

CANADA / JUDGMENT

Postnikoff v. Postnikoff

2025 BCSC 53

COURT

Supreme Court of British Columbia

DECIDED

14 January 2025

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2025 BCSC 53 Postnikoff v. Postnikoff

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Postnikoff v. Postnikoff,

2025 BCSC 53

Date: 20250114

Docket: E22625

Registry: Nelson

Between:

Lisa Marie Postnikoff

Claimant

And

Kenny Douglas Postnikoff

Respondent

Before: The Honourable Madam Justice Lyster

Corrected Judgment: The Reasons for Judgment have been corrected

at paras. 91 and 93 on January 24, 2025

Corrigendum to Reasons for Judgment

Counsel for the Claimant:

M.T. Yates

Counsel for the Respondent:

J.K. Shkooratoff

Place and Dates of Trial:

Nelson, B.C.

June 12-13, 17-21

and July 24, 2024

Place and Date of Judgment:

Nelson, B.C.

January 14, 2025

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Introduction

- [1] Lisa Postnikoff and Kenny Postnikoff lived together in a 32-year relationship. They began living together in September 1990; married on July 4, 1992; and separated on or about October 1, 2022. As of the dates of trial, Ms. Postnikoff was 57 and Mr. Postnikoff was 55 years of age.
- [2] Theirs was a traditional marriage. They had one daughter, Ashley, who was born in 1994. Mr. Postnikoff worked as a truck driver. While Ms. Postnikoff worked outside the home, in mostly part-time positions, Mr. Postnikoff was the main financial provider for the family. Mr. Postnikoff often worked away from the family home. Ms. Postnikoff performed all the household duties and cared for Ashley.
- [3] Throughout their relationship, the parties lived on an acreage located on McHardy Road, fronting on the Kootenay River, in Shoreacres, British Columbia, a rural community near Highway 3A, located about half way between Nelson and Castlegar (the "Former Family Home"). Mr. Postnikoff inherited the property from his uncle and owned the property prior to the commencement of the parties' relationship, and Ms. Postnikoff moved in with him when they commenced their relationship.
- [4] In 2002, the parties incorporated a company, KEPO. KEPO is a trucking and hauling business. Mr. Postnikoff operates the business, but Ms. Postnikoff was, prior to separation, also actively involved in the business, performing a variety of administrative and other tasks. They are the sole shareholders and directors. They both took an income from KEPO, taking their accountant's advice about how to do so to minimize their tax burden.
- [5] Initially after separation, the parties continued to both live in the Former Family Home. On May 24, 2023, Ashley obtained a protection order in Provincial Court. Under the terms of the protection order, Mr. Postnikoff was not permitted to return to the Former Family Home. Ms. Postnikoff remained in the Former Family Home, where she continued to reside at time of trial.
- [6] The issues in this family law case are Ms. Postnikoff's claim for spousal support, both retroactive and prospective, and the division of family property and debt. There is no dispute that the value of the family residence at the time the parties began cohabitation, \$52,000, is Mr. Postnikoff's excluded property. Depending on the court's orders with respect to spousal support, Ms. Postnikoff says that it may be appropriate for family property to be divided unequally in her favour. Mr. Postnikoff makes a claim for occupational rent, as he has been required to rent alternate accommodation since he was required by the protection order to leave the Former Family Home.

- [7] There are disputes about both parties' incomes, with both parties taking the position that the other ought to have income imputed to them. The parties had operated KEPO out of McHardy Road property. Mr. Postnikoff was unable to go onto the property after May 2023 due to the protection order. This affected, to some extent, his ability to operate KEPO and to earn income from it. The extent of that adverse effect is in issue, as Ms. Postnikoff says that he could have and ought to have found other means to operate KEPO at full capacity. Ms. Postnikoff has earned little income post-separation. Mr. Postnikoff says that she is intentionally under-employed and ought to have a greater income imputed to her.
- [8] Both Ms. Postnikoff and Mr. Postnikoff testified. The only other witness was Jim Postnikoff (no relation to either party), who testified about Mr. Postnikoff storing KEPO equipment on his property, and the costs of doing so, post-separation. The parties also introduced joint expert appraisals of the property, both as of the date of separation and the date of cohabitation.
- [9] A judicial case conference ("JCC") was held in this matter on July 17, 2023. At that time, the court ordered, on consent, and on an interim and without prejudice basis, that Mr. Postnikoff would, commencing August 1, 2023, pay Ms. Postnikoff spousal support in the amount of \$500.00 per month. It was also ordered on an interim and without prejudice basis that Mr. Postnikoff would be solely responsible for all Fortis and electricity bills for the Former Family Home, all payments on the parties' joint secured line of credit with Kootenay Savings Credit Union ("KSCU"), and all payments on the parties' joint Park Model RV loan with KSCU. Mr. Postnikoff has made all payments required under the JCC order.
- [10] In the course of this trial, the parties agreed, to their mutual credit, to a number of consent orders. Except as necessary for the matters remaining in issue before me, this decision does not address the orders made in the course of the trial by consent. Among the consent orders made was a divorce order on June 21, 2024, the order to take effect on the 31st day after the date of the order.

Background Facts

- [11] Mr. Postnikoff was born in Castlegar and grew up in Shoreacres, B.C. At the time of trial, he was 55 years old. He has lived in the area most of his life, except for a year or two after he graduated high school and was working in construction and for carnivals. He inherited the Former Family Home from his uncle in 1988, and moved there at that time. He continued to live there until he was required to leave by the protection order in May 2023. The Former Family Home is located across the street from the home Mr. Postnikoff grew up in, where his brother now lives. His family has lived in the area since the 1930s.
- [12] Mr. Postnikoff finished high school in Castlegar in 1987. He has post-secondary professional education as a driver from Selkirk College. He has a heavy equipment operator's certificate, a Class 1 driver's licence and has completed some supervisor and managerial training courses. He has worked most of his life as a trucker based in the West Kootenays.

- [13] Ms. Postnikoff was born and raised in Calgary, Alberta. At time of trial, she was 57 years old. She moved to the Nelson area with her family in about 1979, when she was 13 years of age. She graduated from high school in 1984. During high school Ms. Postnikoff had part-time jobs at the Balfour Superette and as a cleaner at an inn.
- [14] After high school, Ms. Postnikoff moved with her family briefly to Vernon and then back to Calgary. In Calgary, she had a job cleaning rooms at the Relax Inn and then decided to take an eight-week floral design course in 1987. She continued working in floral design off and on for the next approximately 30 years.
- [15] Ms. Postnikoff maintained friendships in the Nelson area, and came back to the area for her summer vacation in July 1990, which is when she met Mr. Postnikoff. They moved in together in September 1990.
- [16] Ms. Postnikoff got a job at Tulips Floral in Castlegar in 1990. She continued working there until 2009, when the store closed. She worked three or four days a week, with additional work during busy seasons like Christmas, Mother's Day and graduation.
- [17] Ashley was born in 1994. Ms. Postnikoff took a little less than a year off work on maternity leave. After her maternity leave, she returned to Tulips, initially two days a week, but quickly progressing to her former part-time hours.
- [18] Mr. Postnikoff was frequently working away from home for work when Ashley was little. On some jobs he would be away from home for five or six days a week. On others he would be away for several weeks at a time. Mr. Postnikoff's mother had passed away and Ms. Postnikoff's mother was in Calgary, so Ms. Postnikoff had no one to help her with child care. The family was struggling financially and initially could not afford daycare. Ms. Postnikoff would take Ashley with her to work at Tulips. Later, they got daycare for Ashley. Ms. Postnikoff was almost solely responsible for transporting Ashley to and from daycare and later school and caring for her at home.
- [19] Mr. Postnikoff was the primary provider for the family. Until the parties incorporated KEPO in 2002, he worked for a number of employers trucking, short and long haul, and in the paving industry. Ms. Postnikoff described him as an awesome provider, who "worked and worked and worked". He was earning significantly more than Ms. Postnikoff.
- [20] The parties incorporated KEPO in 2002. They bought their first truck that year and, by 2003, Mr. Postnikoff was driving their own equipment. They struggled financially while getting the business established. Over time, KEPO grew and they purchased additional trucks and trailers. They hired additional employees, reaching a maximum of four drivers, including Mr. Postnikoff. Ms. Postnikoff went on KEPO's payroll in 2009. She paid bills, got information ready for the bookkeeper and accountant, and ran errands as necessary. She worked on average four to eight hours a week at KEPO.

- [21] After Tulips closed in 2009, Ms. Postnikoff found other part-time work as a floral designer at Celebrations Central and later at Kootenay Floral. She also worked part-time at Eagle Graphite, doing cleaning and administrative work. For a period, Ms. Postnikoff was juggling four part-time jobs.
- [22] Ms. Postnikoff's work as a floral designer was very physical. There was a lot of heavy lifting of cases of flowers and buckets of water. It required a lot of arm strength. She had to be on her feet constantly. During holiday seasons the hours could be very long.
- [23] By 2013 or 2014, Ms. Postnikoff stopped doing any paid work other than for KEPO and occasional seasonal floral design. She devoted the majority of her time to maintaining the parties' home, caring for Ashley, looking after their animals, and landscaping and maintaining their extensive gardens. She also worked to help get the hay on their property swathed and baled every year to feed their animals. Ms. Postnikoff testified that she asked Mr. Postnikoff a couple of times if he was okay with her being home. There is no evidence that he responded negatively. Looking after their property was a full-time job, and she helped with KEPO as well.
- [24] Throughout their relationship, Ms. Postnikoff did the vast majority of household tasks. If something broke down mechanically, Mr. Postnikoff would fix it. He also assisted Ms. Postnikoff with pruning their 13 fruit trees, and occasionally mowing the lawn, although he ceased to do so in the last years of their relationship.
- [25] Until about 2013, Mr. Postnikoff's work usually took him away from home for months in the summer. In about 2013, KEPO got a contract with Celgar hauling locally, which allowed Mr. Postnikoff to remain at home. After KEPO lost the Celgar contract, Mr. Postnikoff remained more local, working with local paving companies, such as Selkirk Paving. Much of Mr. Postnikoff's work through KEPO, in particular paving, was seasonal, with paving season starting around the end of April and ending in October or November, depending on the weather. In the winter, he got some work as an employee plowing snow.
- [26] The parties took the tax advice of their accountant with respect to the amounts they were each paid by KEPO. Mr. Postnikoff generally took twice the income Ms. Postnikoff did, although in the winter when KEPO had little work they would stop Mr. Postnikoff's salary from KEPO and keep Ms. Postnikoff on payroll. The amounts they were paid bore no relation to the amount or value of the work they performed for KEPO.

