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Docket: FD 22-02-09700
(Brandon Centre)
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COURT OF KING'S BENCH OF MANITOBA
(FAMILY DIVISION)

B E T W E E N:

DONNA LEE FLETCHER)
petitioner,) Jodi L. Wyman
- and -) for the petitioner
)
BARRY DEAN FLETCHER)
respondent.) Suzette Golden-
) Greenwood
) for the respondent
)
)
) Judgment delivered:
) May 26, 2025

ABEL J.

INTRODUCTION AND BACKGROUND

[1] The parties began living together in 1999 and married in 2002. They separated on April 1, 2022. The parties have two children together, both of whom are now adults. The wife has a child from a previous relationship who is also an adult.

[2] During the course of their marriage, the parties operated Dean Fletcher Construction Inc. (DFC). DFC is a construction

company, operating in south-west Manitoba. Both of the parties are equal shareholders of DFC.

[3] The wife filed a Petition for Divorce on December 13, 2022, seeking *inter alia*, spousal support, a division of family property and corporate oppression remedies. The husband filed an Answer on February 14, 2023, seeking *inter alia*, corporate oppression remedies.

[4] Each of the parties filed a Notice of Application pursuant to ***The Corporations Act***, C.C.S.M. c. C225 (the ***Corporations Act***), alleging that the other has operated DFC in an oppressive manner. As a result of the alleged behaviour of the other, each has sought relief in relation to their respective ownership in DFC.

[5] The parties by consent submitted a Report on Reference to the Associate Judge (the Report), addressing their respective assets and debts, pursuant to ***The Family Property Act***, C.C.S.M. c. F25 (the ***FPA***). Included in the assets of the husband is the valuation of DFC. At issue remains the method of payment for the equalization payment owing by the husband to the wife, including any interest owing from date of separation.

[6] Collateral to the Report, is how the husband will purchase the shares of the wife of DFC, the wife agreeing to sell her shares and the husband agreeing to purchase the shares.

[7] The wife seeks spousal support from the husband. The husband has acknowledged that the wife is entitled to spousal support. The parties have not been able to agree on the quantum of spousal support, nor the commencement date.

[8] Further complicating both the oppression remedies sought by the parties as well as spousal support, is a determination of the incomes of the parties, particularly the income of the husband. As will be detailed further in these reasons, the husband's use of corporate funds post separation, and his accounting of those funds, as it relates to the income of both DFC and himself, will have to be determined by this court.

[9] Lastly, the wife sought a divorce as part of the relief sought in her Petition for Divorce. The wife asks the Court to delay the pronouncement of any divorce, to allow for more flexibility in the transfer of her shares in DFC to the husband that would otherwise be afforded to the parties should they be divorced.

ISSUES FOR DETERMINATION

[10] Based on the issues, as put before the Court by the parties, the Court will have to determine the following:

- a) Did the husband act in an oppressive manner and if so, what remedy ought to be granted?

- b) Did the wife act in an oppressive manner and if so, what remedy ought to be granted?
- c) How will the equalization payment pursuant to the **FPA** be made?
- d) How will the consideration be paid by the husband to the wife for the transfer of her shares in DFC?
- e) Is the wife entitled to interest and if so, from what date and in what amount?
- f) What is the income of the husband for the purpose of determining the quantum of spousal support?
- g) What is the income of the wife for the purpose of determining the quantum of spousal support?
- h) What is the quantum of spousal support to be paid and what is the commencement date for same?
- i) Should the interim no contact order continue as part of a final order?
- j) Should the expense of a valuation report of DFC be shared equally by the parties? and
- k) Should the Court delay pronouncing a divorce in this matter?

FACTUAL DETERMINATIONS

[11] For the purpose of these reasons, I will not be providing a full recitation of the facts. Rather, I will refer to the facts, as I have

determined them, specifically as it relates to each of the above identified issues in my analysis of those respective issues.

[12] However, I do have a few preliminary comments in relation to the evidence presented by the parties.

[13] Counsel agreed that previously filed affidavits of the parties would be tendered as Exhibits in the trial, to be considered as part of the direct evidence of each of the parties, the parties providing further *viva voce* evidence and also being cross-examined at trial on their respective affidavits as well as their further *viva voce* evidence.

[14] Specifically, the wife affirmed affidavits dated December 7, 2023 and August 26, 2024, the husband affirmed affidavits dated January 16, 2024 and October 9, 2024 (collectively referred to as the Affidavits). I will refer to the evidence in the Affidavits in these reasons by those dates.

[15] When the Affidavits were originally drafted, they were not for the purpose of the trial. The contents of the affidavits do not always comply with **Rules** 4.07(2), 70.30(1) and (2) of the **Court of King's Bench Rules**, M.R. 553/88 (the **Rules**) in that the Affidavits contain hearsay and evidence based on information and belief. I advised counsel at the commencement of the trial that I would not be relying on or referring to evidence in the Affidavits that did not comply with the respective **Rules**.

[16] Books of documents from each party were also tendered as exhibits (the Books of Documents). I clarified with counsel, and counsel agreed, that the documents contained within the Books of Documents were not being submitted solely for the fact that the documents contained therein were sent or exist, but rather, for the truth of their contents. It is with that understanding and agreement that I will be referring to and relying on the documents and evidence contained within the Books of Documents.

[17] Lastly, the only evidence presented to the Court was that of the affidavits, the parties' *viva voce* evidence, and that contained within the Books of Documents. Each of the parties attempted to provide an explanation as to their understanding of the financial statements of DFC as prepared by their accountant, their understanding of the cash flow of DFC, and their understanding of income that ought to be or ought not to be imputed to the husband from his handling of payments made to DFC, all without the benefit of any *viva voce* evidence from the accountant of DFC. Evidence from the accountant was provided through the Books of Documents. I will address what use I will make of each of the parties' evidence in relation to their understanding of financial matters in the course of these reasons.

ANALYSIS AND DECISION

Did each of the husband and wife act in an oppressive manner and if so, what remedy ought to be granted?

[18] The right to seek an oppression remedy is provided for in section 234 of the **Corporations Act**. Section 234(2) of the **Corporations Act** permits the Court to make an order rectifying matters complained of, where any act or omission of a corporation, or the business or affairs of the corporation have been conducted in a manner, that is oppressive or unfairly prejudicial or that unfairly disregards the interests of a security holder.

[19] The parties agree that the leading decision regarding the corporate oppression remedy is **BCE Inc. v. 1976 Debentureholders**, 2008 SCC 69 (**BCE**). The Supreme Court of Canada in **BCE** established a two-prong test which must be satisfied in order for an applicant to successfully advance an oppression claim. The complainant must establish both:

- a) A breach of a reasonable expectation held by the complainant;
and
- b) That such breach was caused by conduct that amounts to "oppression", "unfair prejudice" or "unfairly disregards" a relevant interest of the complainant (see **BCE** at paragraphs 56-68).

