



THE CANADIAN INSTITUTE OF CHARTERED BUSINESS VALUATORS

SIXTEENTH BIENNIAL BUSINESS VALUATION CONFERENCE

NOVEMBER 4 AND 5, 2004 — THE WESTIN HOTEL, OTTAWA

**OVERCOMING OBSTACLES IN
GATHERING DOCUMENTS AND INFORMATION
FOR FORENSIC VALUATIONS**

by

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1. INTRODUCTION

There are a number of situations in which a business valuator will, in the course of preparing a valuation opinion, be denied access to important information and documents. Examples that immediately come to mind are valuations in connection with minority shareholder suits and divorce proceedings. This paper outlines some of the cases in which business valuers have confronted significant scope limitations and the reaction of some of the courts in these cases; it also offers some reference material when valuation professionals may be confronted with similar challenges.

Frequently, when a business valuator (or forensic accountant) is denied documents, permission to tour a company's operating premises, or access to the company's management (or the Independent Committee of the Board of Directors, in the case of a going-private transaction), the attorney may seek a court order forcing the company to comply with the valuator's request. Often, the motion or application filed in the court will be accompanied by an affidavit from the valuator, specifying the documents and/or information he or she requires, and usually providing the reasons why each document or piece of information is relevant in the particular circumstances. If the expert is to be cross-examined on the affidavit, he/she will have to justify or defend the “shopping list” of documents requested and interviews and tours sought. The request cannot form part of a “fishing expedition”.

2. SHAREHOLDER LITIGATION

The federal and provincial company law statutes (except for the Province of Quebec) grant to the minority shareholders the right to receive the “fair value” of their shares (“appraisal remedy” or “dissent remedy”) when a corporation reorganizes in such a manner as to have the effect of compelling a minority shareholder of the company to terminate his/her interest therein or when there is a material change in direct of the company’s business (“fundamental corporate changes”). The Canadian statutes also contain provisions granting to minority shareholders the right to have their shares valued when the shares are subject to compulsory acquisition under the takeover-bid provisions of the company law as well as when there is oppressive conduct on the part of the majority (“oppression remedy”).

The dissentient or the oppressed shareholder, as the case may be, may apply to the court to fix a fair value for his or her shares. The statutes impose upon the court the responsibility of determining “a fair value”. One or more valuers may, in the court’s discretion, assist in the fixing of fair value. Of course, there is an abundance of Canadian case law on the subject as well as U.S. jurisprudence emanating from the courts in Delaware and other state jurisdictions.¹

The following summarizes a few cases that have involved requests by the minority shareholders’ business valuator for documents, interviews, company-site visits and (in the case of a going-private squeeze-out) access to the Independent or Special Committee, which were denied by the controlling shareholders and which consequently gave rise to legal proceedings intended to force them to comply with the valuator’s requests:

- *Kruger Inc. v. Hermitage et al.*;²
- *Xerox Canada Inc. v. Ontario Municipal Employees Retirement Board*;³
- *100779 Canada Inc. et al v. Télémedia Inc. et al.*;⁴ and
- *Attorney General for Ontario et al v. Steve A. Stavro et al.*⁵

(1) In certain states, the value term is “fair cash value”.

(2) (1991) R.D.J. 259 (Quebec CA).

(3) (1991), 3 BLR (2d) 68 (Ont. Gen. Div.).

(4) Settled. Quebec Superior Court No. 500-05-038643-985.

(5) Court File No. 94-CQ-54358, Commercial List No. B217/94.

2.1 The *Kruger* Case

In *Kruger*, a motion on behalf of the minority shareholders was presented in Quebec Superior Court (a trial court) under the appraisal-remedy provisions of the CBCA⁶ asking the court to “exercise its discretionary and equitable jurisdiction” and order the production of documents, information, etc., relevant to determining the fair value of certain minority shares, the court having “a duty to ensure the most complete and accurate opinion as to the fair value of the shares”. The motion stated that the documents and information being sought by the minority shareholders’ business valuator would allow their expert to provide at trial a more complete and accurate opinion as to the fair value of the shares of Kruger Inc. (one of the largest newsprint manufacturers in Canada, approximately 90% of its production going to customers in the United States, including large daily newspapers such as *The Wall Street Journal*, *USA Today* and the *Boston Globe*).

