Stella Yang surrounding ownership of shares in the Dartmouth restaurant.

- Stella Yang

[73] Mr. Jon attempted to explain his relationship with Ms. Yang on the basis that he was performing a type of pro bono work for her in the form of market research and business development in China. This is not a credible explanation.

[74] Ms. Yang is a young woman, in her early twenties who became friends with Mr. Jon following her being hired as a waitress. Ms. Jon explained his decision to visit China in late 2010 and his plan to return to China in the spring of 2011 on the basis that he was investigating business opportunities.

[75] Given the demands on his time and energy that the three Nova Scotia restaurants imposed, this is difficult to accept. If business expansion was his objective, as he demonstrated, opportunities surely exist closer to his established restaurants.

[76] Mr. Jon is a business person. Despite his denials of a romantic relationship with Ms. Yang, I am satisfied that his interest in her and her native country reflect that reality.

[77] Of course, his extended absences from the Nova Scotia business while nevertheless receiving an income indirectly from the restaurants forces the question - why is he being paid? If the payments reflect his ownership interest, Ms. Jon is entitled to ask when she will also receive a benefit.

[78] In summary, Mr. Jon was not truthful in the description of his relationship with Ms. Yang. I am not even satisfied that the money she allegedly invested came from her. The cheque bearing her name can be explained on the basis that Mr. Jon gave her the money first. That, however, requires the court to speculate. Given, however, that I must rely principally upon Mr. Jon's evidence and I do not find him credible, I can not satisfy myself on a balance of probabilities one way or the other.

Ownership of Restaurants

[79] Ms. Jon argues that the restaurants are assets subject to division pursuant to s.13 and s.18 of the *Matrimonial Property Act*, R.S.N.S. 1989 c.275 as amended.

[80] These provisions provide:

> 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;

(b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;

(c) a marriage contract or separation agreement between the spouses;

(d) the length of time that the spouses have cohabited with each other during their marriage;

(e) the date and manner of acquisition of the assets;

(f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;

(g) the contribution by one spouse to the education or career potential of the other spouse;

(h) the needs of a child who has not attained the age of majority;

(i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;

(j) whether the value of the assets substantially appreciated during the marriage;

(k) the proceeds of an insurance policy, or an award of damages in tort, intended to represent compensation for physical injuries or the cost of future maintenance of the injured spouse;

(l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;

> (m) all taxation consequences of the division of matrimonial assets. R.S., c. 275, s. 13; revision corrected.
>
> . . . . .
>
> 18 Where one spouse has contributed work, money or moneys worth in respect of the acquisition, management, maintenance, operation or improvement of a business asset of the other spouse, the contributing spouse may apply to the court and the court shall by order
>
> (a) direct the other spouse to pay such an amount on such terms and conditions as the court orders to compensate the contributing spouse therefore; or
>
> (b) award a share of the interest of the other spouse in the business asset to the contributing spouse in accordance with the contribution,
>
> and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. R.S., c. 275, s. 18.

[81] The sale of the first Sushi bar resulted in the parties having $110,897.18 in their President's Choice Savings Account in early 2007 (Exhibit 13, Tab 2). The sale of the second sushi bar was in July 2007. Again, the parties had a cash infusion.

[82] The proceeds from the sale of the two sushi bars is not agreed upon. Mr. Jon states the first bar sold for $100,000 and the second for $70,000 (paragraph 16 of Exhibit 20 - his affidavit sworn January 24, 2011). Ms. Jon states the sale prices were $110,000 and $80,000 respectively (paragraph 10 of Exhibit 6 - her affidavit sworn February 11, 2011). In his oral evidence, Mr. Jon said the first bar sold for $110,000 with the final $10,000 being paid in $1,000 installments over ten months following the sale.

[83] At the end of 2007, "Atlanadian" financial records show loans to shareholders in the amount of $202,413.65 (tab 23 of Exhibit 5). The parties were the only shareholders. There was an additional $64,475.25 in "Atlanadian's" account. These two amounts total $268,888.25 and Ms. Jon argues this number represents the parties' investment in the first restaurant, i.e. in Dresden Row.

[84] In October 2008, a promissory note shows “Atlanadian” owing the parties $300,000 (tab 19 of Exhibit 5). The promissory note was created when a new company Jon and Family Holdings Inc. was created and the shares in Atlanadian were transferred to Jon and Family Holdings Inc. New investors were also welcomed at that time.

