

THE MNP VALUATION GUIDANCE SERIES

## **Retaining a Chartered Business Valuator**

A Guide for Lawyers, Accountants and their Clients

# The MNP Valuation Guidance Series

**MNP LLP's Chartered Business Valuators provide practical guidance to lawyers, accountants and their clients**

This publication is intended to guide in situations where a conclusion of value is required. It also outlines the advantages of retaining a Chartered Business Valuator (CBV) and details the valuation engagement process.

The engagement of CBVs is often critical in obtaining a successful outcome on matters such as legal and taxation disputes, transactions and compliance with corporate and tax legislation.

The topics we address in this guide include:

- CBV Governing Body: The Canadian Institute of Chartered Business Valuators;
- The role of CBVs;
- Matters in which CBVs are retained;
- Standard value terms used in CBV prepared valuation reports;
- Defining the assignment;
- Types of valuation reports and levels of assurance;
- The engagement process; and
- Elements of valuation reports.

This guide does not provide advice on the selection of a specific Chartered Business Valuator, which is a subjective process. Selection of a CBV should be based on an assessment of their qualifications, experience and skills in the context of the mandate and the unique circumstances surrounding it.

## **The Canadian Institute of Chartered Business Valuators**

Chartered Business Valuators are members of the Canadian Institute of Chartered Business Valuators (CICBV) and are bound to follow its professional practice standards. The CICBV Practice standards (as well as other useful information about the profession such as technical publications, glossary of terms, code of ethics, education requirements, etc.) are found on the institute's website: [www.cicbv.ca](http://www.cicbv.ca)





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# The Role of Chartered Business Valuators<sup>1</sup>

Clarifying the role of a CBV is important for a number of engagement decisions. Such roles include independent expert or advisor. The role of the CBV dictates the nature of the deliverable (particularly the type of report, if any, that the valuator produces), the uses of the report and the relevant Practice standards that must be followed.

When working with lawyers, accountants and their clients, the typical role of the CBV is that of independent expert, objectively arriving at a conclusion of value that is communicated in a report known as a valuation report. In other situations, the CBV is engaged as an expert to provide advice to clients, as opposed to rendering an independent valuation report. Examples of such situations include: providing strategic valuation related advice to a litigant (including evaluating the work of other valutors)<sup>2</sup>, advising an open market buyer or seller of a business interest regarding pricing and insight on other strategic decisions.

In cases where the CBV is assuming an independent role, care must be taken by the valuator and counsel at the outset of the engagement to ascertain independence and document potential conflicts (factual and perceived). This step usually requires that the valuator is provided with names of all parties and business entities involved with the dispute or action being litigated and should be completed before details of the matter are shared with the expert.

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<sup>1</sup>This guide pertains to valuations and does not address situations where a valuator is retained to quantify damages or provide other litigation support.

<sup>2</sup>In some disputes involving large dollar amounts, or significant financial complexities, a party may choose to retain an additional valuation expert to serve as a litigation consultant, which enables counsel to receive expert advice regarding valuation matters, on a privileged basis.



# Matters in Which CBVs are Retained



The following illustrates the typical matters in which CBVs are retained to provide independent valuation reports and other valuation services:

Category	Matter
 <b>Litigation Support</b>	<ul style="list-style-type: none"><li>• Shareholder, partner, family disputes, minority shareholder oppression / dissent remedy</li><li>• Buy / sell agreements</li><li>• Expropriation</li><li>• Disputes and torts involving loss of value and or goodwill</li><li>• Family law matters (equalization of family property)</li><li>• Expert witness testimony (trial, mediation, arbitration etc.)</li><li>• Assessing settlement options</li><li>• Acting as mediator or arbitrator</li></ul>
 <b>Mergers &amp; Acquisitions</b>	<ul style="list-style-type: none"><li>• Formal valuation and / or fairness opinion for securities filings</li><li>• Fairness opinion for board of directors and / or shareholders for corporate governance purposes</li><li>• Advisory (pricing, strategy, negotiations, succession planning)</li><li>• Valuation of non-cash consideration, and other transaction structuring considerations</li><li>• Allocation of purchase price for tax compliance or financial reporting (e.g. valuation of acquired intangible assets)</li><li>• Tax compliance (asset valuation including intangible assets)</li></ul>
 <b>Income Tax Planning</b>	<ul style="list-style-type: none"><li>• Corporate reorganization</li><li>• Estate freeze</li><li>• Rollovers (tax-deferred transactions)</li><li>• Non-arm's length transactions</li></ul>