[20] The first step in the analysis is to identify the expectations that an applicant claims have been violated by the conduct of the respondent and establish that the expectations were reasonably held.

[21] The Supreme Court of Canada in **BCE** set out a list of factors which are useful in determining whether a reasonable expectation exists. The factors include: general commercial practice; the nature of the corporation; the relationship between the parties; past practice; steps the applicant could have taken to protect themselves; representations and agreements; and the fair resolution of conflicting interests between corporate stakeholders (see **BCE** at paragraph 72).

[22] The most relevant factors in this case are the size, nature and structure of DFC, the relationship between the parties and the past practice of DFC.

[23] **BCE** makes it clear that the determination as to whether a particular expectation is reasonable, is based on an objective and contextual analysis. The question of whether the expectation is reasonable is determined having regard to the facts of the specific case, the relationships at issue and the entire context, including the fact that there may be conflicting claims and expectations. The actual and subjective expectation of any particular complainant is not sufficient or conclusive in any given case (see **BCE** at paragraph 62).

The facts of each case must be examined in the context of whether it would be just and equitable to grant an oppression remedy.

[24] It is also important to note that in this case there is a distinction between what can be described at best, as immature behaviour between the parties as their marriage deteriorated and they separated, and behaviour which would ground an action for oppression. I will not detail the behaviour which I view as simply inappropriate behaviour between separated spouses.

[25] It is also important to not conflate the parties' acting poorly in relation to their personal assets, as opposed to their behaviour in relation to each other as shareholders of DFC. How the parties acted in relation to their jointly owned cabin, or jointly owned residence, again does not equate to potentially oppressive conduct as it relates to DFC.

[26] Further, I am in no way minimizing behaviour which resulted in criminal charges, or behaviour that resulted in a no-contact order between the parties, by consent, pursuant to ***The Domestic Violence and Stalking Act***, C.C.S.M. c. D93. My focus is on the conduct of each of the parties that may support a finding of oppression, as sought by each party. I will refer to behaviour which is viewed as oppressive, for the purpose of determining what, if any, remedy is available to either spouse.

[27] DFC was a corporation, where the shareholders are husband and wife. The parties' reasonable expectations must be viewed and measured against the backdrop of this marital relationship as well as the practices of DFC during the marriage and prior to separation. DFC was started when the parties were together. Both worked and were involved in DFC and are both equal shareholders of DFC.

[28] Based on a review of the evidence, each of the parties had a reasonable expectation that they each would act in the best interests of DFC, and each other as equal shareholders in DFC. Further, each of the parties had a reasonable expectation that each would use the income generated by DFC and the assets of DFC for the purpose of advancing the interests of DFC, not for their own personal benefit.

[29] In considering the conduct of the parties, there is much evidence provided, that is opposed or denied by the other. In the context of this trial, it is difficult to sift through competing versions to determine whose version of events ought to be accepted. However, there is conduct on the part of each of the spouses which amounts to oppressive. I do not intend to detail each's parties' behaviour which is oppressive. For the purpose of these reasons, a few examples of each will be sufficient to find oppressive conduct.

[30] With respect to both:

- a) The manner in which each treated the cash flow and bank account of DFC, in what can only be described as retaliatory and escalating behaviour, demonstrated each parties' breach of the reasonable expectations each had;
- b) Historically, and immediately after separation, payments made by third parties from work done by DFC was deposited to the bank account of DFC;
- c) The wife's evidence is that in response to the husband cutting off her access to the business account, she withdrew \$19,000 from the parties' personal joint account;
- d) The husband's evidence is that in response to the wife withdrawing funds from the personal account, he maxed out the line of credit of DFC, such that the wife could no longer withdraw funds from DFC's business account. The husband's evidence is that he could not trust the wife to not unilaterally withdraw funds from the account of DFC, which would jeopardize the husband's ability to ensure expenses of DFC were paid;
- e) The husband thereafter would deposit cheques payable to DFC into the business account, but would immediately transfer the funds to his personal account. This resulted in the business account constantly being maxed out, thereby incurring additional interest charges;

- f) The wife agreed in October of 2022 to step away from the business, provided a professional bookkeeper was hired regarding DFC and that the wife would be paid \$3,000 per month, to which the husband agreed;
- g) The wife was paid \$3,000 per month by DFC from December 2022 to March 2023;
- h) The husband's evidence is that DFC stopped paying the wife \$3,000 in April 2023 as the wife was retaining the proceeds, largely cash, from the car wash located in a building owned by DFC. The husband's evidence is that DFC could not afford to keep paying the wife if DFC did not have access to all of the cash flow it required to remain operational, including its obligation to pay the wife; and
- i) The wife does not dispute retaining the car wash proceeds, but avers that she was also covering the expenses of the car wash from those funds.

[31] Each party attempts to justify their behaviour, or in an attempt to mitigate the damage caused, explain that they have provided an accounting either personally, or from the accountant of DFC, of the funds each has retained.

[32] I cannot determine if either party is solely to blame for the manner in which each has decided to utilize the funds of DFC. The

reality is that each, to a certain extent, is responsible for the escalating behaviour. Relevant for these purposes is that while each may feel justified in how they acted in relation to the other as a spouse, their behaviour is not justified as equal shareholders in DFC.

[33] That is, each party lost sight of the fact that their behaviour did not reflect their mutual reasonable expectation that they would each act in the best interests of DFC, and each other as equal shareholders in DFC and that each would use the income generated by DFC for the purpose of advancing the interests of DFC, not for their own personal benefit.

[34] There are also examples of each spouse, as a shareholder, failing to act in a manner consistent with the reasonable expectations each had as shareholder.