[85] Ms. Nicholson, on behalf of Ms. Jon, argues therefore that $150,000, being one half of $300,000 is owed to Ms. Jon by “Atlanadian”.

Division of Assets

[86] Ms. Nicholson argued that Ms. Jon is entitled to the following award as a division of property:

> (1) ½ the value of the promissory note issued by Atlanadian - $150,000
>
> (2) ½ of the $101,000 deposited into a British Columbia bank account between August 2008 and May 2009
>
> (3) ½ of the $20,000 taken from the business when Mr. Jon was purchasing a condo.
>
> (4) ½ of the RRSP amount of $27,465 (Tab 5 of Exhibit 5)

Mr. Jon does not dispute item 3 & 4. The resolution of 1 & 2 is deferred for reasons that follow.

[87] I am satisfied that the restaurant(s)/or ownership of the shares of the corporations operating the restaurants are business assets. They are not subject to division as matrimonial assets as provided by the *Matrimonial Property Act.* I am not prepared to rule on whether they are subject to division as provided by s. 13 and s. 18 of the *Matrimonial Property Act, supra*. I have come to this conclusion because I am satisfied that Mr. Jon has not produced the financial records necessary for the claim to be properly considered. Furthermore, I am satisfied that much of what he did produce and did testify to is unreliable. Given the disclosure order that follows I am reserving jurisdiction to hear the parties further on this issue.

Child/Spousal Support

[88] Mr. Jon's income for child and spousal support purposes is imputed to be $151,000. I arrive at this figure by grossing up Mr. Jon's undeclared income which I conclude is $50,000. I am therefore adding $75,000 to his 2010 declared income of $76,000.

[89] I believe my estimate is conservative given that he deposited $100,000 in a British Columbia account over the period August 2008 - May 2009.

[90] I have determined Mr. Jon’s annual income for purposes of the child support tables to be $151,000. His child support obligation is $1,913 per month.

[91] Section 15.2 (4) (a) - (c), (5) & (6) (a)- (d) of the *Divorce Act*, *supra*, requires the court to consider the condition, means and circumstances of each spouse and provides that a spousal support order should address four statutory objectives:

> 5.2(1) Spousal support order - A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse
>
> (4) Factors - In making and order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse including:
>
> (a) the length of time the spouses cohabited
>
> (b) the functions performed by each spouse during cohabitation; and
>
> (c) any order, agreement or arrangement relating to support of either spouse
>
> **...**

> (6) Objectives of spousal support order - An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should:
>
> > (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
> >
> > (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above an obligation for the support of any child of the marriage;
> >
> > (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
> >
> > (d) in so far as practicable, promote the economic self sufficiency of each spouse within a reasonable period of time.

[92] The words of Justice McLaughlin in *Bracklow* [1999] S.C.J. No. 14 at paras. 30-31 are on point:

> (30) The mutual obligation theory of marriage and divorce, by contrast, posits marriage as a union that creates interdependencies that cannot be easily unravelled. These interdependencies in turn create expectations and obligations that the law recognizes and enforces ...
>
> (31) The mutual obligation view of marriage also serves certain policy ends and social values. First, it recognizes the reality that when people cohabit over a period of time in a family relationship, their affairs may become intermingled and impossible to disentangle neatly. When this happens, it is not unfair to ask the partners to continue to support each other (although perhaps not indefinitely). Second, it recognizes the artificiality of assuming that all separating couples can move cleanly from the mutual support status of marriage to the absolute independence status of single life, indicating the potential necessity to continue support, even after the marital "break". Finally, it places the primary burden of support for a needy partner who cannot attain post-marital self-sufficiency on the partners to the relationship, rather than on the state, recognizing the potential injustice of foisting a helpless former partner onto the public assistance rolls.

[93] Justice L'Heureux Dube in *Moge v. Moge* 1992 CanLII 25 (SCC), [1992] 3 S.C.R. 813, [1992] S.C.J. No. 107 directed that spousal support must strive to achieve some equitable sharing upon the dissolution of the marriage. At paragraph 73, she stated:

> The doctrine of equitable sharing of the economic consequences of marriage or marriage breakdown upon its dissolution which, in my view, the Act promotes, seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse.

