

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Faddoul v. Faddoul, 2005 NSSF 21

Date: 20050331

Docket: SFHD-020922;
1201-057308

Registry: Halifax

Between:

George Faddoul

Petitioner

v.

Ellen Faddoul

Respondent

Judge:

The Honourable Justice Kevin Coady

Heard:

June 14, 15, 16, 17, 2004

September 28, 29, 2004

October 18, 2004

December 9, 16, 21, 2004 in Halifax, Nova Scotia

Counsel:

Robert Ritchie Wheeler, for the Petitioner

D. Timothy Gabriel, for the Respondent

Coady, J.:

[1] George and Ellen Faddoul were married on August 19, 1990 in Lebanon after a brief relationship. Ms. Faddoul was then a Canadian citizen and Mr. Faddoul was a citizen of Lebanon. Ms. Faddoul's parents and family were extensively involved in the Halifax residential housing business and enjoyed considerable financial success. Ms. Faddoul, as well as members of her family, travelled to Lebanon in 1990 for the purpose of nurturing the relationship between the parties. The parties returned to Canada in 1991 and have resided in Halifax since that time.

[2] There are three (3) children of this marriage; namely 12-year-old Georgina, 11-year-old Samantha and 9-year-old Caroline. The girls have been residing with Ms. Faddoul since separation and Mr. Faddoul has been exercising regular access.

[3] On December 16, 2002 an Interim Application was heard in chambers by Justice Tidman and as a result the following Interim Order issued:

- George and Ellen share joint custody of the three children.

- Primary care of the children to be with Ellen Faddoul.
- Ellen Faddoul to have exclusive possession of the matrimonial home.
- George Faddoul to have access on specific terms.
- Income was imputed to George Faddoul, for the purpose of child support, in the amount of \$34,800 per annum.
- George Faddoul to pay basic guideline support for the children in the amount of \$650 monthly, effective December 31, 2002.
- No spousal support ordered.

[4] George and Ellen Faddoul have grown further apart since separation. That acrimony is also evident as between Mr. Faddoul and Ms. Faddoul's family. The Metledge family have been a critical factor in the parties personal and financial affairs since Mr. Faddoul moved to Canada in 1991. Since separation they have

been very supportive of Ms. Faddoul. They support her positions in this divorce especially on issues of property division.

[5] This proceeding involves two (2) primary areas of dispute. The first involves issues of custody, access, child and spousal support. The second relates to classification, valuation and division of several pieces of property. I will deal with the less contentious **Divorce Act** issues first.

[6] **Divorce:** A Divorce Order was issued on June 14, 2004 on the basis of a one (1) year separation. I was satisfied that all statutory requirements were met and there was no possibility of reconciliation.

[7] **Custody:** The parties agree that a Joint Custody Order shall issue and that primary care shall remain with Ms. Faddoul. I find that the children's best interests are served by remaining in the matrimonial home with their mother.

[8] Mr. Faddoul wants meaningful consultation and input into major decisions respecting the upbringing and activities of the children. Ms. Faddoul is prepared to

consult but wants the final say when they cannot agree. I find that meaningful consultation is unlikely at least in the foreseeable future.

[9] I make the following Order:

- The parties shall share joint custody of the three (3) children.

- Day-to-day primary care shall be with Ellen Faddoul.

- Ellen Faddoul shall consult with George Faddoul on all major issues affecting the children's educational, medical, religious and cultural development and upbringing.

- In the event that these parents cannot agree after meaningful consultation, the final decision will be made by Ellen Faddoul.

- George Faddoul will be kept advised of all information respecting the children in a prompt way. He will be authorized to make direct

inquiries of the children's teachers, physicians, clergy or any other caregiver.

[10] I have given Ellen Faddoul the final word in the face of disagreement. I do so because she is the primary care parent and because this couple cannot effectively communicate on these kinds of issues.

[11] **Access:** The parties are generally in agreement as to the terms of Mr. Faddoul's access. They disagree on the times of Sunday access when Mr. Faddoul has the children for the weekend. Mr. Faddoul wants the children to remain with him until Sunday evening. Ms. Faddoul wants them returned early Sunday morning so that they can participate in Sunday School, Mass and lunch with her and her extended family. I will set forth the agreed terms first:

- Periodic access shall be based on a two (2) week schedule.