# Matters in Which CBVs are Retained

The following illustrates the typical matters in which CBVs are retained to provide independent Valuation reports and other valuation services:

Category	Matter
<div></div> <div>Income Tax Compliance</div>	<ul style="list-style-type: none"><li>• Deemed disposition and measurement of related capital gains (death, going offshore)</li><li>• Non-arm's length transactions and measurement of related capital gains</li><li>• Valuation of items (business interests) contributed to or withdrawn from a Registered Retirement Savings Plan or Tax Free Savings Account</li><li>• Charitable donations in kind (e.g. of private company shares)</li><li>• Measurement of stock option benefits</li><li>• Disputes with taxation authority such as Canada Revenue Agency (CRA) over value</li></ul>
<div></div> <div>Strategic Planning, Financing</div>	<ul style="list-style-type: none"><li>• Evaluation of strategic options</li><li>• Succession planning</li></ul>



## Value Standard: Fair Market Value and Other Value Terms

Value conclusions provided by CBVs are expressed in terms of a specific value concept, most frequently fair market value (or in some cases, fair value). In certain situations, a statutory prescribed value term and definition applies, while in other instances (e.g. a shareholders' agreement), the parties themselves may choose the value term and definition. The table below summarizes the common definitions and typical use of various value terms:

Value Term	Typical Contexts	Common Definition
<b>Fair Market Value</b>	<ul style="list-style-type: none"> <li>Income tax planning and compliance, Income Tax Act (Canada)</li> <li>Securities filings</li> <li>Shareholder agreements, buy / sell agreements</li> </ul>	The highest price expressed in terms of money or money's worth, obtainable in an open and unrestricted market between informed and prudent parties, acting at arm's length and under no compulsion to transact. This definition is equivalent to the definition referred to in securities filings, found in Multilateral Instrument 61-101 (Protection of Minority Shareholders in Special Transactions), and the definition recognized by CRA <sup>2</sup> .
<b>Fair Market Value or Fair Value</b>	<ul style="list-style-type: none"> <li>Provincial family law</li> </ul>	A non-defined term in provincial family legislation, open to interpretation and often based on specific circumstances and case law.
<b>Fair Value – Financial Reporting</b>	<ul style="list-style-type: none"> <li>Canadian, U.S., international generally accepted accounting principles, reporting standards (Canadian GAAP, IFRS)</li> </ul>	The amount of consideration that would be agreed upon in an arm's length transaction between knowledgeable, willing parties who are under no compulsion to transact.
<b>Fair Value – Corporate Legislation</b>	<ul style="list-style-type: none"> <li>Appraisal remedies found in corporate legislation such as Ontario Business Corporations Act, Canada Business Corporations Act</li> </ul>	Typically a non-defined term, open to interpretation and often based on specific circumstances and case law.

<sup>2</sup>As defined in CRA Information Circular IC89-3: Policy Statement on Business Equity Valuations and the glossary posted on the CRA website.

# Defining the Assignment

In order to properly and efficiently structure the engagement, the following items should be considered and communicated to the CBV, as they will influence the scope of work done and the valuator's approach. Many of these parameters should also be specified in the engagement agreement between the valuator and client:

## Identification of the client

- What is being valued
  - Assets
  - Shares
  - Total capital (shares plus debt)
  - Enterprise (business operations)
  - Stand-alone asset
  - Partial interest or en bloc
  - Consolidated entity
- Where the value of a specific ownership interest is required, such as a minority interest pursuant to a dispute or shareholder / partner exit, whether the valuator is to consider a pro rata value (no discount for liquidity, lack of control etc.), or whether the valuator is to consider the extent (if any) to which discounts such as a partial ownership or a liquidity discount may apply;
- Purpose of the valuation: The context is important for all parties to understand since a Valuation report is prepared for a specific purpose and intended audience, at a specific point in time and generally cannot be used for other purposes. In some cases, the valuator must refer to legislation that is specific to the context (e.g. family law, income tax, corporate) or a shareholder or partnership agreement;
- Valuation date(s): Notional value is based on information and circumstances existing at a specific point in time and can vary if the valuation date is changed. When there is conflict relating to family law matters and shareholder disputes, it is not unusual for there to be a discrepancy regarding the effective date triggering the action and in some cases, valutors are asked to conclude on value as at more than one date;
- Value term to be used: Refer to discussion above;
- Special assumptions that should be incorporated by the valuator (e.g. exclude special purchasers, ignore impact of specific events or potential transactions);
- Any limitations that will be imposed on the scope of the valuator's review (such as access to management or detailed financial records);
- Deliverables required including the type of Valuation report and level of assurance required (discussed in more detail below) and the extent to which a written response to the work of other experts will be required (such as a critique or rebuttal);
- Timing for completion of draft report, final report and any relevant dates imposed by the legal process such as dates for report filing, examinations for discovery, rebuttals as well as trials and other legal hearings; and fees.



## A comprehensive list of parameters is key to an effective engagement agreement.

Specific items need to be communicated in detail to the CBV to properly structure an engagement as they will influence the scope of work done and the valuator's approach.



## The Engagement Agreement

The engagement of a CBV is governed by a legal engagement agreement, typically in the form of a letter provided by the valuator. The engagement agreement defines the engagement and specifies the parameters listed above as well as the following clauses, among others:

- A statement restricting the use of the Valuation report by the persons for whom the report was prepared and only for the stated purpose;
- A statement denying responsibility for losses resulting from any unauthorized or improper use of the Valuation report; and
- A statement giving the valuator the right to make revisions and / or to further support the conclusion under specified circumstances, such as when facts existing at the valuation date become apparent to the valuator after the Valuation report has been issued.



# Valuation reports and Levels of Assurance

The CICBV defines (and prescribes report disclosure standards for) three types of Valuation reports that are generally distinguished by:

- 1. Scope of information / documentation reviewed;
- 2. Procedures;
- 3. Level of detail contained in the Valuation report; and
- 4. Level of assurance provided in the conclusion.

When selecting the type of report to be prepared, the parties should consider the purpose, availability of supporting information, need for assurance and whether the type of report selected will be credible for the intended purpose.

The following table summarizes the notable differences in the types of Valuation reports:

	Comprehensive Valuation report	Estimate Valuation report	Calculation Valuation report
Scope of Review / Procedures	Detailed review and analysis of business, industry, economy and all other relevant factors, adequately corroborated	Limited review, analysis and corroboration of relevant information (less than a Comprehensive Valuation)	Minimal review and analysis and little or no corroboration of relevant information
Level of Detail in Report	High level of detail.	Less detailed than a Comprehensive Valuation	Low level of detail, brief written descriptions of information, analyses and commentary
Level of Assurance	Highest level of assurance	Lower level of assurance than a Comprehensive Valuation	Lowest level of assurance
Typical Uses	Often used in litigation, transactions and buy / sell situations to establish basis for an actual arm's length transaction	Often used for litigation, internal purposes, to evaluate strategic options and for income tax planning	Used for high-level review purposes, preliminary analysis

In some cases, CBVs may be retained as independent experts to provide comments on another expert's valuation. The CICBV defines such a written report (where the valuator does not provide his or her own conclusion of value) as a Limited Critique Report and prescribes report disclosure standards that must be followed by CBVs.

# The Engagement Process

While recognizing that each situation is unique, the following represents the stages of a typical valuation engagement where an estimate valuation report or comprehensive valuation report is being prepared. As stated above, the extent of analysis, documentation, disclosure and timing depends on the type of valuation report being prepared:



- Gather, review, and analyze business information and documents
- Hold discussions with key management and tour premises
- Conduct financial and operational review and analysis of the documents
- Research and assess the industry, trends, outlook, economy, key value drivers, comparable companies, products and transactions
- Strategic review of the business involving analysis of strengths, weaknesses, opportunities and threats



- Selection of appropriate valuation methodologies
- Valuation analysis and calculations
- Consideration of relevant income tax implications
- Corroboration of findings
- Conclusion on value of the subject asset or business
- Consideration of redundant asset value
- Allocation of value to share classes
- Consideration of special items such as minority discount
- Presentation and discussion of preliminary findings