[94] Nevertheless, in the words of Justice MacLachlin in *Bracklow*, 1999 CarswellBC 532:

> 21. When a marriage breaks down, however, the situation changes. The presumption of mutual support that existed during the marriage no longer applies . Such a presumption would be incompatible with the diverse post-marital scenarios that may arise in modern society and the liberty many claim to start their lives anew after marriage breakdown. This is reflected in the Divorce Act and the provincial support statutes, which require the court to determine issues of support by reference to a variety of objectives and factors.

[95] Ms. Jon is clearly entitled to spousal support on both a compensatory and non compensatory basis. She remained at home to care for the children while Mr. Jon advanced his business interests. Ms. Jon missed opportunities for herself and must now "catch" up. In happy times this couple accepted a responsibility for each other. They became responsible for each other.

[96] The spousal support obligation determined by application of the *Spousal Support Advisory Guidelines (S.S.A.G.)*, has a range that considers the payment of child support and the length of the parties' marriage. Herein, Mr. Jon earns $151,000 and Ms. Jon is without an income.

[97] The *SSAG* require (1) the calculation of the individual net disposal income (INDI) for each spouse and (2) the sharing of the total of the net disposal income.

[98] When "spouses" have children, *SSAG* have, as an objective, leaving the lower income spouse with forty to forty-six percent of the combined INDI.

[99] Mr. Jon's INDI is his guideline income minus child support; a contribution to s.7 expenses; minus taxes and deductions and minus spousal support.

[100] Ms. Jon's INDI is her guideline income, minus taxes and deductions; plus government benefits and credits and plus spousal support.

[101] The Court has the assistance of software for doing the relevant calculations and take the foregoing variables into account. I have used the *"Childview"* software to determine the range of spousal support recommended by the authours of the *Spousal Support Guidelines*.

[102] He shall begin to pay spousal support as directed herein on December 15, 2011 and every month thereafter until further order of a court of competent jurisdiction or unless consented to.

[103] The spousal support advisory guidelines suggest a range of spousal support of between $2,500 per month and $3,500 per month. I set the quantum of spousal support at $2,500 per month.

[104] After considering the tax deductibility of spousal support, the quantum of spousal support ordered herein is consistent with the parties' consent order following their appearance in January 2010. That order required Mr. Jon to pay $736 per month child support; $450 per month for one child's attendance at private school and $2,814 per month spousal support. The recitals to the 2010 order placed Mr. Jon's income as $51,600.

Conclusion

[105] I order the following:

1. A Divorce Order will issue.

2. Mr. Jon's child support obligation is set at $1,924/month based on the Nova Scotia tables, forming part of the *Child Support Guidelines*.

3. Mr. Jon's spousal support obligation is set at $2,500 per month. This amount is arrived at by applying the *Spousal Support Advisory Guidelines*.

4. Mr. Jon is ordered to prepare complete financial records for Atlanadian Holdings Inc., Jon and Family Holdings Inc. and Sushi Nami Clayton park Restaurant Inc. He is to disclose these records to Ms. Jon within three

months of receipt of this decision. The records are to reflect the period beginning in the calendar year 2007.

5. Mr. Jon is to prepare financial records for any sole proprietorship he has operated since the sale of the parties' two sushi bars. This is to be done within three months of receipt of this decision. He is to disclose these records within three months of receipt of this decision.

6. Mr. Jon is to prepare and to disclose to Ms. Jon detailed cash flow and expense records for the following entities: Atlanadian Holdings Inc., Jon and Family Holdings Inc. and Sushi Nami Clayton Park Restaurant Inc and for the Dartmouth Crossing restaurant for the years 2007, 2008, 2009, 2010 and 2011. He is to disclose these records to Ms. Jon within three months of receipt of this decision

7. Mr. Jon is to prepare a record of his international travel in 2010 and 2011 outlining the dates of his travel, the purpose of the travel and his length of absence from the Province in 2010 and 2011. He is to provide a copy to Ms. Jon within three months of receipt of this decision.

8. The parties are to share the special expenses of the children on a proportionate basis and in particular, to share the dental expenses and the tuition for the child attending a private school. The obligation to share the private school tuition expense is limited to the 2011 - 2012 school year.

9. The application for relief as provided by s. 13 & s. 18 of the *Matrimonial Property Act* is adjourned.

A.C.J.