KEPO's Earnings

- [27] KEPO's financial statements for the 2020-2024 calendar years were entered into evidence. 2019 information can also be gleaned from the 2020 financial statement. KEPO's financial year ends on January 31, so each of the financial statements effectively indicates the company's financial status for the previous calendar year. Both Mr. and Ms. Postnikoff testified about them, but in general, it was clear that they both had relatively unsophisticated understandings of the financial statements, and were content to act on their

accountant's advice. The key elements of the financial statements for the purposes of this decision are as follows. I will return to some other elements of the financial statements later when determining Mr. Postnikoff's income.

- [28] As a general observation, KEPO usually carried a deficit. The parties have been content to use KEPO to generate income that they have lived off of. The vast majority of KEPO's revenue is from its hauling operations. Revenue has fluctuated year to year due to a variety of factors. It has had little in the way of assets beyond the equipment necessary to operate.
- [29] As of January 31, 2019, KEPO had total hauling revenue of \$296,882. It paid wages and employee benefits totalling \$121,848, of which \$53,200 was recorded as being paid in wages to its principals, Mr. and Ms. Postnikoff.
- [30] In addition to paying them wages, KEPO paid for medical insurance for both Mr. and Ms. Postnikoff. The evidence is sparse with respect to the amount paid for the medical insurance. On my review of the evidence, it is likely that KEPO simply paid the parties' medical expenses rather than buying external insurance. Doing the best I can with the evidence before me, I accept Ms. Postnikoff's estimate that the medical insurance for the parties cost KEPO approximately \$10,000 per year in this and each subsequent year.
- [31] KEPO's total expenses amounted to \$313,974 for the year ending January 31, 2019, for a net income of \$9,619 before taxes. It recorded a deficit of \$52,820.
- [32] As of January 31, 2020, KEPO recorded hauling revenue of \$247,382. It recorded wages and employee benefits that year of \$83,090. A note to the financial statement states that, of this, wages of \$53,200 were paid to the principals of KEPO. KEPO's total recorded expenses in 2020 were \$292,805, which includes the wages paid to Mr. and Ms. Postnikoff. KEPO recorded a net loss of \$45,673 before taxes as of January 31, 2020. It was carrying a deficit of \$98,252.
- [33] As of January 31, 2021, KEPO recorded hauling revenue of \$219,635. Its total revenues were \$228,847. It recorded wages and employee benefits of \$35,443, of which \$25,181 was paid as wages to its principals. KEPO's total recorded expenses were \$219,618, for a net loss before taxes of \$9,166. It continued to run a deficit of \$89,095. The parties agreed this was a bad year, due to the effects of the COVID pandemic.
- [34] As of January 31, 2022, KEPO showed cash assets of \$109,637. Its hauling revenue was up significantly, at \$373,723. The parties' evidence was that its increase in revenues was due to being able to contract out a water truck they had purchased a year or two before for forest fire-fighting. 2021 was a significant year for forest fires in the region. KEPO recorded wages and employee benefits of \$84,308, of which \$45,000 was paid in wages to its principals. Ms. Postnikoff's evidence was that they had an employee that year, and that \$66,791 was paid to the benefit of Mr. and Ms. Postnikoff. Its total recorded expenses were \$302,984. Its net income before taxes was \$70,954. Its deficit was down to \$21,125.

- [35] As of January 31, 2023, KEPO showed cash assets of \$59,221. Its hauling revenue amounted to \$239,383. It paid wages and employee benefits of \$82,972, of which \$49,000 was noted to have been paid in wages to its principals. The parties' evidence was that the entire wages expense line was in fact paid to them for their benefit that year. KEPO recorded a net loss before taxes of \$35,112, and its deficit was up to \$56,237.
- [36] As of January 31, 2024, KEPO had effectively no cash assets. Its hauling revenue was down at \$114,596, although it recorded other income of \$20,013. It paid \$55,323 in wages and employee benefits, of which \$51,000 was paid as wages to its principals. As Ms. Postnikoff's employment with KEPO was terminated in November 2022, those wages were paid solely to Mr. Postnikoff in 2023. It recorded a loss of \$33,195 before taxes, and its deficit was up to \$89,432.

Prospective Spousal Support

Mr. Postnikoff's Income for Prospective Support

- [37] Ms. Postnikoff submits that KEPO's available earnings, and thus Mr. Postnikoff's income for the purposes of prospective spousal support, should be based on an average of the available revenues reflected in the financial statements for the years ending January 31, 2019 and 2020. She bases this position on Mr. Postnikoff's evidence that those were typical years in terms of revenue earned by the company. She says that the year ending January 31, 2021 was an outlier due to COVID and the resulting shortage of work available to KEPO, and has, therefore, not included it for average purposes. She also submits that both the years ending January 31, 2022 and 2023 were outliers, with company revenues in 2021 being significantly higher due to hiring out the water truck to fight forest fires, and 2022 being significantly lower.
- [38] Ms. Postnikoff provided the following table, which demonstrates her position with respect to the income available from KEPO:

Available Income from Kepo

2023

2022

Average '23 & '22

2020

2019

Average '19 & '20

Net Income (loss) for the year

-\$35,112.00

\$67,969.00

\$16,428.50

-\$45,432.00

\$10,442.00

-\$17,495.00

Personal Expenses

Wages & benefits

\$82,972.00

\$66,791.00

\$74,881.50

\$63,200.00

\$101,200.00

\$82,200.00

Telephone 50%

\$1,756.00

\$1,634.50

\$1,695.25

\$1,893.50

\$2,058.50

\$1,976.00

Rent

\$4,000.00

\$4,000.00

\$4,000.00

\$4,000.00

\$4,000.00

\$4,000.00

Meals & Entertainment 75%

\$870.75

\$720.00

\$795.38

\$3,546.00

\$4,278.75

\$3,912.15

Fuel 10%

\$5,137.10

\$6,654.60

\$5,895.85

\$6,450.80

\$6,281.50

\$6,366.15

Total Personal Expenses

\$94,735.85

\$79,800.10

\$87,267.98

\$79,090.30

\$117,818.75

\$98,454.53

Total Income available

\$59,623.85

\$147,769.10

\$103,696.48

\$33,658.30

\$128,260.75

\$80,959.53

- [39] In essence, Ms. Postnikoff has taken KEPO's reported net income or loss each year, and added to it the income she says was available from it and used by the parties for their personal benefit, but recorded as corporate expenses. This includes the wages paid to the parties, plus her estimate of the cost of the medical insurance paid for by KEPO. It also includes 50% of the telephone expenses claimed by the company, as KEPO paid for cell phones for both parties. It also includes the rent, at least notionally paid by KEPO, to store its equipment at the McHardy Road property. It also includes 75% of the meals and entertainment expenses claimed by the company, as well as 10% of the fuel expenses claimed by the company.
- [40] As indicated on Ms. Postnikoff's chart, if the 2019 and 2020 years are averaged, this results in a total average income available from KEPO of \$80,959.53. By way of contrast, if 2022 and 2023 were used, it would result in a total average income available from KEPO of \$103,696.48. This suggests that the approach proposed by Ms. Postnikoff is fair to both parties, as the inclusion of the latter two years would result in a higher income for Mr. Postnikoff and correspondingly higher spousal support for Ms. Postnikoff.
- [41] Ms. Postnikoff therefore submits that Mr. Postnikoff's income for spousal support purposes should be determined on the basis of the income available from KEPO in 2019 and 2020. This would result in the court imputing to Mr. Postnikoff employment income of \$80,960. In addition, Mr. Postnikoff receives income from WorkSafe due to a work-related back injury, in the amount to \$8,175 per year. That figure must be grossed up to account for its tax free status. In Ms. Postnikoff's submission, this would result in Mr. Postnikoff being imputed with a total income of \$92,347 per year.
- [42] Ms. Postnikoff's position on Mr. Postnikoff's income for prospective spousal support purposes is predicated on Mr. Postnikoff being able either to keep KEPO running and earning revenues at roughly the same level as in the past, or being able to earn equivalent income from alternative sources. I consider each of these options in turn, beginning with the costs of storing KEPO equipment other than at the McHardy Road property.

Costs of storage at Jim Postnikoff's property

- [43] Mr. Postnikoff clearly wants to continue to operate KEPO. In order to do so, he requires a location to store KEPO's equipment. Prior to separation, KEPO's equipment was stored at the McHardy Road property. Mr. Postnikoff also did some minor equipment maintenance and minor repairs on or near the McHardy Road property, such as greasing the vehicles. Mr. Postnikoff wishes to retain the McHardy Road property, and may be able to do so, depending on his ability to obtain financing. If he is able to do so, then there is no reason to believe he would not be able to operate KEPO and earn revenues from it similar to the past.