The motion requested an Order by the court to permit the valuator (a) to interview Kruger’s Vice-Chairman, its President and its Vice-President of Finance concerning the company’s business operations, as well as (b) to inspect its five plants and mills located in Eastern Canada.

The Quebec Superior Court issued the following Orders:

The Court, **seeing ... the letter of [the minority shareholders’ expert] as to the necessity of various kinds of information to permit the determination of the fair value of the shares** of the dissent minority shareholders, and seeing the affidavits in support of the motion; ...

Grants the motion in part [and] authorizes applicants to examine out of court the three [senior executives];

Authorizes the issuance of *subpoenas duces tecum* to such persons with respect to all documents and information [in the list accompanied by the valuator’s request for information and documents] which exist, and in respect of all documents which do not exist,

Orders [Kruger Inc.] to give communication to Applicants of all documents, books and records required to enable Applicants’ expert to obtain the desired information; ...

Orders that the said examinations out of court be held *in camera*;

Orders [Kruger] to permit [minority’s business valuation expert] to visit and inspect the plants and mills of [Kruger] or its subsidiaries (Emphasis added.)

(6) Section 190.

In allowing the motion, the judge said that he would grant the business valuator access to information required under “the broad equitable jurisdiction of the Court under the *Canada Business Corporations Act* and the Court’s jurisdiction to permit examinations before trial under the *Quebec Code of Civil Procedure*”.

The company attempted to have this ruling overturned by the Quebec Court of Appeal. The appellate court unanimously rejected the appeal and upheld the decision of the trial court:

One aspect of this matter that has not been emphasized by either party and which should be stressed is that **Respondents are shareholders, ‘members’, of Appellant, and as such entitled to a great deal of information about their company. In this way it differs from, say, a case of a stranger suing the company for damages; in that situation the plaintiff’s right to information would be more limited. But here we have shareholders asking the court to fix a value of their own shares in their own company**, which I think is an important factor in judging how far they can go.

There are good arguments on both sides in this appeal; I have come to the conclusion that those of Respondents prevail. ... [I]n the circumstances ... and for the limited purposes envisaged, the orders of the Superior Court are lawful and reasonable.

The orders for discovery and production of documents have similar counterparts in the rules of the *Quebec Code of Civil Procedure*; even the order to permit Respondents’ expert to visit plants and mills is analogous to the provisions of Article 420, which **authorizes an expert appointed by the court to visit any place which he considers useful.** (Emphasis added.)

2.2 The Xerox Canada Case

In the *Xerox Canada* case⁷, the Superior Court of Ontario court followed the rulings in *Kruger*. The trial judge stated that “the object, as I see it, is to give [the valuator] as good an opportunity as possible, while at the same time protecting the individuals and intruding on the affairs of Xerox Canada as little as possible”. The following Order was made by the court:

- Only one representative of Xerox Canada Inc., its President, would be interviewed;
- To the extent that commercially sensitive information would be divulged, a confidentiality agreement must be entered into;

(7) *Supra*, footnote 3.

- In light of the oppression-remedy application brought by the dissenting shareholder in conjunction with the fair value proceedings, the management interview would be recorded and conducted in the presence of counsel;
- The interview would take place in the President's office, so that conditions are as close to "normal" as possible; and
- The interview would be conducted by the dissenting shareholder's business valuator. Counsel would not take any part except to object to a question, or the form of a question. The object would be to have as little involvement by counsel as possible.⁸

2.3 The *Télémedia* Case

This case related to a going-private transaction by *Télémedia* Inc., at the time the largest radio broadcasting company and magazine publisher in Canada (publisher of, among others, the *Canadian TV Guide*).