- On week one (1) Mr. Faddoul shall access his daughters on Monday and Thursday from after school until 6:00 p.m

- On week two (2) Mr. Faddoul shall access his daughters on Monday from after school until 6:00 p.m. and from Friday after school until Sunday at a time to be determined.

- March school breaks shall be shared equally.

- Mr. Faddoul shall have two (2) weeks of block access each summer and must give Ms. Faddoul notice of the dates by May 1st.

- Ms. Faddoul shall have the children for two (2) weeks each summer and must give Mr. Faddoul notice of the dates by May 15th. Periodic access by Mr. Faddoul shall be suspended during this period of time.

- Christmas access shall alternate from year to year. On even-numbered years the children will be with Mr. Faddoul from December 24th at noon until December 25th at 2:00 p.m. In odd-numbered years the children will be with Ms. Faddoul from December 24th at noon until December 25th at 2:00 p.m. Regular access shall occur for the balance of the Christmas school break.

- The children shall spend Father's Day with Mr. Faddoul.

- The children shall spend Mother's Day with Ms. Faddoul.

[12] I have decided that Mr. Faddoul's access to the children every second weekend should include Sunday until 6:00 p.m. On long weekends, with a Monday holiday, the children shall remain with their father until 6:00 p.m. on Monday. One reason for this decision is that it involves every second weekend. The other reason is to maintain Mr. Faddoul's presence in the lives of these children. I have concluded that Ms. Faddoul is not committed to maintaining the children's relationship with their father.

[13] Ms. Faddoul testified that the children spending time with her family is more important than spending time with their father. She was not prepared to admit, when pushed, that the children loved their father or that Mr. Faddoul loved them. She stated that the children's relationship with their father was not much different than with a cousin or a grandparent. She testified that she made the decisions and then told Mr. Faddoul what was going to happen. It was very clear that Ms.

Faddoul views her husband as someone who has outlived his usefulness to her, the children and the extended Metledge family. I find as a fact that she believes in these opinions and acts in their furtherance.

[14] Ellen Faddoul has requested that an Order issue allowing her to travel outside of Canada with the children without consulting Mr. Faddoul. She seeks authorization to obtain passports for the children without Mr. Faddoul's involvement. She also wants an order prohibiting Mr. Faddoul from leaving Canada with the children.

[15] There is no evidence that these parents pose a flight risk to the children. Both are firmly settled into their local community.

[16] I will order that both parents cooperate in obtaining passports for the children. They are both required to give the other 30 days written notice of any intention to travel outside the country with any or all of the children. This will allow sufficient time to take legal action if either parent feel such action is warranted.

[17] **Child Support:** The 2002 interim chambers Judge imputed income to Mr. Faddoul in the amount of \$34,800 and set basic guideline support at \$650 per month. Justice Tidman expressly stated in the order “and upon appearing that the respondent George Y. Faddoul has provided insufficient particulars as to his income and the income and expenses of the two companies controlled by him.” Since that time there has been substantial further disclosure.

[18] The evidence of both parents disclosed a wide discrepancy between their stated personal annual income and their standard of living. I have concluded that the parties are very astute in minimizing their income tax exposure. This is not to suggest anything fraudulent. It is a recognition that this families quality of life is not accurately reflected by their tax documents or their sworn statements of financial information.

[19] George Faddoul’s most recent statement of financial information was sworn on March 4, 2004. He advances under salary an income of \$18,373 per annum. He advances under business income a further \$5,443 for a total annual income of \$23,816. He shows no expenses for housing, property taxes, general insurance,

utilities or vehicle costs. The evidence, as a whole, disclosed that these expenses are being paid by the family businesses.

[20] Ellen Faddoul's most recent statement of financial information was sworn on March 19, 2004. She shows a total income before tax of \$21,837 per annum. The evidence, as a whole, disclosed that Ms. Faddoul enjoys considerable financial support from her family.