- [44] If Mr. Postnikoff is unable to retain the McHardy Road property, he will have to obtain an alternative location to store KEPO's equipment. Since separation, he has stored most of KEPO's equipment at Jim Postnikoff's property. Mr. Postnikoff attempted to prove the cost of storing the equipment at Jim Postnikoff's property, through his own evidence and that of Jim Postnikoff. I will consider the evidence about the costs of storing KEPO equipment at Jim Postnikoff's property now.
- [45] While not related to one another, Jim and Ken Postnikoff have known each other for many years, having grown up in Shoreacres. For ease of reference, in this part of my decision I will refer to the two men by their first names. Jim is a little older than Ken. Ken worked for a company owned by Jim as a truck driver at some point in the past.
- [46] Jim owns a property on which he runs a farm in Glade. It is on that property that Ken has stored KEPO equipment. Jim does not live on the Glade property full-time; he sometimes stays there with his daughter, who owns the property next door.
- [47] Jim testified that he has not yet been paid by Ken for storing equipment on the Glade property, but he expects to be paid. According to Jim, Ken asked him at some point if it would be ok to park some equipment on the property. Jim's evidence was that if the equipment was not stored there too long, he would not expect any payment, but that if it was there any length of time, he would have to charge.
- [48] Jim's evidence about his conversations with Ken about charging him for storing KEPO property was vague and inconsistent. He appeared to indicate that he told Ken he would have to charge him rent, and that he did not have any choice because his kids are now running things, and he has to take the lead from them. Jim was unclear about when he talked with Ken about these things. He thought the first time was probably in late June or July 2023, and that at that time they did not discuss a particular price, just that he would charge Ken "something". At some time later, perhaps in late July, they talked again. Jim testified that they still did not discuss a price at that time, and he just told Ken he would not charge him full market rate. After some equivocation, Jim testified that he told Ken he would charge him \$300 per month per piece of equipment in July 2023. He testified that Ken's response was to "hang his head" and say "what choice do I have?".
- [49] Jim Postnikoff sent Ken's lawyer an email on this subject on June 9, 2024, which was introduced into evidence during Jim's direct examination. That email reads as follows:

From: jim postnikoff [Email address omitted]

Sent: June 9,2024 8;42 PM

To: Jolene Shkooratoff Family Law

Subject: rentals

June 1st 2023 beginning of the storage of units on our property rate charged is \$300 per unit for 1 year, rate to be renegotiated July 2024. As currently the going rates for industrial equipment storage is north of \$1000 per unit being charged at the Playmor Junction Area. We have offered Kepo TEMPORARY rates only as described below.

2011 Western Star truck - 12 months times 300 = 3600

Pup Trailer -12 months times 300 = 3600

Travel Trailer -10 months times 300 = 3000

Water Truck -12 months times 300 = 3600

Tridem Axle Pup - 12 months times 300 = 3600

sub total 17400.00

Flat Deck Trailer - 9 months times 300 = 2700.00

Dozer - 6 months times 300 = 1800.00

Travel Trailer - 2 months times 500 = 1000.00

=====

Total to date \$22,900.00

I have taken [possession] of the Dozer as of 6 months ago and have offered the company a sum of \$3600.00 for this equipment towards the outstanding debts owed for storage of the above equipment. If the company [does] not enter into a proper payment arrangement in the next couple of months, I am having no choice to seize further equipment for storage fees. Note the Travel Trailer has been set up as living quarters, water and power are being supplied, thus increasing the rate for the travel trailer. GST and other applicable taxes have not been charged as of yet, but will [need] to be going forward and retroactive as per federal rules. Once the debt reaches over \$30,000.00.

This is a snap shot of the arrangements for Kepo Trucking Ltd.

Please note we dont have a scanner or a printer: I have copied this by hand.

[50] Jim testified that he told Ken about the \$300 per month rate for storing most of the equipment, but it was unclear when he told Ken this. He testified that he was "kind of negotiating on behalf of his kids", who told him they needed to charge Ken something. He testified that other people were storing things on the Glade property, but this was a "friendly price".

[51] Jim testified with respect to the "dozer" that he took it from Ken in lieu of receiving any payments. According to Jim, he told Ken he was going to have to do so, and Ken agreed to give him the dozer, after which Jim found out it was not in working order. When asked in direct examination whether Ken accepted the offer of a sum of \$3,600 for the dozer, Jim testified that he assumed he did.

[52] When asked in direct whether the \$300 per month was a fixed rate, Jim testified that he got heck from his daughter the night before he testified and she made up a new document. He described the intention of that document as formalizing the arrangements for storing KEPO's equipment. That document was entered into evidence, and reads as follows:

Endless Horizons

(DBA: J. Postnikoff)

1071 Lazeroff Rd

Castlegar BC V1N 4P3

The following is a contract between KePo Trucking Inc and J. Postnikoff for all equipment stored on the property at the location of 1071 Lazeroff Rd. Castlegar BC. as indicated below.

The price for storage will be negotiated each year starting July 2024.

June 1, 2023 Rate@ \$300/piece/month

Equipment

Date Started

Date Ended

No. Months

Cost of Rental

2011 Western Star Truck

June 2023

Ongoing

12

3600.00

PUP Trailer

June 2023

Ongoing

12

3600.00

Water Truck

June 2023

Ongoing

12

3600.00

Tridem Axle Pup

June 2023

Ongoing

12

3600.00

Dozer

June 2023

November 2023

6

1800.00

Travel Trailer

August 2023

April 2023

9

2700.00

Flat Deck Trailer

September 2023

Ongoing

9

2700.00

Travel Trailer with water and electricity supplied as of May 1, 2024 at a rate of \$500/Month.

Landlord: Jim Postnikoff Dated:

KePo Trucking Inc.

Ken Postnikoff Dated:

Lisa Postnikoff Dated:

- [53] Jim testified that his daughter changed the wording and said that a new rate would have to be negotiated as of July 2024. The new document, apparently drafted by Jim's daughter, appears to represent a new offer to Ken, which Ken had not yet responded to at the time Jim testified. In fact, it appeared he learned of it while Jim was testifying. Jim testified that he did not have a plan if Ken did not negotiate new rates in July 2024. He described himself as being caught in the middle; that it is his property, but he is trying to relinquish control to his kids.
- [54] It is notable that the proposed contract refers to both Ken and Lisa Postnikoff, given that Jim's evidence was that he has never discussed any of the arrangements for storing KEPO equipment with Lisa Postnikoff.
- [55] Jim testified that Ken is not able to run KEPO off the Glade property, as environmental regulations related to a mine on the property do not permit him to grease equipment at that location due to the risks associated with hydrocarbon spills.
- [56] Jim testified that Ken has done some work for him on the Glade property. He has not paid him for that work, nor has he calculated what work Ken has done. He appeared to indicate that the value of Ken's work would be taken into account in determining how much rent Ken owed, but his evidence on this point was unclear.
- [57] Ken Postnikoff testified after Jim, having heard Jim's testimony. He testified that he phoned Jim after he was unable to return to the McHardy Road property and was trying to figure out where he could park his equipment. That places the conversation in or about late May 2023. According to Ken, Jim asked for some sort of timeline and Ken told him he did not know, but he was hoping it would be somewhat short term. Shortly thereafter, they had an in-person conversation on the Glade property. Ken testified that initially he just wanted to store the dump truck and pup trailer, and he later asked if he could bring over a few more pieces of equipment.
- [58] According to Ken, the conversations were informal, and amounted to Jim telling him he could keep the equipment there for a period of time, but that he would have to pay some rent. According to Ken, Jim initially said he would have to pay \$100 per piece per month, to which Ken agreed. Sometime later, Ken did not recall exactly when, but he thought it might have been in the fall, Jim told him he would have to increase the amount he was charging to \$250 per piece per month. Ken testified that was the final amount communicated to him until he saw the documents introduced during Jim's direct testimony.

- [59] Ken testified that the payment arrangement was that he was to pay when he was able, and that if he did any work for Jim he would be credited for that work at his hourly rate. Ken agreed that he had not paid Jim any money. Like Jim, Ken had not kept track of the work he had done for Jim.
- [60] In relation to the dozer, Ken testified that he offered it to Jim in lieu of the funds owing to him, with a value of \$5,000. He did not realize it had mechanical issues until afterwards, when Jim told him it was worth maybe \$3,500.
- [61] So far as the documents provided by Jim are concerned, and in particular the amounts listed there, Ken testified that he could not really argue as he had no other place to go for the number of pieces of equipment he needed to store. He said he would do his best to negotiate through Jim with his family.
- [62] Mr. Postnikoff submits that he is obligated to pay the following amounts to store KEPO equipment at the Glade property:

STORAGE

June 1st, 2023 to August 31, 2023 - \$100 per month per piece of equipment

5 pieces of equipment:

- 2011 Western Star truck
- Travel trailer
- Water truck
- Tridem axle pup
- Wagon

5 pieces of equipment x \$100 per month = \$500 x 3 months = \$1,500

September 1, 2023 to April 30, 2024 - \$250 per month per piece of equipment

7 pieces of equipment:

- 2011 Western Star truck
- Travel trailer
- Water truck
- Tridem axle pup
- Wagon
- Flat deck trailer
- Dozer

7 pieces of equipment x \$250 per month = \$1,750 x 8 months = \$14,000

May 1, 2024 to June 30, 2024 - \$250 per month per piece of equipment

6 pieces of equipment (travel trailer excluded)

6 pieces of equipment x \$250 per month = \$1,500 x 2 months = 3,000

Storage of equipment total to date: \$18,500

Prospective - July 1, 2024 to September 30, 2024 - \$250 per month per piece of equipment

6 pieces of equipment (travel trailer excluded)

6 pieces of equipment x \$250 per month = \$1,500 x 3 months = \$4,500

Storage of equipment total to September 30, 2024: \$23,000

Less \$3,500 partial payment - Dozer

[63] The amounts submitted are based on Mr. Postnikoff's recollections of the amounts discussed, not the evidence or documents provided by Jim Postnikoff. In essence, Mr. Postnikoff concedes that Jim Postnikoff was not a reliable witness.