For purposes of the valuation, the valuator submitted the following (partial) list of documents and information he required with respect to our valuation of the Class A Shares, and gave reasons for each of the items requested as noted below:

1. Interim financial statements of the Company for the two months ended October 30, 1997 (the "Interim Period").

Notwithstanding that the Valuation Date is only two months subsequent to the Company's most recent fiscal year end (August 31, 1997), it is nonetheless important to have the financial statements of the Company as of the Valuation Date, viz., October 30, 1997, as this period is the most recent and may well reflect relevant information, including transactions, between the year-end date (August 31, 1997) and the Valuation Date. Data with respect to this "stub period" may be essential and material.

2. Internal financial statements of the Company by division (publishing and broadcasting (collectively, the "Divisions")) for the 1995 to 1997 fiscal years inclusive, and for the Interim Period, providing a detailed breakdown with respect to:

(8) The court ruled that Section 7 of the Canadian *Charter of Rights and Freedoms* (which deals with the right to life, liberty and security of the person) was not applicable to proceedings of this kind.

- (a) Revenues;
- (b) Cost of sales;
- (c) Selling expenses;
- (d) Administrative expenses; and
- (e) Financing expenses;

on both a consolidated and unconsolidated basis.

Such data will enable us to analyze the historical trends and importance of each segment of the Company's overall business. A notional purchaser of the business would typically wish to obtain as much information as possible as to the revenues and income by source, trends by segment, etc.

3. Income tax returns and accompanying schedules of the Company and each of its subsidiaries for the 1995 to 1997 taxation years, as well as copies of assessments (and reassessments, if any) by the income tax authorities.

Information gleaned from the corporate tax returns will enable us to determine the appropriate income tax rates to be applied to the Company's profits, as well as to determine the various possible adjustments that should be made, for valuation purposes, to reported accounting (book) profits.

4. Forecasts, projections and/or business plans for the fiscal year ending August 31, 1998, and for fiscal years subsequent to 1998 (to the extent such projections were actually in existence at the Valuation Date).

As valuation is forward-looking, such information would provide us with management's estimates of revenues and income for the years subsequent to the Valuation Date. As a notional purchaser would be interested in the anticipated earnings and cash flows of the Company, such forecasts or projections would be relevant for valuation purposes.

5. Minutes and resolutions of Company's directors and shareholders from January 1, 1994 to the Valuation Date (including details of and documents distributed from all presentations made to the Company's Board of Directors).

These are required to ascertain whether there is anything contained therein that may be relevant for valuation purposes such as (but not limited to) offers for the issued

shares of the Company, offers for certain of the Company's assets, merger discussions, future plans, material commitments with respect to capital expansion, employee pension plans, etc. Any of these may have a bearing on the future of the Company, viewed prospectively as at the Valuation Date.

6. Articles of incorporation, amending articles, certificates of amendment, corporate by-laws and shareholder register of the Company.

These will assist us in determining the rights, restrictions and conditions with respect to the issued shares of the Company; the extent, if any, to which there are control groups; etc.

7. Copies of all major contracts, including (but not limited to) contracts with major customers and suppliers, leases and labour agreements (if any), broadcast contracts and licences.

These would be of interest to a prospective purchaser of the Company or of the issued shares, as they have a bearing on the future revenues and expenses, which, in turn, have a direct effect on value, viewed prospectively as at the Valuation Date.

8. Summary of insurance coverage in force at the Valuation Date on the Company's depreciable assets, inventories and business interruption.

This information is required to enable us to determine the value of the Company's underlying tangible assets, particularly if the adjusted shareholders' equity method of valuation is ultimately selected. Generally, insurance values are based on replacement cost and these values (as opposed to original cost) may be relevant in determining the fair market value of the Company's underlying assets. Additionally, such information will assist us in establishing the "tangible asset backing", which is a recognized factor in the selection of the capitalization rate to apply to the indicated earnings.