[21] It is apparent to me that Mr. Faddoul expenses many of his personal costs through his businesses. The parties disagree on the value of those benefits. I am only concerned about them for the purpose of determining child support. I have considered the position of both parties on value and I accept Ms. Faddoul's figures as the most accurate. Mr. Faddoul did not prove to be credible when it came to values. He admitted preparing different financial reports for different purposes i.e. income tax or to obtain a mortgage. I also find that Ms. Faddoul acquiesced in expensing personal costs through their businesses. This was the way this family did business prior to separation.

[22] Mr. Faddoul's statement of financial information indicates an annual income of \$23,816. His accommodations and utilities are paid by Bazoun Enterprises Ltd.

I set those expenses at \$560 per month and I have grossed up that figure by 30% for an annual benefit of \$9,204. Bazoun also pays for Mr. Faddoul's vehicle and all costs of operation and maintenance. I value that benefit at \$12,594 and I have added 30% for an annual benefit of \$16,372. I also attribute a further \$6,556 as income from Mr. Faddoul's business activities. I set Mr. Faddoul's income for child support purposes at \$55,948.

[23] This income level is also supported by Revenue Canada's re-assessment which was in evidence. The gross up of 30% was put forward by Ms. Faddoul and not disputed by Mr. Faddoul.

[24] I order that Mr. Faddoul pay Ms. Faddoul \$986 per month in basic guideline support for the three children of the marriage.

[25] I have attributed an additional \$32,132 income to Mr. Faddoul. Section 19 of the Federal Child Support Guidelines sets forth a menu of circumstances which support imputation of income. I have not found that any of the enumerated

circumstances apply precisely to Mr. Faddoul's situation. However, Section 19 states "the court may impute such an amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following".

This indicates that the list is not exhaustive. The facts of this case clearly establish a basis to impute this income to Mr. Faddoul. It is exactly these types of benefits that Section 19 is intended to capture. The object of the Guidelines is to establish the fairest determination of annual income.

[26] I also find that Section 18 of the Federal Child Support Guidelines establish a basis upon which to impute this income to Mr. Faddoul. In essence, I find that a Section 16 determination does not fairly reflect all the money available for the payment of child support.

[27] **Section 7 Expenses:** There was very little evidence devoted to Section 7 "special or extraordinary expenses". Ellen Faddoul brought forth a \$4,900 estimate for orthodontic work for Georgina. Ms. Faddoul also gave limited evidence in relation to piano lessons (\$900 per year), soccer (\$200 per year), tennis (\$200 per year), horseback riding (\$200 per year) and musical instruments (\$850 per year) for her children.

[28] The orthodontist bill is clearly covered by Section 7(1)(c). The family do not have a dental plan. Consequently the entirety of this expense must be made by both parents. While this expense had not been incurred at the time of the trial, there was no question but that it is necessary and imminent.

[29] The other items/activities are clearly extracurricular as defined in **Raftus v. Raftus**, [1998] N.S.J. No. 119 and can only be caught as extraordinary by Section 7 (1)(d) or Section 7 (1)(f) of the Guidelines. I do not find that they fit under subsection (d) as they are more extracurricular than educational.

[30] **Raftus v. Raftus** sets forth the approach to a claim under Section 7 (1)(f) of the Guidelines. Flinn J.A. stated:

When a trial judge considers an application, pursuant to s.7(1)(f) of the Guidelines, several issues may arise:

1. Any order for payment of all, or a portion, of such expenses is discretionary. An applicant is not, on establishing certain criteria, entitled to an order. As in all cases of the exercise of discretion, circumstances will dictate whether it is exercised one way or the other.

2. The Court must decide if the expenses which are the subject of the application are “extraordinary expenses for extracurricular activities”. If they are not, the inquiry ends. There is no definition of “extraordinary expenses for extracurricular activities” in the Guidelines. I will say more about this later.
3. If the expenses are extraordinary expenses for extracurricular activities, then, pursuant to s. 7(1), the Court may provide an amount to cover those expenses, after taking into account:
 - (a) the necessity of the expense, in relation to the child's best interest, and
 - (b) the reasonableness of the expense, having regard to the means of the spouses, and those of the child, and to the family's spending pattern prior to the separation.
4. If the expenses are extraordinary expenses for extracurricular activities, and if those expenses are necessary and reasonable, then in determining an amount which is required to be contributed, the guiding principle is that the expense is shared by the spouses in proportion to their respective incomes. In coming to this conclusion the Court considers the contribution, if any, from the child; and the Court takes into account any subsidies, benefits or income tax deductions or credits relating to the expense.