[64] Ms. Postnikoff disputes that Mr. Postnikoff or KEPO owe anything to Jim Postnikoff. She submits that Mr. Postnikoff failed to discuss any of the arrangements for storing KEPO property at the Glade property with her. She submits that Mr. Postnikoff failed to make any inquiries about other places he could have stored KEPO property, and says that he could have made arrangements with her to store KEPO equipment on the McHardy Road property. She also submits that the evidence about any agreement or agreement between Ken and Jim Postnikoff is vague and contradictory and cannot be relied upon to determine that there is any debt owing by KEPO to Jim Postnikoff.

[65] I agree with Ms. Postnikoff's submissions with respect to the debts alleged to be owing from KEPO to Jim Postnikoff for storing equipment at the Glade property. The evidence about the alleged agreements is so vague, contradictory and inconsistent that I cannot rely on it to determine what, if any, money might be owed to Jim Postnikoff. There was likely some vague understanding that KEPO and/or Mr. Postnikoff would eventually pay Jim Postnikoff something for storing equipment there, but the terms of such an agreement have not been established on the evidence before me.

[66] Further, to the extent Mr. Postnikoff or KEPO might owe anything to Jim Postnikoff for storage costs, it is important to note that Mr. Postnikoff chose to store a number of pieces of equipment there which produced little to no revenue, especially over the winter months, when there is no paving work. Similarly, he chose to store the travel trailer there for months before he moved into it in May 2024, thereby incurring both residential rental costs and, if anything is in fact owing to Jim Postnikoff, storage costs for the travel trailer. Ms. Postnikoff would have been prepared to have him store these items when not in use at the McHardy

Road property, at no cost. Mr. Postnikoff never made that request.

- [67] This conclusion has a bearing on two issues before me. First, I find that there is no debt owing from KEPO to Jim Postnikoff, which will be relevant to the valuation of KEPO. Second, it leaves open the question of what it would actually cost Mr. Postnikoff to store KEPO equipment in the future should he be unable to retain the McHardy Road property. The remaining evidence of storage costs before me is sparse. Ms. Postnikoff introduced evidence of the rates advertised by West Kootenay Self Storage, which include \$109 per month for a 12 by 40 foot long space. That is some evidence of what it might cost to store a piece of equipment, although it was not clear on the evidence whether such a space would be appropriate for storing KEPO's equipment. The best I can do on the evidence before me is to conclude that, if Mr. Postnikoff cannot retain the McHardy Road property, he would incur some costs to store KEPO equipment. That cost would not be so substantial as to prevent KEPO continuing to operate as a going concern.

Alternative employment for Mr. Postnikoff

- [68] Ms. Postnikoff's alternative position is that if Mr. Postnikoff is unable to continue operating KEPO at the same level as it has operated historically, then Mr. Postnikoff has a comparable income earning capacity independently of KEPO. He has worked in the past as an employee and as an owner operator. He has the skills, training and experience to work as a class 1 driver or a heavy equipment operator. Mr. Postnikoff testified that if he was working as an employee he would negotiate a base hourly rate of \$35.00 an hour. Based on that figure, Mr. Postnikoff would be capable of earning a base wage for full-time employment of approximately \$72,800 per year. The positions Mr. Postnikoff would be capable of obtaining would likely also provide opportunity for additional overtime and benefits. It is very likely that if Mr. Postnikoff is unable to continue operating KEPO, he can earn an income equivalent to the income historically available from KEPO, in the range of \$80,000 per year.
- [69] Mr. Postnikoff suffered a workplace injury to his back in 2010, as a result of which he receives a WorkSafe pension. He had two surgeries on his back in 2011 and 2012. He requires ongoing chiropractic and massage therapy and quarterly trips to Kelowna to receive treatments to manage the pain associated with this injury. Mr. Postnikoff testified that he would not take long haul trucking jobs due to this injury. I accept that Mr. Postnikoff experiences pain related to this injury, and that that pain limits the work functions he can do. However, there is no medical evidence to support that he is, by virtue of the back injury, unable to perform any particular jobs or to work full time. His evidence was that he has been able to work at all times even if he was in pain, and that the injury has not affected his income. I find that Mr. Postnikoff's back injury is unlikely to have a material impact on his ability to earn an income, whether through KEPO or as an employee.

Mr. Postnikoff's position on his income for prospective support and my conclusions

- [70] Mr. Postnikoff submits that his income for the purposes of determining spousal support should not be based on KEPO's earnings. Rather, he submits that his income for spousal support purposes should be based on a three-year average of his employment income, taking into account 2021, 2022 and 2023. According to Mr. Postnikoff, his total earnings in 2021 were \$41,931, in 2022 were \$81,670, and were \$82,113 in 2023. He says the latter two are much higher than in previous years. He testified that he anticipated a lower income in 2024.
- [71] I found Mr. Postnikoff's calculations of his income and average income difficult to follow. So far as I can determine, Mr. Postnikoff calculated these amounts on the following basis. For 2021, his "total income" was \$39,434, to which he added some corporate expenses used for personal use: \$240 for meals and entertainment, \$817 for phone and \$1,996 for fuel. He also added the grossed up value of his WorkSafe benefits. For 2022, his "total income" was \$73,591.56. He added to that some corporate expenses used for personal use: \$290 for meals and entertainment, \$879 for telephone and \$1,541 for fuel. He also added the grossed up value of his WorkSafe benefits. For 2023, his "total income" was \$75,287. He added to that \$283 for meals and entertainment, \$724 for telephone and \$1,129 for fuel, as well as the grossed up value of his WorkSafe benefits.
- [72] Mr. Postnikoff deducted from his actual income the RRSP contributions he made to arrive at his "total income". I know of no basis for deducting RRSP contributions from income. So far as I can tell from his tax returns in evidence, Mr. Postnikoff made RRSP contributions of \$2,160 in 2021, none in 2022, and \$3,500 in 2023.
- [73] Leaving aside the calculation difficulties inherent in Mr. Postnikoff's figures, and using the final amounts he arrives at, one obtains a three-year average of \$68,571.
- [74] I find that it is appropriate to base Mr. Postnikoff's income for the purposes of determining prospective spousal support on the historical available earnings of KEPO. Acting on their accountant's advice, Mr. and Ms. Postnikoff used KEPO as a means to split their income and thereby reduce their taxes. For example, Ms. Postnikoff received \$23,000 from KEPO in 2021. That same year, Mr. Postnikoff's KEPO T-4 reflects that he received \$18,000 from KEPO. While Ms. Postnikoff did perform some work for KEPO, Mr. Postnikoff was its key worker. Clearly, Ms. Postnikoff was being paid income beyond the extent of her contributions to the company, thereby reducing Mr. Postnikoff's income. This demonstrates that basing Mr. Postnikoff's income on the income he received from KEPO would artificially reduce his income for spousal support purposes. I note that the approach proposed by Ms. Postnikoff does not take into account any employment income Mr. Postnikoff may have received in some years from other sources, such as plowing snow in the winter, which is to his benefit.

- [75] I accept Ms. Postnikoff's submission that KEPO's earnings for the year ending January 31, 2024 should be excluded from the calculation of KEPO's historical earnings, and thus Mr. Postnikoff's income. I find that Mr. Postnikoff intentionally failed to maximize KEPO's income in 2023, as I shall explain in greater detail later.
- [76] Ms. Postnikoff's submission that KEPO's earnings for years ending January 31, 2022 and 2023 should also be excluded from the calculation is more than fair to Mr. Postnikoff, as it excludes the company's highest revenue producing year. I agree that the year ending January 31, 2021 should also be excluded, as it was a low outlier due to the effects of COVID. I therefore accept Ms. Postnikoff's submission that it is fair to base KEPO's income on an average of the years ending January 31, 2019 and 2020.
- [77] Ms. Postnikoff proposes to reallocate a percentage of some corporate expenses as personal expenses. Her proposal to include 50% of telephones, 100% of rent, 75% of meals and entertainment and 10% of fuel in KEPO's available revenue is a fair assessment of the amount of personal value enjoyed by the parties for those categories of corporate expenses.
- [78] Mr. Postnikoff accepted that it was appropriate to reallocate a smaller percentage of corporate expenses as personal expenses. He appears to accept that 25% of meal and entertainment expenses, 25% of telephone expenses, and between 3 and 5% of fuel expenses, should be included in his personal income.
- [79] I find Ms. Postnikoff's proposed reallocation of these corporate expenses as ones used for the parties' personal benefit to be reasonable. The company paid for the parties' cell phones, which they used for business and personal purposes. The company paid them \$4,000 to store KEPO equipment at McHardy Road. So far as the meal and entertainment expenses are concerned, Mr. Postnikoff's evidence about what these funds were used for was vague and inconsistent. I found it unreliable. The evidence does not substantiate that KEPO frequently, if ever, took potential customers out for meals, or otherwise incurred meal and entertainment costs for the company's benefit. There is no explanation for the massive reduction in the amount of meal and entertainment costs claimed between 2020 and 2022. It is likely that the vast majority of the meal and entertainment costs claimed in 2019 and 2020 were for the parties' personal benefit. Evidence about how much of the fuel expensed to KEPO was used by the parties for their personal use was sparse, but 10% seems reasonable on the evidence before me.
- [80] I therefore accept Ms. Postnikoff's submission that an average amount of income historically available from KEPO is \$80,959.53, and that that figure should be used in determining Mr. Postnikoff's income to determine prospective spousal support.