[35] Specifically, with respect to the husband:

- a) The manner in which the husband dealt with two properties, both owned by DFC, and commonly referred to as Ash Street and Millenium Street, demonstrate his failing to meet the reasonable expectations of each as shareholders;
- b) On October 17, 2022, the mortgage on the Ash Street property was paid off by DFC, the husband averring that he felt this was a sound business decision as DFC needed to dramatically reduce monthly expenses. Regardless of that subjective belief of the

husband, he did not consult with the wife regarding using \$55,000 of corporate funds for that purpose;

- c) The husband rented Millenium Street to a third party, starting December 1, 2023, in order to generate a further income stream for DFC. Again, the husband felt that this was a sound business decision, but did not consult the wife regarding the use of this property;
- d) The manner in which the husband was utilizing corporate funds resulted in an increase of a receivable owing from the shareholders to DFC. The financial statement of DFC for the year ending October 31, 2024, showed this asset of DFC, a debt owing by the shareholders, had increased from \$56,209 in 2023 to \$152,011 in 2024. The husband in his direct testimony confirmed that some of those funds were for his personal expenses. The husband did confirm that his plan was to pay those sums back, otherwise it would be treated as his income. To date, the husband had not paid those sums back;
- e) After separation, the husband purchased a residence, commonly referred to as the Walter Thomas property. The Walter Thomas property had a detached garage, which was being rented to DFC, resulting in both income to the husband and an expense to DFC. The husband confirmed that no actual rent is paid, but that the

notional amount is treated as a credit for the husband. The decision of DFC renting property from the husband, and how the rental income would be treated, was done without the input of the wife; and

- f) DFC bought a camper, to be used as part of DFC, its purchase being financed in the amount of \$30,073. The husband confirmed that the wife was not consulted in making this decision. This decision resulted in an additional debt being incurred by DFC, without the knowledge of the wife, which decision is also measured against the backdrop of the husband deciding to pay off the Ash Street mortgage to reduce expenses.

[36] The wife's conduct is also consistent with her disregarding the best interests of DFC in favour of her own personal preference, not as a shareholder, but rather as a separated spouse. For example:

- a) In October, 2022, the wife made a Facebook post, that DFC could not fully pay its workers and was "NSF". The wife does not dispute making the post, but rather, argues that the husband cannot prove or quantify what, if any, business was lost as a result of the Facebook post. While the wife may have been upset with the husband for his conduct, whether as her spouse or business partner, such a statement does not benefit DFC. The wife attempts to minimize her behaviour by arguing that the

husband has not been able to demonstrate any lost business or negative response as a result of her Facebook post. Such a result is not necessary for me to conclude that the wife's conduct was not consistent with the parties' reasonable expectations; and

b) Prior to separation, a laptop was used by DFC. It was used by DFC for the purpose of preparing estimates or quotes, and for invoicing. Both the husband and wife would use the laptop in their respective roles in DFC. The wife also used the laptop as part of her real estate business that began during the parties' marriage. Immediately after separation, there was a struggle for control of this laptop. However, it was agreed in May, 2022 that the laptop would stay in the office of the Ash Street property, neither party removing it, such that each could have access to the laptop. The husband avers that he left the computer in the office during the May long weekend, as agreed, and that the wife removed the computer and has never returned it.

[37] Based on this conduct of the parties, I am satisfied that each of the husband and wife, by their conduct, failed to meet the reasonably held expectations of each other.

[38] The second stage of the analysis is to determine whether an applicant has shown that the failure to meet the reasonable expectations involved unfair conduct and prejudicial consequences.

Not every failure to meet a reasonable expectation will give rise to the equitable considerations that ground actions for oppression. The Court must be satisfied that the conduct falls within the concepts of "oppression", "unfair prejudice", or "unfair disregard" of the applicant's interest within the meaning of the *Corporations Act* (see *BCE* at paragraph 89).

[39] "Oppressive" has been defined as "burdensome, harsh and wrongful". As to "unfairly prejudicial", "unfair" has been taken to mean inequitable or unjust and "prejudicial" as detrimental or damaging to the applicant's right or interest. "Unfairly disregard" has been treated as meaning to unjustly or without cause pay no attention to or treat as of no importance the interests of complainants (see *Danylchuk et al. v. Wolinsky et al.*, 2007 MBCA 132 at paragraph 22).

[40] Conduct that has been held to be oppressive usually falls within one or more of the following categories:

- a) Lack of valid corporate purpose for the transaction;
- b) Non-arm's length transactions;
- c) Discrimination between shareholders with the effect of benefiting the majority shareholder to the exclusion or detriment of the minority shareholder;

- d) Lack of adequate and appropriate disclosure of material information to minority shareholders; and
- e) A plan or design to eliminate minority shareholders.

(See ***Cholakis v. Cholakis***, 2006 MBQB 91 at paragraph 19)

[41] In this case, the concepts of oppression, unfair prejudice and unfairly disregarding each of the spouse's interests overlap and intermingle.

[42] At the very least, the manner in which the husband dealt with the assets of DFC, and payments made to DFC, can be seen as unfair disregard, in that he paid no attention to the wife in making these decisions, or treated her interest in those decisions as being of no importance. Worst case, such conduct was harsh and wrongful.

[43] The husband engaged in non-arm's length transactions, by having DFC rent space from the Walter Thomas property. The husband made unilateral decisions, in paying off debt to decrease expenses, and then made purchases which increased expenses, all without consulting the wife.

[44] Similarly, the manner in which the wife publicly commented about DFC, and treated the assets of DFC, can be seen as unfair disregard, in that she treated the husband's interest as being of no importance. Again, worst case, such conduct was harsh and wrongful.

[45] As a result, I am satisfied that each party has met their onus, to demonstrate on a balance of probabilities, that the other engaged in conduct that was oppressive, was unfairly prejudicial, or unfairly disregarded the interests of the other.

[46] Having determined that each of the spouses engaged in such behaviour, the issue now becomes what remedy is appropriate.

[47] This is not a situation where each of the spouses wishes to maintain control of DFC. Rather, the husband wishes to purchase the shares of the wife, and the wife agrees to sell her shares in DFC to the husband. Pursuant to the Report, the parties have agreed that the value of DFC is \$395,500, that value being noted as an asset of the husband.

[48] The argument of the parties and the relief sought pursuant to the *Corporations Act*, relates to what consideration will be paid to the wife for her shares in DFC. Simply put, the husband proposes to pay cash, personally to the wife for her shares, and the wife seeks a transfer of a corporate asset, Millenium Street, as consideration for her shares.

[49] I have a few preliminary comments regarding what remedy is appropriate, prior to engaging in my analysis of that remedy.

[50] Firstly, the Report, in valuing the assets and liabilities of the parties, treated the value of DFC as an asset of the husband. As the

parties are equal shareholders of DFC, it is arguable that this asset is already equally shared by the parties, and not subject to valuation pursuant to the **FPA**. Given the manner in which the parties prepared for trial, presented evidence and made arguments, it is apparent that the parties do not want to simply leave DFC as an asset already shared, but rather, require a determination by this Court as to how payment will be made by the husband to the wife for her shares in DFC.

[51] The parties agreed that the value of DFC is \$395,500, one half of which, being the wife's share, is \$197,750.

[52] Secondly, in addition to the husband wanting to purchase the wife's shares in DFC, pursuant to the valuations contained in the Report, the husband owes to the wife a **FPA** equalization of \$210,730.92, as of April 1, 2022, the date of separation.