[31] In applying this approach, I find that the piano lessons and musical instruments are extraordinary expenses for extracurricular activities and are necessary and reasonable. I do not include the soccer, tennis or horseback riding in this category. They are extracurricular but are included in the basic child support order.

[32] Given the standard of living enjoyed by Ms. Faddoul, I am exercising my discretion in ordering that the parents share these expenses equally. I have considered Section 7(2) of the Guidelines in arriving at this decision.

[33] It is apparent to me that the children will have the opportunity to become involved in many activities in the future. Some will be appropriate Section 7 expenses and some will not. In the event that Ms. Faddoul is seeking a contribution from Mr. Faddoul, she must give him notice of the activity and the cost.

[34] **Spousal Support.** Spousal support is requested by Ms. Faddoul. She does not seek periodic support but rather a lump sum payment to cover her tuition at the Atlantic School of Theology. The cost is approximately \$6,000 per annum for three (3) years. Ms. Faddoul's position is that she always wanted to study divinity and that Mr. Faddoul should pay these fees. On the other hand, she testified that she will forfeit this claim if she is awarded Bazoun Enterprises Limited.

[35] Mr. Faddoul is opposed to the payment of spousal support in any form. He argues that he does not earn enough to pay such an expense and that Ms. Faddoul does not need support. He argues that Ms. Faddoul has a college degree, extensive financial support from her parents and knows how to make money on her own.

[36] This is not a case that calls for spousal support, either periodic or lump sum. There is no basis for entitlement. I have considered the “condition, means, needs and other circumstances” of both spouses. I am satisfied that Ms. Faddoul’s financial future is brighter than that of Mr. Faddoul. I have considered this analysis from both a pre-separation perspective and from the perspective of this couple’s property division.

[37] I have carefully considered the objectives of spousal support set forth in Section 15.2(6) of the **Divorce Act**. I conclude that Ms. Faddoul has not suffered any economic disadvantage arising from the breakdown of this marriage. I also conclude that she has not suffered any economic hardship as a result of the breakdown of this marriage. I find that Ms. Faddoul is economically self sufficient and has been since separation.

[38] The **Divorce Act** does not provide specific factors a court must take into account when deciding whether or not to make a lump sum award. Consequently it is a matter of judicial discretion. I see no reason to order this relief given the overall circumstances of the parties. I have concluded that awarding lump sum spousal support in this situation would amount to an indirect division of property.

[39] In her evidence, Ms. Faddoul stated that she was prepared to assume responsibility for the businesses. This in itself supports my conclusions that Ms. Faddoul did not suffer any economic disadvantage or hardship as a result of the breakdown of the marriage.

[40] **Property Division:** The parties have an interest in several pieces of real property. They disagree on classification (matrimonial or business asset) and valuation. Accordingly, it is necessary to review each property and the manner of acquisition.

[41] **70 Sinclair Street, Dartmouth:** This is the matrimonial home. Ms. Faddoul and the children have resided there since separation. She wishes to retain this property as the family home and Mr. Faddoul does not object to such a

disposition. The home was bought in July 1999 for \$105,000. It was financed by way of a mortgage on the “motel” property and some funding from Bazoun Enterprises Limited. It was released as security for that mortgage in 2000 and since then has been unencumbered. Mr. Faddoul’s appraisal, as of July 23, 2003 is \$155,000. Ms. Faddoul’s appraisal as of June 3, 2004 is \$145,000.

[42] The matrimonial home is clearly a matrimonial asset and must be divided equally. It is agreed that Ms. Faddoul will retain this asset. There is a \$10,000 difference in valuation. I do not accept this modern home has decreased in value over this eleven month term. The evidence of “necessary repairs” advanced by Ms. Faddoul is not sufficient to move away from the appraisals. Consequently I am valuing this property at \$150,000 for the purposes of these proceedings.