Ms. Postnikoff's Income for Prospective Support

- [81] Ms. Postnikoff's employment income at time of trial consisted of her earnings from Dragonflies & Fairy Dust Gifts. She had worked there on a casual basis prior to separation since about 2020. It is a giftware shop and she provides customer service. Post-separation, she began working two days a week, for five and a half hours a day. At time of trial, she was working part-time, three days a week for five and a half hours a day. She makes minimum wage, which at time of trial had recently increased to \$17.40 an hour from \$16.75 an hour.
- [82] Ms. Postnikoff testified that her activities are limited by her medical conditions, and that she has issues with prolonged sitting and standing, as well as lifting, and climbing stairs or ladders. She testified that she can no longer do floral design due to these limitations. Her position is that she has had to limit the number of hours she works due to these limitations, and that she does not expect her limitations to improve. She thought that if a position such as her current job was available she might be able to work four five and one-half hour shifts a week, an increase of one day over her current work schedule.
- [83] On this basis, Ms. Postnikoff submits that it is appropriate to impute an income of \$19,905.00, equivalent to four days a week with five and one-half hours shifts, to her for the basis of determining prospective spousal support.
- [84] Ms. Postnikoff is interested in starting her own consignment business. At the time of trial, she was in the very early stages of investigating this possibility, including taking an online course on consignment sales. She likes the idea of being self-employed, as it would allow her to control her hours and work duties, which may allow her to work more hours and earn more income. For this reason, Ms. Postnikoff submits that a review period of five years is appropriate in order to determine if she has been able to start a business and earn a greater income than if she continues in part-time minimum wage employment.
- [85] On July 13, 2023, Ms. Postnikoff applied for CPP Disability benefits. Her application was rejected on April 24, 2024, on the basis that the information provided did not show that her medical conditions would prevent her from regularly working at any job, although she may be unable to return to her usual job. Copies of a number of letters provided by her family doctor, chiropractor and pain specialist in support of Ms. Postnikoff's CPP application were entered into evidence. They do not constitute expert reports, and I can rely on them only for limited purposes. On the evidence before me, I find that Ms. Postnikoff does have chronic medical conditions which limit her ability to perform some types of work, in particular the cleaning work which she attempted with Cleaning Genies, but was unable to successfully perform in early 2023 due to her back problems. She worked a total of three shifts before having to stop that work.

- [86] Mr. Postnikoff's position with respect to Ms. Postnikoff's income for the purposes of determining prospective spousal support is that she should be imputed with an income equivalent to full-time work at the current minimum wage, for an imputed amount of \$33,478. He submits that the evidence does not establish that Ms. Postnikoff is unable to work full-time, and that there is no evidence she has sought additional employment since in or about February 2023.
- [87] Both parties agree that it is appropriate to impute some additional income to Ms. Postnikoff. The test for doing so is, as stated in *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37, "one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability".
- [88] I agree with Mr. Postnikoff that Ms. Postnikoff should be imputed with an income of \$33,478 for the purposes of determining prospective spousal support. For reasons I give below, I accept that Ms. Postnikoff has faced barriers in re-entering the full-time workforce. She has some medical conditions which limit the tasks she can perform or their duration or frequency. Since separation, she has not been able to pay for all the treatments she had previously received to manage her pain, in particular massage therapy, as she no longer had access to the medical insurance KEPO provided the parties following the termination of her employment. She has continued to see a chiropractor regularly at her own cost. At age 57, and with her education and work history, her options for employment are likely to be somewhat limited.
- [89] However, the evidence does not establish that Ms. Postnikoff could not work full-time in a position that did not require her to perform tasks beyond her physical capacities. She has been active in maintaining the Former Family Home, including looking after the gardens and the animals, which establishes that she has some capacity for physical labour. She testified that she has been preoccupied with maintaining the property and looking after the animals on her own. Once the Former Family Home is sold, that will no longer be the case. She has clearly also been preoccupied by these proceedings, and has been waiting to make concrete plans for her future until they are over. Her efforts to find employment post-separation have, in the words of Madam Justice Prowse in *McEachern v. McEachern*, 2006 BCCA 508 at para. 41, been "less than whole-hearted". Ms. Postnikoff has now had some time to adjust to the new reality of her life post-marriage breakdown. She has an obligation to do what she can to become self-sufficient. On the evidence before me, I find she is likely capable of full-time work, albeit at a level where she is unlikely to earn more than minimum wage. I therefore impute a prospective income of \$33,478 to Ms. Postnikoff.

Conclusion on Prospective Spousal Support

- [90] Prospective support will be payable starting on the date Ms. Postnikoff moves out of the Former Family Home following its sale. It is appropriate for prospective support to begin as of that date, as Mr. Postnikoff will continue to be responsible for certain expenses until such time as Ms. Postnikoff moves out of the Former Family Home.
- [91] A DivorceMate calculation based on an imputed income of \$92,347 for Mr. Postnikoff and \$33,478 for Ms. Postnikoff results in spousal support payable of \$1,840 at the low range, \$2,146 at the mid range and \$2,333 at the high range, for an indefinite duration, subject to variation and possibly review. I must determine where in the range support should be set at.
- [92] The parties had a traditional marriage which lasted for 32 years. Mr. Postnikoff was the primary breadwinner. Ms. Postnikoff did some limited paid work outside the home, but was primarily responsible for the care of the parties' child and the care and maintenance of the Former Family Home. She supported Mr. Postnikoff in his employment at KEPO by performing administrative tasks and doing things like running errands. She also enabled him to work remotely for lengthy periods of time by caring for their daughter. Ms. Postnikoff has a strong compensatory and non-compensatory claim to spousal support.
- [93] While I have found that Ms. Postnikoff is likely capable of obtaining and maintaining full-time employment, she is unlikely to be able to do so at more than minimum wage, given her age, limited employment experience and education. I therefore conclude that spousal support should be payable at the high end of the range at \$2,333. This amount will ensure that the parties, based on the incomes I have imputed to them, have roughly equal net disposable incomes. Spousal support is payable for an indefinite period, in light of the parties' long relationship.
- [94] As I have set out, Ms. Postnikoff is interested in the possibility of opening her own consignment business. This idea is in its infancy, and it is impossible to assess, at this stage, whether she will be successful in doing so, and if so what she may earn. I therefore agree with Ms. Postnikoff that it is appropriate to set a review period of no sooner than five years from the date of this order to allow the parties and the court to review the appropriate quantum of spousal support.

Retroactive Spousal Support

- [95] With respect to retroactive spousal support, there a number of factors which must be considered, including the parties' actual earnings post-separation, spousal support payments made by Mr. Postnikoff pursuant to the July 17, 2023 JCC consent order, and other payments made by Mr. Postnikoff with respect to the Former Family Home and other family expenses. In addition, I must consider whether additional income should be imputed to one or both parties in the post-separation period.

[96] Pursuant to the JCC order, Mr. Postnikoff was required to pay Ms. Postnikoff spousal support in the amount of \$500 per month starting August 1, 2023, on an interim and without prejudice basis. Also pursuant to the JCC order, Mr. Postnikoff was solely responsible for all Fortis gas and electricity bills for the Former Family Home, all payments on the parties' joint secured line of credit with KSCU, and all payments on the parties' joint park model RV vehicle loan. Those payments must all be taken into account in determining what further retroactive spousal support may be payable.

Mr. Postnikoff's Income for Retroactive Support

[97] Ms. Postnikoff submits that Mr. Postnikoff's income, for the purposes of retroactive spousal support, should be based on the income available from KEPO in 2022, which she calculates, as I have previously set out, at \$59,623.85, plus the grossed up amount of Mr. Postnikoff's WorkSafe benefits, totalling \$8,175.00. That results in a total income for Mr. Postnikoff for retroactive support purposes of \$71,009. As I understand Mr. Postnikoff's position, he says that his income for the purposes of retroactive support should be \$50,675. I believe that that amount is based on his calculation of his average income in 2020, 2021 and 2022.

[98] For these reasons I have already given, I find that Mr. Postnikoff's income for spousal support purposes should be based on the income available from KEPO. For retroactive purposes that should be the available income in 2022. I find that Mr. Postnikoff's income for the purposes of determining retroactive spousal support is \$71,009.

[99] Mr. Postnikoff disputes this figure, and points to KEPO's reduced hauling revenues in 2023.

[100] I find that notwithstanding the fact that Mr. Postnikoff could no longer store all of KEPO's equipment at the Former Family Home following the May 2023 protection order, which did change to some extent how he had to operate KEPO, Mr. Postnikoff did not take reasonable steps to maximize his income post-separation, whether through KEPO or as an employee. For example, he testified that he had not been able to work for a significant KEPO customer, Selkirk Paving, on the basis of a negative rumour about him, that he says he heard via a two-way radio, communicated by individuals he could not identify. Mr. Postnikoff testified that he assumed he was not getting work from Selkirk Paving because of this rumour. However, Mr. Postnikoff took no steps to verify the rumour, to correct the record if necessary with Selkirk, and simply assumed he would not be called by Selkirk to work. Further, the evidence shows that in fact Selkirk did call Mr. Postnikoff for work later in the year, which strongly suggests that his assumptions about Selkirk being unwilling to employ him were unfounded.

[101] At trial, Mr. Postnikoff testified that he intends to reach out to Selkirk and everyone else he can think of once the trial is over, which begs the question of what efforts he had made to reach out to Selkirk and other prospective employers and customers prior to trial. While Mr. Postnikoff subsequently testified that he meant to say that he had already called everybody and would do so again after trial, I was left with the strong impression that Mr.