[53] Thirdly, the wife seeks a transfer of a corporate asset in exchange for her shares. In other words, should I agree to the relief sought by the wife, it is not the husband paying to the wife with personal funds to acquire the shares of the wife, but rather, an asset already owned by DFC being transferred to the wife. This raises an issue as to whether the shares of the wife can or should be transferred to the husband, or returned to treasury, given the source of the wife's proposed consideration.

[54] Lastly, the husband argues that s. 234(3) of the **Corporations Act** does not grant the Court the ability to transfer an asset of the corporation as a remedy in an oppression remedy application. I do not agree.

[55] The types of orders the Court may make, as set out in s. 234(3) of the **Corporations Act** are meant to be exemplary of the relief available, not limiting of such relief. Specifically, s. 234(3) provides that the Court may make any interim or final order it thinks fit including, without *limiting the generality* of the orders then specifically set out in that section (*emphasis added*).

[56] Even if I were to accede to the argument of the husband, s. 234(3)(j) of the **Corporations Act** permits the Court to make an order compensating an aggrieved person, which section does not limit how that compensation may take place.

[57] In considering the remedies available to the Court, I am guided by the comments in **BCE**, where the Supreme Court reminds us that oppression is an equitable remedy, which seeks to ensure fairness, by doing what is “just and equitable”. Oppression gives a Court broad, equitable jurisdiction to enforce not just what is legal but what is fair (see **BCE** at paragraph 58).

[58] With respect to the husband’s plan to simply pay the wife cash, there are significant difficulties with that plan. The husband

confirmed during cross-examination that his plan was to liquidate personal assets in order to generate funds to then pay the wife.

[59] Specifically, the husband confirmed that he planned to sell the cabin and the farmhouse, both of which were accounted for as assets of the husband in the Report.

[60] The farmhouse is situated on land not owned by the parties. It will therefore be necessary for the farmhouse and a number of acres to be subdivided from the quarter section upon which the farmhouse is situated.

[61] There was no evidence that the husband has taken any steps towards liquidating either asset. There was no evidence that the husband had spoken to a real estate agent about listing the cabin, nor taken any steps to begin the subdivision process. The husband confirmed in cross-examination that it would probably take until 2026 for the wife to receive all of her money.

[62] The wife argues that the only way in which to ensure she receives the consideration for her shares, in a timely way, is for the Court to order a transfer of an asset to her. The wife further argues that this would also provide her an income earning asset, reducing her need for spousal support. Finally, a transfer of an income earning asset of DFC to the wife, would also be reflective of the wife having

been an equal shareholder of, and important contributor to the success of DFC.

[63] An appraisal for Millenium Street was prepared, stating an appraised value of \$230,000 as of April 1, 2022. The husband acknowledged this value during cross-examination.

[64] The value of the wife's shares is \$197,750. The appraised value of Millenium Street is \$230,000, a difference of \$32,250. The wife argues that with interest owing on her shares, the transfer of Millenium Street is a just and equitable remedy.

[65] The husband confirmed during his testimony, and the status of title filed in relation to Millenium Street, shows a mortgage registered against the title to Millenium Street on November 1, 2021, in favour of the Sunrise Credit Union Limited. I have no evidence as to the current balance of that mortgage.

[66] I am not inclined to have the wife wait for another year, to receive her funds, when there is no evidence of any steps having been taken by the husband to secure payment to the wife.

[67] However, it is too simplistic to simply order that DFC, as part of the relief granted pursuant to the wife's oppression remedy application, transfer the Millenium Street property to the wife. The husband will be provided an opportunity to pay to the wife, without

transferring a corporate asset, the amount owing with respect to the value of the wife's shares in DFC.

[68] Prior to making my determination as to how the substantive payments with respect to the **FPA** and the wife's shares in DFC are to be made, I will also address the wife's claim for interest.

[69] With respect to the wife's claim for interest pursuant to the **FPA**, s. 20(3) permits the Court to make an order for the payment of interest, on all or a portion of the of the amount owing for the equalization payment, at a rate fixed by the Court, if the Court is satisfied that it is equitable to do so under the circumstances.

[70] The following principles have been considered to determine whether interest ought to be paid:

- a) Interest should be awarded to place the payee of a judgment in the same position that party would have been had the required payment been made at the time of separation;
- b) Generally, prejudgment interest should be awarded, as such a practice will encourage timely settlement;
- c) A party need not plead this relief for the relief to be granted;
- d) The onus is on the party claiming prejudgment interest to demonstrate on a balance of probabilities that it is equitable to award interest on the equalization payment; and

e) Delay in bringing a matter to Court is a factor to be considered in determining whether it is equitable to grant the relief.

(See *Ali v. Ali*, 2024 MBKB 172 at paragraph 77)

[71] With respect to the wife's claim for interest on her oppression remedy claim, s. 234(3)(j) of the *Corporations Act* permits the Court to make any order it thinks fit, including, an order to compensate an aggrieved person.

[72] The entitlement to prejudgment interest is provided in s. 80(1) of *The Court of King's Bench Act*, C.C.S.M. c. C280 (the *King's Bench Act*) which provides that subject to ss. 81 and 82, an order shall include an award of interest at the prejudgment rate on the principle sum calculated.

[73] Section 81(1) of the *King's Bench Act* permits the Court to disallow interest or allow interest at a rate higher or lower than the prescribed interest rate. Section 81(2) of the *King's Bench Act* lists factors that the Court shall consider in making such a decision, namely changes in the quarterly interest rate, the circumstances of the case, and the conduct of the parties.

[74] The philosophic rationale for prejudgment interest is to compensate a party for the time value of money that has been withheld from it. It is not intended to punish the party who has been ordered to pay damages or other compensation (see

63833 Manitoba Corporation v. Cosman's Furniture (1972) Ltd et al, 2018 MBCA 72 [**63833 Manitoba**] at paragraph 26).

[75] The effect of the **King's Bench Act** provisions is that a successful party has a *prima facie* right to prejudgment interest. The onus is on the party seeking a higher or lower rate to justify a deviation from the presumptive rate (see **63833 Manitoba** at paragraph 29).

[76] The wife is entitled to interest on both the payment to be made pursuant to the **FPA** as well as any consideration for her shares.

[77] With respect to the interest owing on the **FPA**, the wife was entitled to that payment at the date of separation, and has been denied the benefit and use of those funds since. I do not find that either party has significantly delayed the matter proceeding to trial.

[78] While the wife has made use of both the farmhouse and cabin, for example, after separation, the husband will have the benefit of the current value of those real properties, as opposed to a valuation for equalization purposes from a date of separation from three years ago.

[79] I am satisfied that the wife has met her onus to demonstrate on a balance of probabilities that it is equitable to award interest on the **FPA** equalization payment.