- Preparation of draft Valuation report
- Discuss / answer questions from the management or others, as appropriate regarding draft report
- Obtain signed management representation letter confirming representations, and providing warranties regarding the completeness and accuracy of information provided
- Preparation and delivery of final report



# Elements of Valuation reports

The CICBV defines (and prescribes report disclosure standards for) three types of Valuation reports that are generally distinguished by:

1. Scope of information / documentation reviewed;
2. Procedures;
3. Level of detail contained in the Valuation report; and
4. Level of assurance provided in the conclusion.

When selecting the type of report to be prepared, the parties should consider the purpose, availability of supporting information, the need for assurance and whether the type of report selected will be credible for the intended purpose.

The following table summarizes the notable differences in the types of Valuation reports:

Element	Description	Comprehensive	Estimate	Calculation
Defining the Assignment	<ul style="list-style-type: none"><li>• Identifies addressee</li><li>• Identifies assignment including the property or ownership interest being valued, the value term and the level of assurance the report provides</li><li>• States purpose</li><li>• Specifies restrictions on use of the report, disclaimers</li><li>• Limitations on the Valuator's scope of review (if any)</li><li>• Defines the value term</li></ul>	✓	✓	✓
Scope of Review	<ul style="list-style-type: none"><li>• Identifies data reviewed, research, discussions, site visit and limitations (if any)</li><li>• Refers to letter of representation received, confirming representations and warranties made to the Valuator which was relied upon</li></ul>	✓	✓	✓
Major Assumptions	<ul style="list-style-type: none"><li>• Major assumptions relied upon</li></ul>	✓	✓	✓

## Elements of Valuation reports

Element	Description	Comprehensive	Estimate	Calculation
Background Context	<ul style="list-style-type: none"> <li>Company background including nature of business, history, description of operations, products, services, intellectual property, distribution management, customers, competitors, etc.</li> </ul>	✓	Less detailed	Minimal
	<ul style="list-style-type: none"> <li>Financial statement review</li> </ul>			
	<ul style="list-style-type: none"> <li>Industry description, conditions, trends, outlook as at the valuation date</li> </ul>	✓	Optional, less detailed	Usually not included
	<ul style="list-style-type: none"> <li>Economic conditions, trends, outlook as at the valuation date</li> </ul>	✓	Optional, less detailed	Usually not included
Valuation Methodology	<ul style="list-style-type: none"> <li>Discussion of various valuation approaches.</li> </ul>	✓	✓	✓
	<ul style="list-style-type: none"> <li>Selection of valuation approach(es) and rationale</li> </ul>	✓	✓	✓
Valuation Calculations	<ul style="list-style-type: none"> <li>Discussion of calculations, rationale for inputs, corroboration, factors considered in arriving at conclusion</li> </ul>	✓	Less detailed	Minimal
Valuation Conclusion	<ul style="list-style-type: none"> <li>Statement summarizing concluded value or value range</li> </ul>	✓	✓	✓
	<ul style="list-style-type: none"> <li>Consideration of discounts, if relevant, to reflect lack of control, illiquidity etc.</li> </ul>			
Schedules and Appendices	<ul style="list-style-type: none"> <li>Calculation schedules</li> <li>Historical summarized financial statements</li> </ul>	✓	✓	Less detailed







Retaining a Chartered Business Valuator involves a number of key decisions. We hope that this publication provides useful guidance and will contribute to efficient engagements.

MNP's Chartered Business Valuators have extensive experience working with lawyers and accountants on valuations for a wide range of purposes and industries. Please contact our Valuation specialists to discuss your specific needs and how we can assist you, your clients or your business.



## About MNP

MNP is a leading national accounting, tax and business consulting firm in Canada. We proudly serve and respond to the needs of our clients in the public, private and not-for-profit sectors. Through partner-led engagements, we provide a collaborative, cost-effective approach to doing business and personalized strategies to help organizations succeed across the country and around the world.

For more information on MNP's suite of Valuation and Litigation Support services, please visit [MNP.ca](http://MNP.ca) or contact your local advisor.



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