Postnikoff is waiting until these proceedings are over to make his best efforts to find work and maximize his earnings, whether through KEPO or as an employee.

[102] Mr. Postnikoff testified that having certain KEPO equipment unavailable to him has had a drastic impact on KEPO's earnings. In particular, he said that he has had to turn down work because a piece of paving equipment, consisting of two steel corner pieces for the truck, were on the McHardy Road property and he could not retrieve them whenever he needed to. The evidence is clear that Ms. Postnikoff has not stood in the way of Mr. Postnikoff retrieving KEPO equipment when he has needed it for work, and indeed has offered to let him retrieve equipment he needs for work from the property. Further, given that Mr. Postnikoff has been able and willing to store numerous pieces of equipment at Jim Postnikoff's Glade property, there is no reason why these two small corner pieces could not have been stored there as well. There was no evidence that Mr. Postnikoff had investigated other storage options with friends or family. The inability to retrieve equipment from the McHardy Road property appeared to be more an excuse for not working to his maximum capacity than a reason for diminished income post-separation.

[103] During the winter of 2023-24, Mr. Postnikoff used KEPO's overdraft facility to pay his personal expenses. He did some limited contract work for the City of Trail and some other odd jobs. There is no reason why Mr. Postnikoff could not have been applying for employment positions rather than focussing on continuing to operate KEPO, particularly given KEPO's reduced work and revenues in this period. He chose not to do so.

Ms. Postnikoff's Income for Retroactive Support

[104] Ms. Postnikoff has had very limited income since separation. Her employment with KEPO was terminated effective November 1, 2022, thereby eliminating her almost sole source of income. In addition to her KEPO income, in 2022, she earned a total of \$1,651.37 from Dragonflies and Fairydust. She has also made some nominal money from her crafting.

[105] In 2023, her tax return shows employment income of \$1,780.75. This includes the \$213.41 she earned from Cleaning Genies in February and March 2023. In addition, she received the payout from her cancelled life insurance, which she declared as income. Her 2023 line 150 income, inclusive of those amounts, spousal support, and RRSP income, totalled \$28,839.15.

[106] In 2024, Ms. Postnikoff had earned a total income from Dragonflies and Fairydust to April 27, 2024 of \$2,099.14. At time of trial, her hours at Dragonflies and Fairydust had recently increased to three five and a half days a week at minimum wage, for a weekly income of \$287.10. Prior to that she was working two five and a half hour days a week. She testified she would be prepared to attempt to work four days a week, if the work was available to her at her current employer, who is very accommodating, but it is not.

- [107] Ms. Postnikoff submits that she has made reasonable efforts to obtain employment, in light of her experience and medical limitations. She has been solely responsible post-separation for maintaining the Former Family Home, including maintaining the extensive gardens, looking after the animals, and doing minor repairs. Her evidence is that she has had a very hard time emotionally dealing with the breakdown of the marriage, and has had difficulty making decisions and moving forward. She saw a counsellor for eight sessions to help deal with these issues. She submits that, for the purposes of determining retroactive support, it is more than reasonable to impute to her an income equivalent to her current three part-time days a week, for a total income of \$14,929.
- [108] Mr. Postnikoff submits that Ms. Postnikoff should be imputed with an income of \$25,651 for the purposes of retroactive support. With Mr. Postnikoff's income at \$50,675, this would result in a mid-range support payment of \$912 per month. However, Mr. Postnikoff's position is that no retroactive support is payable, because of other payments he has made.
- [109] Ms. Postnikoff has suffered significant financial hardship since separation, having to borrow money from both her daughter and mother, incur consumer debt, and cash out her Hollis RRSPs to support herself. She also had to cancel her life insurance policy because she could not afford the premiums; while she did not realize it until after she had done so, she did receive \$4,610.01 as a payout. This is in contrast to Mr. Postnikoff, who has not had to cash out all of his RRSPs, or cancel his life insurance, and has continued to pay himself out of KEPO, at a higher rate than pre-separation, and has even had sufficient disposable income to make an RRSP contribution in some years.
- [110] I find that it is appropriate to impute Ms. Postnikoff with an income of \$14,929 for retroactive support purposes, essentially for the reasons submitted by her. This is significantly more than her actual employment income post-separation, which I find appropriate given the limited evidence of Ms. Postnikoff seeking additional employment post-separation, all of which occurred prior to February 2023. At the same time, it reflects the difficulties she has experienced in moving forward since the breakdown of the parties' very lengthy relationship.

Conclusion on Retroactive Spousal Support

- [111] A DivorceMate calculation based on these incomes results in spousal support of \$1,752 at the low end of the range, \$2,045 at the mid range, and \$2,193 at the high end of the range. As submitted by Ms. Postnikoff, I find that it is appropriate to fix the quantum of retroactive spousal support at the mid end of the range, in the amount of \$2,045 per month.
- [112] A number of adjustments need to be made to the retroactive support payable to reflect various payments made by Mr. Postnikoff to date and that he will make until the Former Family Home is vacated by Ms. Postnikoff.

- [113] Many of these adjustments are uncontroversial. One that is in issue is the payments on the Flexline mortgage for the park model RV. The parties purchased the park model RV for their daughter to use as a residence on the McHardy Road property. They did so with a mortgage provided by KSCU. Mr. Postnikoff paid the mortgage payments since separation.
- [114] Ms. Postnikoff submits that she should not be responsible for any of the payments on the park model RV mortgage, at least since January 2023. That is because she has been advocating to get the park model sold since separation. She asked Mr. Postnikoff in person to sell the park model in April 2023, at which time Mr. Postnikoff responded that it was not the right time. Subsequent requests to sell the park model were made through counsel in July 2023. In cross-examination, Mr. Postnikoff said that he had not been agreeable to selling the park model because he wants to retain it as a rental at McHardy Road should he be able to retain the property. Therefore, Ms. Postnikoff submits that the park model has been retained post-separation solely for Mr. Postnikoff's benefit, and that she should not be responsible for the loan payments made on it since January 2023.
- [115] Mr. Postnikoff submits that both parties should be equally responsible for the payments on the park model RV mortgage.
- [116] I find that Ms. Postnikoff should not be responsible for 50% of the loan payments made on the park model RV since April 2023. This is the first date in the evidence that Ms. Postnikoff asked Mr. Postnikoff to agree to sell it. It was not been put on the market for sale at Mr. Postnikoff's insistence and solely for his potential benefit. Ms. Postnikoff should not bear the financial cost of that decision. In this connection I note that, by consent, I ordered on June 21, 2024 that the park model RV be put up for sale, with the net proceeds to be divided equally, net of the associated debt, which was to be paid in full from the sale proceeds.
- [117] Mr. Postnikoff also seeks credit for some additional payments, in particular for life insurance until the end of 2022 and Telus until January 2024.
- [118] Mr. Postnikoff paid a total of \$1,371.78 for life insurance in October-December 2022. The parties both had life insurance through the same insurer, although there is no evidence about how much of the payments were to the benefit of each party, the beneficiaries under the policies, or the amount of insurance each party had. He seeks credit for 50% of the amount he paid towards retroactive spousal support. Ms. Postnikoff opposes this on the basis that there was no evidence led as to what benefit Ms. Postnikoff received from these payments, and the matter was not put to Ms. Postnikoff in cross-examination. I agree with Ms. Postnikoff that the evidence is insufficient to support Mr. Postnikoff being given credit for these life insurance payments for the purposes of retrospective spousal support.

- [119] Mr. Postnikoff paid a total of \$594.45 to Telus between October and December 2022. Between January and May 2023, he paid \$1,386.49 to Telus. He seeks credit for 50% of both of these amounts. He paid \$385.76 to Telus in the remainder of 2023, after he moved out. He seeks 100% of these payments. He made a single payment to Telus in January 2024 in the amount of \$214.46. He seeks credit for 100% of this payment.
- [120] The evidence about these Telus expenses was sparse. Mr. Postnikoff testified that the parties had a package that included internet, a land line, a fax line and satellite TV. Ms. Postnikoff was not cross-examined about these expenses. In closing submissions, she did not dispute that she received some benefit from these expenses being incurred, but submitted that she was taken by surprise by the fact they were being claimed. She noted that, unlike Mr. Postnikoff's contributions to some other expenses, such as electricity and gas, there was no agreement between the parties about him paying for these expenses. There was no explanation in the evidence for the widely varying amounts of money paid to Telus, which went down significantly after Mr. Postnikoff moved out in May 2023, and ended completely after January 2024.
- [121] I find that Mr. Postnikoff has failed to establish that he should be given any credit for these Telus payments in respect of retroactive spousal support payable.
- [122] For the period between October 1 and December 31, 2022, a total of \$3,839.40 is payable, based on the following:
- Retroactive spousal support in the amount of \$2,045 per month for three months, totalling \$6,135;
- Less \$186.21, equalling 50% of the electricity and gas expenses paid by Mr. Postnikoff over that three month period;
- Less \$1,561.37, being:
- \$1,964.53, equalling 50% of the payments made by Mr. Postnikoff towards the Flexline line of credit minimum payments for that three-month period;
- Less \$405.16, being 50% of the difference between the Flexline payments and the interest charged to the Flexline line of credit in that three-month period;
- Less \$548.02, being 50% of the payments made by Mr. Postnikoff towards the Flexchoice park model mortgage in the three month period to KSCU.
- [123] For the 2023 calendar year, a total of \$12,357.03 is payable, based on the following calculations:
- \$24,540, being \$2,045 per month for twelve months;

Less \$3,500, being seven months of interim spousal support in the amount of \$500 per month paid between June and December 2023. I note that I base this amount on Ms. Postnikoff's draft order, although the JCC order only required Mr. Postnikoff to pay spousal support starting August 1, 2023;

Less \$476.15, being 50% of the payments made by Mr. Postnikoff for electricity and gas expenses between January 1, 2023 and May 24, 2023;

Less \$2,042.19, being 100% of the payments made by Mr. Postnikoff for electricity and gas expenses between May 25 and December 31, 2023;

Less \$5,548.71, being:

\$6,765.95, being 50% of the Flexline payments made by Mr. Postnikoff in the 12-month period;

Less \$1,217.24, being 50% of the difference between the Flexline payments and the Flexline interest in the 12-month period;

Less \$615.92, being 50% of the payments Mr. Postnikoff made on the Flexchoice park model mortgage between January and April 2023 only.