9. Copies of municipal assessments with respect to the Company's land and buildings.

This information will assist us in arriving at the values of the Company's underlying real estate, as municipal assessments provide some indication of land and building values, which would be important to the extent that these values are significantly different from their respective costs.

10. Details of management/shareholder remuneration, including all benefits and emoluments of any nature during the three fiscal years ended August 31, 1997, as well as during the Interim Period.

Significant benefits may be granted to management in excess of economic value for services rendered. This information will help us determine whether adjustments should be made to the reported accounting (book) profits for valuation purposes.

11. List of customers of the Divisions during the past three fiscal years accounting for more than 10% of said Divisions' sales, with respective sales volume for each.

This information has bearing on future revenues which, in turn, have a direct effect on value. This information would also provide a better understanding of the risks related to the business.

12. List of any suppliers of each of the Divisions during the past three fiscal years accounting for more than 10% of each Division's purchases, with respective dollar volume of purchases for each.

This information is to determine whether there is a high level of dependence on a particular supplier and the effect of same on the valuation of the enterprise (as regards degree of risk).

13. Copies of any appraisals of the Company's fixed assets made during the thirty-six months ended at the Valuation Date.

This information would provide us with independent opinions regarding the values of the Company's underlying tangible assets. This would have a direct effect on the determination of the value of the shares, whether the asset-based approach or income approach is applied.

14. Copies of any arm's length bona fide offers made since January 1, 1994 for the Company's assets, shares or its business.

Such information would provide us with open market, arm's length indicia of price/value and would, accordingly, be an important factor in our assessment of the value of the Company's shares.

15. Details of any non-arm's length transactions to which the Company was party during the period January 1, 1994 to the Valuation Date.

Transactions between non-arm's length parties may occur at prices below or above fair market value. This information would therefore enable us to determine which adjustments would be required to the accounting profits for valuation purposes.

16. Particulars relating to claims by and/or against the Company as at the Valuation Date and details of any lawsuits instituted or pending.

As contingent liabilities and/or gains are not necessarily recorded in the Company's accounting records (i.e., they are "off-balance sheet" items), such contingencies, whether relating to a lawsuit or potential lawsuit, can have a significant impact on the fair market value of the Company's issued shares, as future cash outlays (or receipts) may be required or forthcoming.

17. Details of any non-recurring (a) legal, accounting or other professional fees; (b) bad debts; and (c) other expenses.

Adjustments to reported accounting profits must be made in respect of non-recurring expenses to arrive at a normalized level of earnings which would be representative of future, indicated earnings for valuation purposes.

18. Annual sustaining capital reinvestment (ongoing capital maintenance) required to maintain operations at their current level.

This information is necessary for purposes of estimating the Company's cash flow from operations.

19. Copies of any bank, mortgage or loan applications made during the five fiscal years ended in 1997 and the Interim Period.

Bankers and loan institutions generally require cash flow projections and/or historical analyses of reported results, overall objectives and strategies of the Company, etc., in connection with a loan application. Such information would also be useful for purposes of our valuation, as these would be serious documents provided to an arm's length lender and would include certain prospective data prepared by management. It would also help us obtain a better understanding of the business.

20. Copies of all bank (term or other), mortgage, subordinated notes, loan agreements in force as at the Valuation Date, as well as any lines of credit available to the Company.

The agreements reached with lending institutions by the Company will help us enable the exact use of leverage by the Company, its borrowing capabilities, its strength as a borrower, its future financing costs, etc.

21. Copies of any brochures, pamphlets or other descriptive literature as to the Company's products or services, prepared for any purpose whatsoever.

This information would assist us to augment our knowledge of the business.

22. Details of most recent market-share ratings for, and revenues generated by, each of the radio stations in which the Company has an ownership interest.

Ratings provide additional information as to the relative performance of each respective radio station owned by the Company.

23. Details of circulation of, and revenues generated by, each of the magazines published by the Company.

This will provide additional information as to the relative performance of each respective magazine published by the Company.