[80] With respect to the interest owing on the wife's shares of DFC, the wife has *prima facie* right to prejudgment interest, for the value of

her shares. The wife has not been involved with DFC since the fall of 2022, and has not received any compensation as a shareholder since that time.

[81] Given the circumstances of this matter, I am satisfied that the wife is entitled to the presumptive rate for prejudgment interest, the husband not establishing that a different rate ought to be awarded.

[82] The King's Bench pre-judgment and post-judgment quarterly interest rates since April 1, 2022 average 3.875%.

[83] Using that average interest rate, interest on the **FPA** equalization is \$8,165.82 per year or \$680.49 per month. From April 1, 2022 to May 31, 2025 is 38 months.

[84] The interest owing on the **FPA** equalization to May 31, 2025 is \$25,858.44. The equalization payment amount will continue to accrue interest at the rate of \$680.49 per month, from June 1, 2025, until paid.

[85] The wife was involved in DFC until the end of September, 2022. The King's Bench pre-judgment and post-judgment quarterly interest rates since October 1, 2022 average 4.45%.

[86] Using that average interest rate, the interest owing on the payment for the wife's shares is \$8,799.88 per year or \$733.32 per month. From October 1, 2022 to May 31, 2025 is 32 months.

[87] The interest owing on the payment for the wife's shares to May 31, 2025 is \$23,466.33. The payment of the wife's shares will continue to accrue interest at the rate of \$733.32 per month, from June 1, 2025, until paid.

[88] Accordingly, I make the following order:

- a) The husband has until August 31, 2025 to pay to the wife the sum of \$408,480.92, representing the wife's **FPA** equalization payment of \$210,730.92 and the value of the wife's shares of \$197,750;
- b) The husband has until August 31, 2025 to pay to the wife the sum of \$25,858.44 representing interest on the **FPA** equalization plus \$680.49 per month interest from June 1, 2025 until paid; and
- c) The husband has until August 31, 2025 to pay to the wife the sum of \$23,466.33 representing interest on the payment for the wife's shares in DFC, plus \$733.32 per month interest from June 1, 2025 until paid.

[89] Those payments are to be made to the wife, in cash, or transfer of asset, should the wife agree to accept an asset in lieu of cash. The payments are also to be made on a tax-free basis to the wife.

[90] In the event the husband pays to the wife the sum ordered for her shares in DFC, the wife shall ensure that she signs any documents necessary to transfer her shares in DFC to the husband, or otherwise as agreed, as well as resign as director and officer of DFC.

[91] I am directing the wife to cooperate with the husband, as necessary, to effect a transfer of land in the cabin, which is jointly owned, so as to not frustrate the husband's efforts to liquidate personal assets, pursuant to his payment proposal.

[92] In the event the husband fails to pay to the wife the sum of \$197,750 by August 31, 2025, I am exercising my discretion provided in s. 234(3)(n) of the ***Corporations Act***, and ordering a trial of an issue specifically as it relates to the transfer of Millenium Street to the wife in satisfaction of the value of her shares in DFC.

[93] The parties need not file further evidence that repeats the evidence before the Court. I am specifically requesting evidence from the parties, and more specifically, from their accountant, or any other accounting evidence they wish to provide that is relevant and admissible, in relation to:

- a) What is the current balance of the mortgage on Millenium Street?
- b) What are the tax consequences to DFC regarding a transfer of Millenium Street to the wife?

- c) Are the wife's shares to be redeemed by DFC, returned to treasury, or transferred to the husband? and
- d) Can the wife be transferred a corporate asset, as a shareholder of DFC, on a tax-free basis?

[94] The parties need not proceed through the Family Case-Flow model. I am directing counsel, upon receipt of this decision, to contact the Brandon Trial Coordinator to specifically schedule a case conference with myself, after August 31, 2025. Should the husband make the payment within the scheduled period, the case conference can be cancelled. Should the payment not be made by the husband, a further trial date will be scheduled before myself at case conference.

What is the income of the husband for the purpose of determining the quantum of spousal support?

[95] The husband's sole source of income is DFC, whether as an employee, through shareholder draws, or the payment of personal expenses of the husband by DFC. It is through that lens that my analysis of what the income of the husband ought to be for support purposes will be made.

[96] The wife argued that the husband's income ought to be set at \$215,345 and the husband argued that his income ought to be set at \$132,000. For the reasons that follow, I am setting the husband's income at \$154,218.

[97] With respect to the wife's evidence, she prepared a two-page spreadsheet for the years 2020 to 2024 (the spreadsheet). The employment income of the husband was used as starting point in the spreadsheet, the wife then making adjustments for automobile expenses, meal and entertainment expenses, office expenses, hydro, water and insurance expenses, as well as adjustments for draws by the husband from DFC.

[98] I am not relying on the spreadsheet for the purpose of determining the income of the husband. The spreadsheet is based on the wife's opinion as to whether an expense or draw ought to be included as income of the husband, and in what amount. The wife would add either 1/8, 1/4, 1/3, 1/2, or 3/4 of an expense to the income of the husband. The percentage added was based on the wife's perceived personal usage by the husband.

[99] The wife then asks the Court to impute to the husband pre-tax corporate income of DFC, including adjustments for amortization expenses.

[100] The wife asks the Court, essentially based on her opinion, to engage in an analysis of the husband's income that ought properly have been considered and analyzed by an expert providing a report of the income available to the husband.

[101] The evidence from trial does not support a finding that the husband failed or refused to produce financial information. The evidence of the husband is that the wife had access to his and DFC's banking information. The wife had access to Lisa Tutthill, the corporate accountant (Tutthill). There is no evidence to suggest that the wife was limited or precluded from obtaining a report as to the husband's income, other than by her own choice. While I acknowledge that this choice may have been influenced by a number of factors, including the costs associated with obtaining such a report, that decision cannot justify the Court then engaging in an analysis of the husband's income without a proper evidentiary foundation.

[102] However, many of the issues raised by the wife should still be considered in determining the income of the husband for support purposes.

[103] Accordingly, I start with the husband's 2024 T4 showing employment income from DFC of \$120,000.

[104] I am then considering correspondence from Tutthill, dated February 23, 2025 (the Tutthill letter) which was included in the husband's Book of Documents. Tutthill writes that:

- a) historically, DFC paid the husband and wife a combined gross wage of approximately \$110,000 to \$120,000

- b) annual corporate net earnings (income less expenses) directly correlate to the maximum wage/dividend amount the husband can extract from DFC annually; and
- c) based on the average earnings of 2023 and 2024, they would expect the husband's wage to continue to be in the range of \$120,000 going forward.