[124] For the 2024 calendar year, the total amount payable will be based on the following formula:

\$24,540, being \$2,045 for 12 months;

Less \$6,000, being the total amount of interim support payable for 12 months;

Less 100% of the payments made by Mr. Postnikoff for electricity and gas expenses for the 12-month period;

Less the amount equal to 50% of the Flexline payments made by Mr. Postnikoff for the 12 months, less 50% of the difference between the Flexline payments and the Flexline interest for the 12-month period.

[125] For the 2025 calendar year, the amount payable will be based on the same formula as in 2024, until such time as Ms. Postnikoff moves out of the Former Family Home. All retrospective spousal support payments are to be made from Mr. Postnikoff's share of the proceeds of the sale of the Former Family Home, or are to be included in the amount Mr. Postnikoff is to pay Ms. Postnikoff should he be able to buy her out of the Former Family Home.

Division of Family Property and Debt

[126] Ms. Postnikoff provided three alternative scenarios for the division of family property and debt: equal, 60% in her favour or 70% in her favour. The latter two were put forward in the event the court did not accept her positions on income or the appropriate range for spousal support.

- [127] Section 81 of the Family Law Act, R.S.C. 2011, c. 25 [FLA] provides that on separation each party is presumptively entitled to an undivided one half interest in family property. Section 95 permits the court to order an unequal division of property, but only if the equal division of property would be "significantly unfair" in consideration of the factors set out in s. 95(2).
- [128] In light of my conclusions on the parties' incomes and spousal support, which have accepted Ms. Postnikoff's position on Mr. Postnikoff's income and placed prospective spousal support at the upper range, I find that an equal division of family property would not be significantly unfair. It is, therefore, unnecessary to consider Ms. Postnikoff's alternative positions with respect to unequal division.

Former Family Home

- [129] In terms of the Former Family Home, there is no dispute that Mr. Postnikoff is entitled to an excluded property claim of \$52,000, being the appraised value of the property at the time he inherited it. There is also no dispute about its appraised value as of the date of trial, being \$905,000, excluding the park model RV and a sea can on site. I will note that the latter two items were among the parties' chattels dealt with by way of the June 21, 2024 consent order.
- [130] Accordingly, each of the parties is entitled to one-half of the appraised value of the Former Family Home, less Mr. Postnikoff's exclusion, amounting to \$426,500 each. There is a line of credit secured against the property, with a balance as of April 1, 2024 of \$135,603.00. Under the terms of the June 21, 2024 consent order, neither party was to use the line of credit, except to pay the 2024 property taxes and property insurance. Beyond that, neither party has used the line of credit post-separation for personal purposes, with the exception of a \$6,000 withdrawal made by Mr. Postnikoff on December 6, 2023 for a lawyer retainer. Each party is responsible for one-half the line of credit, the amount to be determined at the date the property is sold, whether to Mr. Postnikoff or to a third party, as set out below. In addition, Mr. Postnikoff is responsible for 50% of the withdrawal he made.
- [131] Mr. Postnikoff wishes to have an opportunity to buy Ms. Postnikoff out of the Former Family Home prior to it being put up for sale, while Ms. Postnikoff seeks an immediate order for sale, with Mr. Postnikoff having the opportunity to bid on the open market. As Ms. Postnikoff's concedes, on the evidence before the court, it is possible that Mr. Postnikoff will be able to obtain, either from family members or from a commercial lender, the financing necessary to buy Ms. Postnikoff out of the Former Family Home. Given his familial connection to the McHardy Road property, and his desire to continue operating KEPO from the property, I agree with Mr. Postnikoff that he should be given an opportunity to buy Ms. Postnikoff out before the property is put on the market.
- [132] Mr. Postnikoff seeks 90 days to do so. It is important for the parties that this matter be brought to a final conclusion as soon as possible, so I order that Mr. Postnikoff have 60 days from the date of this order to buy out Ms. Postnikoff, based on the appraised value of \$905,000. Should Mr. Postnikoff buy out Ms. Postnikoff, he will be solely responsible for the

line of credit secured by the McHardy Road property and will either take all steps necessary to remove Ms. Postnikoff's name from the line of credit secured against the property or he will refinance and pay out the existing line of credit in its entirety. In this scenario, Ms. Postnikoff will take all necessary steps and sign any documentation required to facilitate removing her name from the McHardy Road property and the line of credit, the cost of which is to be borne equally.

- [133] Should Mr. Postnikoff not buy out Ms. Postnikoff's interest in the Former Family Home in accordance with the foregoing terms, the parties will, no later than 60 days from the date of this order, list and sell the Former Family Home located at 896 McHardy Road, Castlegar, B.C. I expect that the parties will be able to cooperate with respect to the sale of the Former Family Home, and therefore grant joint conduct of sale, but either party is at liberty to apply should further directions be required concerning the conduct of sale.

Miscellaneous Assets and Debts

- [134] There are a number of other cash assets and debts that need to be addressed. As of October 1, 2022, Ms. Postnikoff had a personal account with KSCU with a balance of \$718.00. That is to be divided equally.
- [135] As of September 30, 2022, the parties had a main joint account with KSCU with a balance of \$17,955.18. This was the main account used by the parties, including to deposit any wages Mr. Postnikoff earned, his WorkSafe benefits, and to pay expenses such as utilities, mortgages and taxes. On October 3, 2022, Ms. Postnikoff withdrew \$8,000 from this account for a lawyer retainer. She testified that she intentionally withdrew half of the money in the account at that time for that purpose. With the exception of filling up her car's gas tank on one occasion in the same period, Ms. Postnikoff has not used this account since that time. Effectively, the parties have by their actions equalized the funds in this account, and no further order is required to deal with it.
- [136] Ms. Postnikoff paid for property insurance in 2023 in the amount of \$2,415.00 post-separation. By consent, Mr. Postnikoff is responsible for 50% of that amount, being \$1,207.50. Ms. Postnikoff paid \$193.73 for a plumber to fix an emergency problem with an outside faucet in October 2023. Mr. Postnikoff is responsible for 50% of that amount.
- [137] As of September 8, 2022, Ms. Postnikoff owed \$5,541.35 on a Walmart Mastercard. She withdrew \$3,000 from the joint account on September 25, 2022 to pay this card down to \$2,487.20. As of May 8, 2024, the balance was \$8,150.83. If I understand the parties' positions correctly, Mr. Postnikoff says this should be Ms. Postnikoff's sole debt while Ms. Postnikoff says it should be divided equally. I see no reason to depart from the normal rule that this debt should be divided equally as of the date of separation, October 1, 2022.

- [138] Ms. Postnikoff has two Scotiabank lines of credit. The first, with account number ending in 019, had a zero balance as of August 21, 2023. As of April 18, 2024, it had a balance of \$5,403.70. Ms. Postnikoff testified that it had a zero balance as of the date of separation. As I understand the parties' positions, they both agree that this is Ms. Postnikoff's sole debt, and I so order.
- [139] The second, with account number ending in 026, had a balance of \$27,333.67 as of December 8, 2022. As of April 8, 2024, it had a balance of \$26,258.98. There is no statement in evidence for this line of credit showing its balance as of the date of separation. Ms. Postnikoff testified in direct that the balance was very similar in September 2022, that she had had this line of credit for many years, and that it had been used for a variety of family expenses. This evidence was not challenged, and I find that the balance on this line of credit as of the date of separation was \$27,333.67. That debt is to be shared equally.
- [140] The parties each had RRSPs at the time of separation. Ms. Postnikoff had a Hollis Wealth RRSP with a value of \$45,000. For his part, Mr. Postnikoff held a Hollis Wealth RRSP with a value of \$61,000. In the consent order, I ordered that in order to equalize the parties' RRSPs Mr. Postnikoff was to transfer to Ms. Postnikoff by way of spousal rollover \$6,886 from his RRSP to an RRSP in Ms. Postnikoff's name. I do not believe any further order is necessary to deal with these RRSPs.
- [141] Ms. Postnikoff has a small spousal RRSP with KSCU. By consent, that spousal RRSP is her sole asset. Mr. Postnikoff has a very small pension with the Teamsters Local 213 Pension Plan. That will be his sole asset. The parties' unadjusted Canada Pension Plan credits will be divided pursuant to Part 6 of the FLA.
- [142] There are a couple of other minor items to address. Ms. Postnikoff has an annual tradition of holding a garage sale. In keeping with this tradition, she held a garage sale in the summer of 2023, following the parties' separation. Mr. Postnikoff did not wish her to do so. By consent, Ms. Postnikoff is ordered to pay Mr. Postnikoff an amount equal to one-half the total sales, in the amount of \$148.
- [143] The McHardy Road property has a hay field. Post-separation, Ms. Postnikoff needed someone to cut the hay. She paid him in a percentage of the hay he cut. Mr. Postnikoff seeks compensation for one-half of the value of the hay Ms. Postnikoff gave away, in the amount of \$750, on the basis that the hay should have been sold for \$1,800, less \$300 paid to the person who cut the hay. Mr. Postnikoff's calculation does not take into account that at least some of the hay would have been fed to the parties' animals. He does not provide any basis for his valuation of the hay. Nor does it take into account that the responsibility to deal with the hay fell solely on Ms. Postnikoff's shoulders post-separation and she did not have the physical strength necessary to do the work. Further, Ms. Postnikoff still had to buy some hay because she did not have enough to feed the parties' animals. I decline to order any compensation for the value of the hay given away.