[43] I deduct a 6% real estate commission (\$9,000), HST (\$1,350), and legal fees (\$750) leaving a net value of \$138,900.

[44] **3445-51 Rowe Avenue**: This is a rental property consisting of four (4) rental units. Ms. Faddoul’s father acquired the property in 1989. It was his intention to provide a gift/business opportunity to Ms. Faddoul as he had acted similarly

towards his other children. Mr. Metledge conveyed this property to Ellen Faddoul on December 6, 1991. She assumed a mortgage of approximately \$210,000. This property, and the mortgage, is in Ms. Faddoul's name only. I find as fact that since 1991 this property has been regularly rented with the proceeds going to the mortgage and into the couple's joint account.

[45] Ms. Faddoul takes the position that this is a business asset. She argues that Mr. Faddoul has no interest but if he does, it is pursuant to Section 18 of the **Matrimonial Property Act**. She further argues that any such contributory interest is "slight". She denies that Mr. Faddoul has done much on the property and that anything he did was pursuant to his employment relationship with Mr. Metledge.

[46] Mr. Faddoul argues that this property is a matrimonial asset and, therefore, enjoys the presumption of equal division. He testified that this property was operated from a joint family account and that they have always treated it as a family asset. Mr. Faddoul testified that he did most of the work on the property throughout the marriage. He claims to having changed the heating system, provided all maintenance, acted as book keeper, rented the apartments and attended Tenancy Board Hearings. In support of his evidence he tendered cheques in his

name, leases in his name, notices to quit in his name and many invoices directed to his name.

[47] I find as a fact that Mr. Faddoul has been extensively involved in the operation of the property since marriage and that the couple considered this property to be a joint business operated for the benefit of the family.

[48] Mr. Faddoul's appraisal came in at \$400,000 as of August 6, 2003. Ms. Faddoul's appraisal came in at \$370,000 as of April 3, 2004. The mortgage balance at the date of separation was \$127,507. Ms. Faddoul wishes to maintain this property.

[49] I find that this property was acquired by Ms. Faddoul after her marriage and is, therefore, presumptively a matrimonial asset as defined by Section 4(1) of the **Matrimonial Property Act**. In order to accept Ms. Faddoul's argument that it is not a matrimonial asset, I would have to find the property to be a gift/inheritance or a business asset.

[50] I find that initially this property was a gift to Ms. Faddoul from her parents, albeit an encumbered gift. I further find that it became a matrimonial asset during the marriage because it was used for the benefits of both spouses and the children. It therefore qualifies for the exception in Section 4(1)(a) “except to the extent to which they are used for the benefit of both spouses or their children”. These parents operated this property jointly with Mr. Faddoul being the contact person with tenants, contractors, suppliers and the like. I find that Ms. Faddoul treated this property as theirs until the breakdown of the marriage.

[51] I also do not find this property to be a “business asset” as defined by Section 2(a) of the **Matrimonial Property Act**. The couple operated this building as a family venture. Ms. Faddoul never took any steps to prevent this property from being a family venture. Consequently I find this property to be a matrimonial asset. I order an equal division and that Ms. Faddoul will retain this property. I find no basis for an unequal division as listed in Section 13 of the **Act**.

[52] Even if I were to accept that this was a business asset, and I do not, I would divide the asset equally pursuant to Section 18 of the **Matrimonial Property Act**.

[53] The evidence of value in relation to this property covers several dates. The appraisals are dated August 6, 2003 and April 3, 2004. The mortgage balance is as of August, 2002, the date of separation. I have adopted the approach set forth in **Simmonds v. Simmonds**, [2001] N.S.J. No. 276:

The Matrimonial Property Act, S.N.S., 1980, c.9 (the "Act") does not specify a date for valuation. This is left to the discretion of the trial judge. The case law in this province suggests that such discretion is a positive thing so that a fair and equitable result can be obtained on a case by case basis. The Act is based on the principle of fundamental fairness in the division of assets. In an unreported case of *MacDonald v. MacDonald*, [1991] N.S.J. No. 639, August 23, 1991, Judge Daley of the Family Court in his capacity as a referee stated:

"The key in valuating the matrimonial property is an orderly and equitable settlement of the spousal affairs, and whatever the date has to be to accomplish this purpose, it is the proper date."