[105] There are two key aspects that make Tutthill's evidence compelling as a starting point for the Court's determination of the husband's income. Firstly, counsel agreed at the outset of the trial that documents contained in the Books of Documents could be utilized for the truth of their contents. This would include the Tutthill letter. Secondly, Tutthill was not cross-examined at the trial based on that correspondence, or any other evidence relating to the income of the husband. In essence, her evidence, by way of the Tutthill letter, was unchallenged by the wife.

[106] However, a determination of the husband's income does not end with the evidence of Tutthill.

[107] Section 18(1)(a) of the ***Federal Child Support Guidelines***, SOR/97-175 (the ***Guidelines***) permits the Court to include in the husband's annual income all or part of the pre-tax income of DFC, should the Court be of the opinion that the husband's total income does not fairly reflect all the money available to the husband.

[108] Section 19(1)(e) of the *Guidelines* also permits the Court to impute an amount of income to the husband as it considers appropriate, where the husband's property is not reasonably utilized to generate income.

[109] While I am not prepared to rely on the wife's evidence for the purpose of imputing income to the husband, the husband's evidence, and admissions, provide a further evidentiary foundation for the Court to engage in such an analysis.

[110] The husband included in his Book of Documents the Compilation Engagement Report for DFC as of October 31, 2024, prepared by MNP LLP, which included the balance sheet, statement of earnings and retained earnings (the Engagement Report). The Engagement Report included a historical reporting back to the year 2020.

[111] In the statement of earnings, DFC claimed expenses for fuel, phone and utilities.

[112] It was not disputed by the husband that he derived a personal benefit from a portion of the corporate expenses for fuel, phone and utilities. The issue for determination is what amount or percentage of those expenses, plus others as identified by the wife, ought to be attributed to the husband.

[113] The husband bears the onus to demonstrate that on a balance of probabilities, claimed corporate expenses are reasonable business expenses and not personal expenses.

[114] With respect to the fuel expense, the husband testified that it was his estimation that 20% of that amount was for personal use. It was the wife's evidence that 50% of that amount was for personal use.

[115] The husband testified that DFC had three vehicles, one of which, the Duramax, was the vehicle that he used. He further testified that he estimated fuel for the Duramax to be \$250 per week, and the maintenance and repairs for the Duramax amounting to \$200 per month. The husband in cross-examination was not challenged on those assertions.

[116] The fuel expense claimed was for all three vehicles, the husband only using the Duramax. The husband's evidence was that for the total fuel expense, claimed over three vehicles, one of which he used for personal use, his personal use of the total of the fuel expense was 20%.

[117] While the wife provided in her Book of Documents a ledger of fuel expenses, there was nothing provided in either evidence or argument to demonstrate how that ledger showed what would be a personal versus a corporate expense.

[118] Accordingly, based on the evidence provided to the Court, for the purpose of determining the income of the husband, I accept the husband's evidence of 20%.

[119] The average fuel expense for the years 2020 to 2024 is \$28,281. An amount equal to 20% of that amount, or \$5,656 will be added to the husband's income, representing his personal rather than corporate use for the fuel expense.

[120] Similarly, the average of the insurance and license expense for the years 2020 to 2024 is \$16,771.60. If a similar amount of 20% is used to determine the personal use of the husband for that expense, the amount is \$3,354, which amount will be added to the husband's income, again representing his personal rather than corporate use for this expense.

[121] With respect to the telephone expense, the 2024 amount for that expense was \$5,901. I note pursuant to the Engagement Report, that in the years 2021 the expense was \$5,334 and in 2022 was \$5,493. The husband testified that it was his estimation that \$2,000 of that amount was for personal use. It was the wife's evidence that \$3,131 was for personal use. Again, I have no independent evidence as to what amount is personal use.

[122] For the purpose of determining the income of the husband, I accept the husband's evidence of \$2,000. The total amount of the

expense did not greatly increase or fluctuate from a pre-separation amount. An amount of \$2,000 will therefore be added to the husband's income.

[123] With respect to utilities, I am not adding an amount for that expense to the income of the husband. The husband testified that this amount reflected utilities for Ash Street and Millenium Street, and not for the farm property, the cabin, or his residence. I accept that evidence and will not be adding any amount for utilities to the husband's income.

[124] The wife in her spreadsheet of expenses included an amount for professional fees. In 2024, the wife sought to include the amount of \$2,952 for such fees. In reviewing the Engagement Report, the amounts paid for professional fees for the years 2020, 2021 and 2022 were \$4,210, \$3,143 and \$5,492 respectively, being the years prior to and the year of separation.

[125] For the years 2023 and 2024, post-separation, the expense for professional fees increased to \$15,145 and \$20,873 respectively. While those expenses likely increased as a result of the separation, and the additional accounting work resulting therefrom, some amount ought to be attributed to the husband and included in his income, representing a personal rather than corporate use.

[126] Again, I have no independent evidence regarding this expense. However, given the large increase from the years prior to separation to the years following separation, and given the wife's modest position regarding this expense, I accept the wife's evidence regarding this expense. For the purpose of determining the income of the husband, I accept the wife's evidence of \$2,952 which amount will be added to the husband's income.

[127] The farmhouse is currently being rented to family of the husband, in the amount of \$600 per month. The husband testified that in order to ready the house for rent, appliances were purchased in the amount of \$6,786 and the carpet was replaced, costing \$1,456. The husband testified that the tenants are paying the hydro, and the property taxes are paid by the husband's mother, who owns the land on which the house is situated.

[128] For the purpose of determining the income of the husband, I am prepared to include the amount of \$7,200, being the annual rental from the farmhouse. Should the husband sell the farmhouse, the inclusion of this amount in the income of the husband can be revisited.

[129] The rental expense included in the statement of earnings in the Engagement Report shows an increase in that expense from \$407 in 2020, \$161 in 2021, and \$400 in 2022 to \$10,550 in 2023 and

\$10,910 in 2024. The husband testified that this was meant to reflect a notional rent paid to him as a result of DFC using the detached garage at the Walter Thomas property, which is the residence of the husband purchased after separation.

[130] The husband testified that this figure was acting as a credit against amounts he was required to repay to DFC. Regardless of how the figure is being treated between the husband and DFC, the husband is receiving rent from DFC. The increase in the amount of rent being paid is approximately \$10,000, which will be included in the income of the husband for support purposes.

[131] The wife seeks to include an amount representing the pre-tax corporate income of DFC as income of the husband. The Engagement Report statement of earnings shows retained earnings of DFC of \$350,713 as of October 31, 2024. However, for the year 2024, DFC had a loss of \$24,654.

[132] Historically, the husband and wife did not take extra amounts from DFC. The Tutthill letter confirms that the annual corporate net earnings directly correlate to the maximum wage amount the husband can extract from DFC annually, resulting in the income available to the husband going forward being \$120,000.

