

Marmer Penner Inc. Newsletter

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Valuation Reports – The Cake, the Icing and the Cherry-on-Top

In the context of family law, valuation reports serve as expert evidence in the determination of a litigant's Net Family Property ("NFP"). As dictated by the practice standards of the Canadian Institute of Chartered Business Valuators ("CICBV"), there are three levels of valuation reports providing different levels of assurance. These reports are referred to as Comprehensive (formerly known as "Opinion"), Estimate and Calculation Valuation Reports. In September of this year, the CICBV published a practice bulletin which attempts to assist a Chartered Business Valuator ("CBV") in the following three specific areas:

- a) The scope of work to be completed for each level of report;
- b) Determining the suitability of each level of report for various purposes; and
- c) Assessing the availability of information and how it impacts the type of valuation report being contemplated.

The level of assurance provided by the conclusion in a valuation report is highest in a Comprehensive Report, mid-level in an Estimate Report and lowest in a Calculation Report. The amount

of review, analysis and corroboration to be performed by the CBV is highest in a Comprehensive Report, more limited in an Estimate Report and very limited in a Calculation Report. According to the CICBV standards, Calculation Reports quite often do not engage in any corroboration of significant relevant information. In addition, Comprehensive Reports are required to contain a description of the economic context and industry outlook of the business being valued, which is not required in the other two types of reports.

In determining the suitability of the valuation report for the purpose it is being prepared, the CICBV practice bulletin outlines seven possible factors to be considered. Of these factors, the more relevant considerations in a family law context are as follows:

- a) Preliminary nature of the matter – if a preliminary or interim assessment is being made in the course of an extended matter, a limited assurance report, i.e. a Calculation Report, may suffice. In family law matters, this would likely include situations where the litigants are looking for a quick, amicable, out-of-court settlement. For example, in cases where mediation is the likely outcome, a limited assurance report may be suitable. In the case where the matter becomes increasingly acrimonious, the Calculation Report can then be upgraded to an Estimate or Comprehensive report;
- b) Whether the report will be disclosed or referred to in public documents – this would include exposure of a report at trial, given that the judgment becomes publicly available. This may warrant a report that provides a higher level of assurance, i.e. either an Estimate Report or Comprehensive Report. For arbitrations, even though not public, since

judgments are going to be based on the valuation reports tendered, at least mid-level assurance should be provided; and

- c) Contentious nature of the matter or the potential for being contentious – in family law matters everyone has had the case where they know at the outset (for one reason or another) that it will proceed to trial. For these cases, it is often best to seek a mid to high-level assurance report at inception.

The availability of information can greatly impact the type of valuation report that a CBV will be able to complete. Although the lack of access to relevant information could result in a qualified valuation report at a higher level, the CBV has to determine for each case whether an unqualified valuation report at a lower level could instead be prepared, using the same limited information. The professionals involved in the matter should determine which report best serves its users, be it a qualified report of higher assurance or an unqualified report of lower assurance.

Lastly, other considerations to be made in determining the type of report to be completed in the context of a valuation assignment are fee and time constraints. As one would expect, fees and time requirements are highest for a Comprehensive Report and lowest for a Calculation Report. It is always useful to consider the end-user of the valuation report and discuss the cost-benefit of each level of report so that all options can be fairly considered.

This newsletter is intended to highlight areas where professional assistance may be required. It is not intended to substitute for proper professional planning. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at www.marmerpenner.com.