The Nova Scotia Court of Appeal in the case of *Lynk v. Lynk* (1989), 92 N.S.R. (2d) held that the date of commencement of the proceedings "which may be varied at trial in accord with the evidence" is the appropriate date for valuation.

[54] I lack confidence in both appraisals given they indicate a considerable decrease in value over nine (9) months. I feel I have no alternative but to split the difference and set the value at \$385,000 for division purposes. All revenues since separation have gone to Ms. Faddoul so I accept the separation date value of the mortgage.

[55] I am deducting a real estate commission of 6% (\$23,100), HST (\$3,465), legal fees (\$1,500) and the mortgage balance (\$127,507). I set the net value at \$229,428.

[56] **2559 Prospect Road**: This is a rental property held by a numbered company solely owned by Mr. Faddoul. It was purchased in February 1994 by Mr. Faddoul and his brother-in-law Stephen Metledge Jr. for \$105,000. Mr. Metledge Sr. Provided the financing. One year later a mortgage for \$150,000 was negotiated. Mr. Faddoul paid out Mr. Metledge Sr.'s investment and bought out Mr. Metledge Jr.'s interest in the company. George Faddoul testified that for the past ten years he solely managed the property. He limits Ms. Faddoul's contribution to a few phone calls and the occasional rent collection. He takes the position that this is a business asset and as such Ms. Faddoul has no interest. However, in argument he agreed that Ms. Faddoul should receive \$15,000 for her contribution to this business asset.

[57] Ms. Faddoul's position is that this was to be an investment on behalf of her, Mr. Faddoul and Mr. Metledge Jr. She claims that she was not included in the

numbered company because she was ill at the time and not paying attention. She contends she contributed to the property by buying appliances, showing units and hiring painters and carpet cleaners. She testified to visiting the property one-half dozen times. She seeks an equal division of this property whatever the characterization.

[58] Mr. Faddoul's appraisal valued this property at \$285,000 as of September 12, 2003. Ms. Faddoul did not obtain an independent appraisal and accepts this valuation. The parties agree that for the purpose of these proceedings the mortgage payout will be \$97,000.

[59] This property must be treated in the same way as the Rowe Avenue property. It was initially acquired by a company controlled by the parties and Mr. Metledge Jr. Their company (Metledge and Faddoul Developments Limited) developed a number of building lots and the proceeds went back into the business. The initial company properties were acquired with the assistance of Ms. Faddoul's family. When this company became a numbered company, and Mr. Metledge Jr. was bought out, Ms. Faddoul was left off the documentation. I find as a fact that Ms. Faddoul considered herself as a partner in this venture. The developments of 2559

Prospect Road would not have been possible without the involvement of Ms. Faddoul and her family.

[60] I find that this property is a matrimonial asset and that it will be divided equally. Mr. Faddoul shall retain the property as he has the most involvement in the development and day-to-day management of this asset.

[61] The parties agree that the value of this property for division purposes will be \$285,000. They also agree that the mortgage payout will be \$97,000. I will deduct a 6% real estate commission (\$17,100), HST (\$2,565), legal fees (\$1,500) and the mortgage (\$97,000). The net value of this property is set at \$166,835.

[62] **317 Prince Albert Road:** (Express Lodge) This is a multi-unit motel property. Mr. Faddoul has resided at, and managed this property since separation. The evidence discloses that prior to separation, both parties operated this business. It was home to the Faddoul family for 2 years.

[63] This property was acquired in 1992 for \$250,000 by Mr. Faddoul and Mr. Metledge Sr. Mr. Metledge felt it would be a good business for George and Ellen.

He provided the \$60,000 down payment and arranged a mortgage for the balance. Initially the property was in the name of a numbered company. It was later conveyed to Bazoun Enterprises Limited, a company in which the Faddoul's are equal shareholders.