[133] Given the historical treatment of earnings by DFC, and given the evidence of Tutthill that the net earnings of DFC correlate to the

income of the husband available from DFC, no additional amount for pre-tax corporate earnings will be attributed to the husband.

[134] Further, the wife seeks to include an amount for amortization of vehicles and buildings of DFC, as additional income available to the husband. I am not prepared to do so, given the lack of evidence as to how much, if any, of the amortization ought to be added back to the pre-tax corporate income of DFC. Even if such an amount were added back to the income of DFC, that would not necessarily result in pre-tax corporate income being attributed to the income of the husband.

[135] For example, in 2024, the earnings of DFC before income taxes were a loss of \$23,685. In that same year, \$23,074 was expensed as amortization. Even if the entire amount of amortization was included in the pre-tax corporate income, DFC would still not have reported a net income.

[136] I note that the amortization rates are set by Canada Revenue Agency. There is no subjective analysis undertaken by the husband as to how much of an amortization amount ought to be included as an expense.

[137] Further, the husband was not cross-examined on the amortization expense. The issue of inclusion of the amortization amount was only raised during closing argument. It is not reasonable to expect the husband to have to testify on a line by line basis for

each expense, in anticipation of an amount being challenged. Accordingly, no amount for amortization will be included in the income of the husband.

[138] The wife also seeks to include an amount, at 50%, of the interest expense claimed by DFC. As included in the Engagement Report, in 2023 the interest and bank charges expense was \$10,850, 50% being \$5,424 and in 2024 the interest and bank charges expense was \$8,464, 50% being \$4,232.

[139] In the years prior to separation, as noted in the Engagement Report, the interest and bank charges expense for 2020 was \$3,666, for 2021 was \$3,156 and for 2022 was \$3,876.

[140] This expense increased post-separation. The evidence of the husband, as previously referenced in these reasons, was that he was keeping the line of credit of DFC maxed out, such that the wife did not have the ability to access those funds. One of the repercussions of that decision is an obvious increase in the interest being charged on that line of credit.

[141] The interest expense in the years 2020 to 2022 averaged \$3,566. The interest expense post separation in the years 2023 and 2024 averaged \$9,657. The average interest and bank charge expense increased by \$6,091 after separation.

[142] As noted at paragraph 30 of these reasons, in determining that the conduct of both spouses amounted to oppressive conduct, I considered the manner in which the spouses treated the cash flow and bank account of DFC, in their escalating behaviour.

[143] I am not able to, nor is it necessary, for the purpose of these reasons, to specifically determine who is more to blame for that conduct, resulting in an increase in the interest and bank charges. Each is to blame, and for the purpose of my analysis, an amount equal to 50% of the increased interest and bank charge expense, being \$3,046 shall be included in the income of the husband, for support purposes.

[144] For the purposes of support, the income of the husband will be set at \$154,218, calculated as follows:

- a) T4 income of \$120,000;
- b) Fuel expense of \$5,656;
- c) Insurance and license expense of \$3,354;
- d) Telephone expense of \$2,000;
- e) Professional fees of \$2,952;
- f) Farmhouse rental of \$7,200;
- g) Walter Thomas rent of \$10,000; and
- h) Interest expense of \$3,046.

What is the income of the wife for the purpose of determining the quantum of spousal support?

[145] A determination of the wife's income is less contentious, given the nature and source of the wife's income.

[146] The wife's income is derived from her employment at a furniture store, where she earns \$37,080 per year. This figure is not disputed by the husband.

[147] The wife also earns an income as a real estate agent. The wife argues that her total income for support purposes, including her real estate income ought to be \$45,000. The husband argues that the total income ought to be \$49,000.

[148] The wife included in her Book of Documents a breakdown of her 2024 income from her real estate commissions. In 2024, her net earnings from RE/MAX were \$20,937.95, from which the wife is entitled to deduct her own expenses. The wife's calculation of expenses was \$19,395.30, resulting in a net income of \$1,542.65. The wife was prepared to include a greater amount for the purposes of setting her income for support purposes.

[149] The husband argues that a greater amount of the claimed expenses ought not be considered for the purposes of setting the wife's income.

[150] The parties are \$4,000 apart, in their argument regarding a determination of the wife's income. I have no third-party report to

assist in a determination of what expenses of the wife are reasonable, but given the disparity in the positions of the parties, no report being provided is understandable.

[151] I am simply going to average the two positions of the parties, for a determination of the wife's income being \$47,000 for the purposes of determining the quantum of spousal support.

What is the quantum of spousal support to be paid and what is the commencement date for same?

[152] The husband has acknowledged that the wife is entitled to spousal support. The issue is in what amount, and when ought spousal support should commence.

[153] The objectives of an order for spousal support are set out at s. 15.2(6) of the ***Divorce Act***, R.S.C., 1985 c. 3 (2nd Supp). The objectives of spousal support relevant to this case, are to:

- a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- b) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- c) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[154] In determining the appropriate quantum of support, a court is required to consider the support factors and objectives. The ***Spousal Support Advisory Guidelines*** (the ***SSAG***) also provide a number of

factors to consider while choosing a location within the range, including the strength of the compensatory claim, the recipient's need, property division and debts and the payor's needs and ability to pay (see *Mason v. Mason*, 83 R.F.L. (7th) 1 (Ont. C.A.)).

[155] Common factors that may favor a support award at the higher end of the range include:

- a) the recipient has a strong compensatory claim;
- b) the recipient has limited income and earning capacity;
- c) the recipient has compelling needs;
- d) the recipient is older;
- e) there is no property to be divided;
- f) the recipient has primary care of young children or children with special needs;
- g) the marriage is long term; and
- h) the marriage is short, but with young children requiring a stay-at-home custodial parent.

[156] Common factors that may support an award in the lower end of the range include:

- a) the recipient has a weak or no compensatory claim;
- b) the payor has a limited income or earning capacity;
- c) the recipient does not have significant need;
- d) the recipient is younger than the payor;

- e) there has been an unequal division of property in favor of the recipient;
- f) the debts of the parties exceed the assets, and the payor is carrying those debts; and
- g) the recipient has remarried or re-partnered.

[157] In this case, the wife has at least a moderate compensatory claim. Her income earning capacity is somewhat limited in and is reflected in the disparity of incomes between her and the husband. The wife does have a need for spousal support. The wife in argument was seeking the mid-range of spousal support. Based on my considerations of the above referenced factors, spousal support in the mid-range would be appropriate.

[158] Using the without child support formula of the **SSAG**, at an income of \$154,218 for the husband and an income of \$47,000 for the wife, the range of spousal support as suggested by the **SSAG** would be \$3,015 low end, \$3,518 mid-range, and \$4,020 high end.