[144] Ms. Postnikoff seeks compensation for one-half of \$1,800 Mr. Postnikoff lent or gave (the evidence is equivocal) to two women prior to separation. I am unaware of any legal principle or authority, and none was provided to me by counsel, that would support such an order. I decline to make such an order.

KEPO

[145] Mr. Postnikoff wishes to retain KEPO. The parties have agreed that KEPO's equipment is worth \$220,000. The extent of its remaining assets and debts remains to be determined, as is how KEPO is to be dealt with.

[146] KEPO had cash assets of \$28,175.21 in its KSCU account as of October 1, 2022. KEPO also has a Visa card, but the debt on it appears to be negligible.

[147] After October 1, 2022, Ms. Postnikoff did not use the KEPO account. All withdrawals after that date were made by Mr. Postnikoff. He used it for KEPO purposes, and some family expenses, such as Fortis payments. By the last bank statement in evidence, it had an overdraft of \$13,572.17.

[148] Throughout this period, Mr. Postnikoff continued to draw a salary from KEPO.

[149] Mr. Postnikoff was solely in charge of KEPO and its finances post-separation. He chose to increase his salary, while its revenues went down, ultimately leading to the KEPO account going into overdraft.

[150] Mr. Postnikoff submits that Ms. Postnikoff should be responsible for half of the KEPO overdraft as of May 31, 2024, in the amount of \$13,572.17. In support of this position, he relies on s. 86(b) of the FLA, which provides that family debt includes all financial obligations incurred for the purposes of maintaining family property, and s. 87(b)(ii), which provides that unless an order provides otherwise, the value of family property and debt must be determined as of the date of the hearing.

[151] Mr. Postnikoff points to KEPO obtaining a CEBA loan in the amount of \$60,000, of which \$20,000 was forgivable if \$40,000 was repaid by a certain date. It was repaid in November 2023. He says that repayment of that loan put KEPO in a deficit position.

[152] I find that it was Mr. Postnikoff who made the decisions that led to KEPO incurring the overdraft post-separation. Ms. Postnikoff did not benefit from those decisions and ought not to be held responsible for them.

[153] I therefore accept Ms. Postnikoff's position that KEPO's cash assets of \$28,175.21 as of October 1, 2022 are to be divided equally.

- [154] KEPO had a loan for the Ford F350 owned by the company and used by Mr. Postnikoff as his personal vehicle. Ms. Postnikoff says that \$36,398.00 was outstanding on the truck loan as of January 2024. Mr. Postnikoff says that \$39,205.22 was owing as of June 10, 2024. While there is some apparent disagreement on the amount owing, there is no dispute the loan should be split equally. I so order and leave it to the parties to determine the precise amount owing, with leave to seek further directions should that prove necessary.
- [155] Mr. Postnikoff claims that Ms. Postnikoff should be responsible for one-half of outstanding truck and equipment repairs owed by KEPO to third parties in the amount as of the date of trial. The total amount is \$4,205.79, and Ms. Postnikoff's half share would be \$2,102.90. Ms. Postnikoff questions whether all of the repairs are ones which Mr. Postnikoff would have performed himself had he had access to the McHardy Road property. She also submits that KEPO would always have had to pay third parties for some repairs and mandatory inspections, and these are expenses incurred in the normal course for which she should not be held liable.
- [156] I agree with Ms. Postnikoff with respect to the KEPO equipment repairs. Effectively, Mr. Postnikoff has been solely running and responsible for operating KEPO since separation. Ms. Postnikoff is not responsible for one-half of the claimed repair bills.
- [157] Mr. Postnikoff seeks six months or in the alternative 90 days to purchase Ms. Postnikoff's interest in KEPO, with the equipment to be sold thereafter should he be unable to do so. Ms. Postnikoff seeks an order that the value of KEPO be equalized immediately, with Mr. Postnikoff paying Ms. Postnikoff for her share out of the net sale proceeds of the sale of the Former Family Home. Mr. Postnikoff submits that that would be potentially unfair to him, essentially because he would take all the risk that he could not continue to operate KEPO, and in that event would be saddled with storing and eventually selling the equipment, without the benefit of the McHardy Road property. Ms. Postnikoff responds by pointing out that she would have no control over what was done with KEPO or the equipment, which could depreciate before Mr. Postnikoff sells it.
- [158] In my view, Ms. Postnikoff's proposed option is preferable, as it ensures that the parties' financial dealings, save and except for the ongoing payment of prospective spousal support, will be brought to an end as soon as possible. Ms. Postnikoff should not be left waiting for her share of the value of KEPO for another six months. Mr. Postnikoff will therefore pay Ms. Postnikoff her half share of KEPO, taking into account their equal share of the loan for the F350, either upon his purchase of the Former Family Home, or upon the sale of the Former Family Home. This gives Mr. Postnikoff effectively two months to obtain any financing he may need to pay Ms. Postnikoff for her share of KEPO. Ms. Postnikoff will, upon payment, transfer her interest in KEPO to Mr. Postnikoff, and will take all steps necessary and sign any documentation required to facilitate the transfer of her shares in KEPO to Mr. Postnikoff, the costs of which are to be borne equally.

Occupational Rent

- [159] Mr. Postnikoff claims occupational rent in relation to the apportionment of family property and debt. As a result of the protection order, Mr. Postnikoff had to move out of the Former Family Home in late May 2023 and find alternative accommodation.
- [160] Between June 1, 2023 and September 30, 2023, Mr. Postnikoff rented a room from a friend in Castlegar at a cost of \$1,200 per month. Between October 1, 2023 and December 31, 2023, Mr. Postnikoff rented a one bedroom apartment in Trail at a cost of \$1,200 per month. Between January 1, 2024 and April 30, 2024, Mr. Postnikoff returned to Castlegar, renting accommodation with a shared kitchen at a cost of \$1,200 per month.
- [161] Starting May 1, 2024, Mr. Postnikoff moved into the travel trailer that he had been storing at Jim Postnikoff's property. He says that he is obliged to pay Jim Postnikoff \$500 per month to live in the travel trailer. According to Jim, the trailer is in fact located on his daughter's property, and that his daughter has extended water and power to the trailer that is located on the driveway. It would follow that if anyone is owed rental for the trailer, it is Jim Postnikoff's daughter.
- [162] For the reasons I gave earlier in considering the KEPO equipment storage costs claimed at Jim Postnikoff's property, I do not find the \$500 figure reliable and do not find that Mr. Postnikoff has established that he will eventually be required to pay Jim Postnikoff or his daughter anything for staying in the travel trailer located on his or his daughter's property.
- [163] The principles applicable to claims for occupational rent were summarized as follows in *Petrie v. Lindsay*, 2019 BCSC 371:
- [136] Occupational rent is not a typically asserted as stand-alone claim, but is often considered in the reapportionment analysis. Even in that context, it is an exceptional remedy that should only be used cautiously and only to achieve a just and equitable result: L.W. at paras. 166-168; *Stasiewski v. Stasiewski*, 2007 BCCA 205 at para. 30. Additionally, *Shen v. Tong*, 2013 BCCA 519, contains a non-exhaustive list of factors to consider in assessing a claim for occupational rent (at para. 94):
- a) whether there has been ouster (although several authorities have indicated that this is not a requirement);
 - b) whether children are residing with the occupying spouse;
 - c) whether the occupying spouse has made a claim for contribution from the non-occupying spouse for the expenses related to the premises;
 - d) whether child and/or spousal support was being paid by the non-occupying spouse;
 - e) whether the occupying spouse increased the selling value of the property;
 - f) the duration of the occupancy; and

g) any other competing claims.

[164] Understandably, given the date on which it was filed, Mr. Postnikoff did not claim occupational rent in his counterclaim. Mr. Postnikoff did not amend his counterclaim to claim occupational rent after he was required to move from the Former Family Home in May 2023 as a result of the protection order. It was only in his trial brief, filed May 15, 2024, that Mr. Postnikoff put Ms. Postnikoff on notice that he was seeking occupational rent.

[165] Mr. Postnikoff has made contributions to expenses associated with the Former Family Home since he left it in May 2023. I have taken those contributions into account in determining the quantum of the retroactive spousal support Ms. Postnikoff is entitled to. Ms. Postnikoff has maintained the Former Family Home single-handedly since Mr. Postnikoff moved out. While there is no suggestion that in doing so she has increased its value, she has certainly maintained its value by her contributions.

[166] Ms. Postnikoff has wanted to sell the Former Family Home for some time. Mr. Postnikoff has opposed its sale, wanting eventually to buy Ms. Postnikoff out and retain the property. This is understandable, given his family connection to the property and desire to operate KEPO from that location. However, it weighs against his claim to occupational rent.

[167] Considering all of the circumstances, I do not find it just or equitable to make an order for occupational rent.

Conclusion

[168] All amounts owing by either party to the other party, with the exception of prospective spousal support, are to be dealt with by way of an equalization payment following the sale of the Former Family Home.

[169] Should any clarification be required of any of the orders made, should any further direction be necessary to give effect to the intent of these orders, should any mathematical errors be identified, or should it be necessary to speak to costs, counsel are at liberty to request to appear before me to address those issues.

"L.M. Lyster J."

LYSTER J.

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