[64] In 1997 the property was improved and a new mortgage was negotiated and Mr. Metledge Sr.'s financial interests were extinguished. Both parties would like to retain this property. Ms. Faddoul states that Mr. Metledge Sr. is prepared to fund this buyout. Mr. Faddoul feels he can arrange financing to buy out Ms. Faddoul.

[65] The distinction between matrimonial and business asset is not that critical given that the parties hold an equal interest in the company.

[66] Mr. Faddoul's appraisal valued this property at \$490,000 as of May 23, 2003, less the cost of some roof repairs.

[67] Ms. Faddoul did not commission an appraisal. In 2000 Mr. Faddoul's appraiser valued the property at \$695,000 for mortgage purposes. The evidence

disclosed that in 1999 a neighbouring hotel owner offered \$625,000. The Faddouls refused to close feeling the price was too low and the matter resulted in litigation. In September, 2004 the same individual made an offer of \$600,000 that was not accepted by Mr. Faddoul. Ms. Faddoul is prepared to buy out Mr. Faddoul accepting a \$600,000 value.

[68] The mortgage payout as of August, 2002 was \$326,897. It was approximately \$308,000 of November 1, 2003.

[69] This property is owned by Bazoun Enterprises Limited, a company owned equally by Ellen and George Faddoul. The only company asset is the Express Lodge. It is not necessary to classify this company as matrimonial or business given the corporate structure and both parties extensive involvement over 10 years. The parties are entitled to an equal division.

[70] I order that Mr. Faddoul retain this asset.

[71] The value of this property for division purposes is very much in issue. I have no confidence in the \$490,000 figure put forth by Mr. Faddoul. The evidence

respecting various appraisals over the years indicates that he is not credible on this issue. He has been able to effect values by controlling the financial information provided to the appraiser.

[72] I value this property at \$600,000. I rely on the fact that the parties signed an agreement to sell in 1999 for \$625,000. As well, in 2000 they obtained an appraisal for mortgage purposes in the amount of \$625,000. I also rely on the fact that in September, 2004, they were offered \$600,000 which was turned down by Mr. Faddoul. The prospective purchaser testified that he was expecting a counter offer. These are real indicators of true value.

[73] I am not going to make any adjustments for roof repairs. The September, 2004 offer did not address these repairs and the offer was primarily "as is". I have applied the principles in **Simmonds v. Simmonds**, supra, and fix the mortgage payout at \$308,000. I will deduct the real estate commission (\$36,000), the HST (\$5,400), legal fees (\$1,500) and the mortgage (\$308,000). The net value for division purposes is set at \$249,100.

[74] **The Lebanon Property:** This is a single, condo style home in Lebanon. Construction was completed in 1990 prior to marriage. The parties lived in the property for less than a year before returning to Halifax in 1991. Ms. Faddoul has not seen the property since that time. While they lived in the property, Ms. Faddoul's parents spent \$5-6,000 for furnishings.

[75] Ms. Faddoul's position is that this is a matrimonial property and is presumptively divisible. While there is no evidence of valuation, she advances a value of \$25,000. Mr. Faddoul's position is that the parties have no interest in the property given that it was conveyed to his mother pre-separation. He stated that they both agreed to surrender any ownership after 1991 and that it only became an issue upon separation.

[76] I found the evidence respecting the Lebanon property to be vague and unreliable. I am unable to ascertain value or whether the Faddoul's have any present day ownership in the property. It has not been occupied as a matrimonial home since 1991. I found no evidence to conclude that the parties, during their marriage, ever considered this to be a matrimonial asset. Consequently I make no order respecting this property.

[77] **Matrimonial Home Contents:** The matrimonial home contains the usual contents for a family of five. Mr. Faddoul testified that at separation he removed only the BBQ and his clothing. He now seeks the living room and dining room furniture and his souvenirs from a ledge above the fireplace. There have been no valuations submitted in relation to any household contents.

[78] I am not prepared to disturb the present division of contents which leaves almost everything in the matrimonial home. The livingroom and dining room furniture shall remain in the home for the benefit of the children and Ms. Faddoul. I have no evidence as to value so I will not make an order compensating Mr. Faddoul for the unequal division of household contents. I do order that Mr. Faddoul receive his personal belongings and souvenirs.