[159] Each of the parties provided an updated financial statement. The wife claims monthly expenses of \$6,079 and the husband claims monthly expenses of \$10,819. The wife's expenses include an amount for income tax, EI and CPP contributions. If the wife's claimed income tax, EI and CPP deductions are backed out, the wife's claimed monthly expenses are approximately \$5,771.

[160] Based on the purported expenses of the parties, the husband has no ability to pay spousal support, and the amount ordered does not cover the needs of the wife.

[161] This is one of the scenarios where the use of the **SSAG** is of benefit. The **SSAG** assist in neutralizing the subjective expenses of the parties, to assist in arriving at a quantum of spousal support which is more objective.

[162] Given my determination as to mid-range support being appropriate, the husband is ordered to pay to the wife spousal support, on a monthly basis, in the amount of \$3,518 per month, payable on the first of each month, commencing June 1, 2025.

[163] As to a retroactive start date, the wife was seeking to have spousal support commence January 1, 2023, there being credits to the husband for payments made after that date.

[164] The wife agreed in October of 2022 to step away from the business. The wife was paid \$3,000 per month by DFC from December 2022 to March 2023. DFC stopped paying the wife \$3,000 in April 2023 as the wife was retaining the proceeds, largely cash, from the car wash.

[165] As the wife's source of income from DFC was terminated by the husband in March 2023, spousal support will commence as of January 1, 2023. Arrears of support will be calculated based on

spousal support payable from January 1, 2023 to May 31, 2025 (a period of 29 months), the monthly periodic amount commencing June 1, 2025.

[166] For a period of 29 months, spousal support being ordered in the amount of \$3,518 per month, arrears of spousal support are set at \$102,022, representing unpaid, periodic monthly spousal support.

[167] The husband will have a series of credits as a result of payments made to the wife, or on her behalf.

[168] The wife did receive \$9,000 from January to March, 2023, which will be a credit against the arrears of spousal support. The husband or DFC paid hydro while the wife was residing in either the farmhouse or cabin in 2023, resulting in a further credit of \$12,000. In 2024, the wife received the sum of \$10,500, which again will act as a credit, as well as a credit for hydro in 2024 for \$12,000. The total of these amounts is \$43,500.

[169] There is some discrepancy as to how much the wife retained from the car wash, and whether she ought to have been compensated for any of the work she did regarding the car wash. The wife acknowledged that if the Court thought it was equitable to do so, a further \$12,000 from the car wash could act as a credit against arrears of spousal support owing by the husband. There will be that further credit for the husband.

[170] Against the arrears of support of \$102,022, the husband has a credit of \$55,500, leaving arrears of spousal support owing of \$46,522. Those arrears will be paid at the rate of \$400 per month, again commencing June 1, 2025.

[171] The payments of spousal support and arrears are to be made through the Maintenance Enforcement Program.

[172] Lastly, on the issue of spousal support, the quantum was calculated based on DFC retaining the Millenium Street property, and the wife not having that income earning asset. In the event the husband does not make the payments as set out at paragraph 88 of these reasons, and the Millenium Street property is ultimately transferred to the wife, the quantum of spousal support is reviewable at the husband's request.

Should the interim no contact order continue as part of a Final Order?

[173] An Interim Order was pronounced, by consent, on November 29, 2023, which provided, *inter alia* that:

- a) Neither party would follow the other from place to place;
- b) Neither party would attend at or be within 50 metres of where each resides; and
- c) Neither party would directly or indirectly contact or communicate with each other, except regarding issues relating to their child

who was under the age of 18 years, that child no longer being a child.

[174] Although not specifically addressed by the husband, to advise whether he opposed such an order or consented to same, there will be a prevention order, pursuant to the ***Domestic Violence and Stalking Act***, incorporating the terms of that Interim Order, on a final basis, excluding any reference to any children of the parties.

[175] That same Interim Order provided that the wife have exclusive occupation of the cabin. The wife no longer resides in the cabin, the exclusive occupation provisions of the Interim Order are set aside.

Should the parties share the costs of the BDO report obtained by the husband?

[176] The parties agreed that a series of email exchanges between their lawyers, and with MNP, would be filed relating to this issue, the emails being tendered for the truth of their contents.

[177] In September, 2023, the parties began discussions to retain MNP LLP to prepare a joint valuation of DFC. Tutthill contacted the parties, by email, on November 1, 2023, advising that both parties would have to sign the engagement letter.

[178] On December 12, 2023, the wife through her lawyer advised the husband's lawyer that the wife was in agreement with retaining MNP to prepare a corporate valuation and would sign whatever documents MNP required.

[179] On December 13, 2023, Tutthill emailed the husband regarding needing the signed retainer letters back from both the husband and the wife.

[180] At the end of February, 2024, the wife signed the necessary documents with MNP, the wife's lawyer advising the husband's lawyer of same by email dated February 29, 2024.

[181] On March 1, 2024, the husband's lawyer advised that given the length of time that had passed, the husband retained BDO Dunwoody to prepare a valuation of DFC.

[182] The husband seeks to have the wife pay one-half of those invoices from BDO, to which the wife is opposed.

[183] There is no dispute that several months passed between December 2023 when the wife advised that she was in agreement with MNP preparing the valuation, and February 2024 when she signed the necessary documents.

[184] However, there is no evidence that the husband ever signed the necessary documents. Further, there is no evidence that the husband put the wife on notice that should she not sign the necessary documents by whatever date chosen by the husband, he would obtain his own valuation, and seek to have that expense be a cost in these proceedings.

[185] Given that lack of evidence on the part of the husband, I am not ordering that the BDO invoices are a shareable cost. That is, the wife is not obligated to pay one-half of those invoices, nor are they a disbursement in these proceedings for which the husband may claim as part of a costs order.

Should the Court delay pronouncing a divorce in this matter?

[186] I am not going to pronounce a divorce in this matter, at this time. Although there is nothing to preclude such a pronouncement, given my order regarding the manner in which the wife is to be compensated for her shares in DFC and for her **FPA** equalization, I will not pronounce the divorce at this time. The issue of the divorce is adjourned *sine die*.

[187] Should the parties remain married, there is greater flexibility in how the consideration can be paid to the wife by the husband. If they are divorced and no longer spouses, they must treat each other as at arm's length.

[188] However, should the matter be required to be returned before me to address the issue of a transfer of an asset of DFC, the issue of the divorce should be addressed at that time. Should the wife receive the consideration as ordered herein within the time frames ordered, the wife shall proceed with obtaining the divorce, on a desk-top basis.

Remaining costs

[189] Should the parties not be able to agree on the issue of costs, they may be spoken to.

_____J.