[79] **Boat, trailer and truck:** Mr. Faddoul retained a boat and trailer from the marriage. He has valued these items at \$5,500 and that value has not been refuted. He sold a 1985 truck post-separation for \$1,200 and kept those proceeds.

[80] There will be an equal division of the value of these items.

[81] **Jewellery:** The Faddouls kept their jewellery in a safety deposit box. Mr. Faddoul stated that when he last visited the box nothing remained. Ms. Faddoul testified that she had the box drilled only to find it empty. Both parties accuse the other of “cleaning out” the safety deposit box. Both had access to the box. Both deny removing the contents.

[82] There are no formal evaluations. The parties both feel the jewellery in the box was worth approximately \$10,000.

[83] Neither Mr. Faddoul nor Ms. Faddoul have sufficient credibility on this issue to allow me to determine what happened to the jewellery. I am unable to conclude which party disposed of this property. I make no order respecting the jewellery.

[84] **Debts - Obligations:** The parties have argued there are outstanding financial obligations that should be included in the overall property division. The evidence and the “paper trail” for each is convoluted and confusing. The transactions are as follows:

- Mr. Faddoul submits that Bazoun Enterprises Limited is owed a shareholders loan of approximately \$40,000 and this represents funds used to purchase the matrimonial home at 70 Sinclair. I find this is a pre-separation transaction.

- Ms. Faddoul contends that she had \$30 - \$40,000 in savings at the time of the marriage and that these funds went into the business.

- Ms. Faddoul alleges that in 1999 Mr. Faddoul removed \$15,006 from the Prospect Road property account and that she has no idea as to the disposition of those funds. Mr. Faddoul suggests that these funds were used for ongoing business activities. This alleged transaction pre-dates separation.

- Ms. Faddoul alleges that Mr. Faddoul removed \$25,000 from the Prospect Road property account and took it to Lebanon. Mr. Faddoul says he paid back \$15 - \$17,000. Ms. Faddoul says none was paid back. This alleged transaction pre-dates separation.

[85] I find that all of these “transactions” occurred prior to separation. They were subsumed by the manner in which the Faddoul’s conducted their personal and business finances. The evidence, both oral and documentary, does not allow for any kind of factual determination. Consequently I conclude they were resolved prior to the parties separation and no order will be made respecting these amounts.

[86] **Conclusion:** It will be apparent to the parties that I have decided to treat their property as matrimonial and, therefore, equally divisible. I see no factors that would suggest that an overall equal division would be unfair or unconscionable. A review of the evidence as a whole satisfied me that this couple did not separate their personal and business finances during the marriage. Significant attempts were made after separation and during the trial to create a business asset out of a family venture. It would be unfair to both spouses to treat their property in any way other than equally divisible.

[87] The parties filed extensive financial documentation in an effort to establish that one or the other had removed funds from their businesses without the consent of the other. As stated the documentation was extensive but not conclusive. The parties credibility was a factor in interpreting the documentation and both lacked

credibility when it came to discussing the records. Given that the Faddouls operated a family business, I am not prepared to apportion these amounts to one spouse or the other. I have found them all to be pre-separation transactions and that none of them survived the date of separation.

[88] I have awarded ownership of the individual assets to the party who I felt could operate them most effectively. Additionally I have considered which party managed each individual asset since the date of separation.

[89] The following table sets forth the property division.

EQUALIZATION TABLE

Asset	Value	Husband	Wife
1. Matrimonial Home 70 Sinclair St.	\$138,900		\$138,900
2. 3445-51 Rowe Ave.	\$229,428		\$229,428
3. 1985 Chevrolet Truck	\$1,200	\$1,200	
4. Boat and Trailer	\$5,500	\$5,500	
5. Bazoun Developments Ltd.	\$249,100	\$249,100	
6. Prospect Road Hfx. Reg. Mun.	\$166,835	\$166,835	
TOTAL	\$790,963	\$422,635	\$368,328
Mr. Faddoul pays Ms.	\$27,153		\$27,153

Faddoul to equalize division of property			
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[90] I therefore order that Mr. Faddoul pay Ms. Faddoul the sum of \$27,153 to effect an equal division of matrimonial property.

J.