24. List of major competitors of each of the Divisions of the Company proximate to the Valuation Date, including approximate market-share and level of competition of each.

This information relates to the Company's future revenues, which, in turn, may directly impact value. This information would also provide a better understanding of the risks related to the business.

25. Details of cost bases for income tax purposes for significant fixed assets and investments.

This information will enable us to estimate the appropriate income tax liability, for valuation purposes, on a notional disposition of certain assets of the Company.

26. All documents and information, not requested above, which had been made available by the Company to the fairness opinion provider (“FOP”), including (but not limited to) the following:
- (a) Details of the Company’s tax and legal status and proceedings.
 - (b) Industry reports on radio and publishing.
 - (c) Documents provided to the members of the Strategic Committee of the Company’s Board of Directors during the two fiscal years immediately preceding the Valuation Date (including the Interim Period).
 - (d) Press releases of Telemedia issued since January 1, 1996.
 - (e) Notes and/or minutes of all discussions among FOP, the respective legal counsel of the Company, the Independent Committee of the Company’s Board of Directors and the Offeror and the members of the Independent Committee, etc., with respect to the opinion being requested of FOP.

As such information was deemed relevant by the Company and/or FOP for purposes of preparing FOP’s fairness opinion, we wish to review the same relevant material for purposes of preparing our valuation opinion.

While the business valuator was given access to most of the documents requested, he was denied access to management as well as to members of the Independent Committee (Special Committee) of the Board. Counsel for the minority shareholders therefore sought a court order that would grant the valuator access to three Independent Committee members. In doing so, counsel asked the business valuator to provide reasons why such interviews of members of the Independent Committee were essential, so counsel could include the reasons in the motion filed in court. The valuator outlined his reasons as follows:

In our opinion, the visits and interviews will help accomplish the following objectives with respect to our valuation:

- (a) gaining a better understanding of the Company’s operations;
- (b) having a better understanding of the information contained in the Company’s financial statements and other financial documents;
- (c) identifying current and potential changes that might cause the Company’s future results to differ from those indicated by an extrapolation of historical data; and

- (d) providing additional insight as to the future prospects of the Company's business, major risks, concerns, etc.

The information to be gathered during the course of interviews with members of the Independent Committee would, in the valuator's opinion, represent a critical component of the valuation process. Surely, the members of the Independent Committee must have been provided with relevant documents, information and professional opinions to assist *them* in determining whether the proposed offer was fair, from a financial point of view, to the shareholders, and in recommending whether the offer should be accepted or rejected. *In fact, directors have a statutory duty to act honestly and in good faith, with a view to safeguarding the best interests of the corporation and to exercise the care, diligence and skill that a reasonably prudent person would demonstrate in comparable circumstances. This standard of care typically requires that directors devote the necessary time and attention to be able to apply their own judgment on the matter and, prior to making a decision, to inform themselves of all material information reasonably available to them.*

Furthermore, corporate directors are required to disclose in reasonable detail (a) the material factors on which their beliefs regarding the offer are based, (b) the background of their deliberations, and (c) their analysis of the expert opinions they obtained. As to the role of the Independent Committee concerning the opinion received from the FOP in connection with the transaction, it was presumed that the Committee's initial involvement and subsequent monitoring of the process would (or should) have likely included the following matters, as appropriate:

- The appropriate definition of "fairness" from a financial point of view.
- Disclosure to the FOP of any valuation issues particular to the circumstances already identified by the Independent Committee.
- The scope of review undertaken by the FOP, including consideration of any restrictions which were likely to be encountered.
- Requirement for the retention of experts other than the FOP, such as tax or other counsel.
- Identification of members of management of Télémedia Inc. and of the acquiror, who would have knowledge with respect to Télémedia's history and future prospects, the industries in which it operates, and who may be aware of any "distinctive material value" that might accrue to the acquiror.

- Identification of outside parties (independent of Télémedia and the acquiror) who would be knowledgeable as to the industries in which Télémedia operates, who may be able to offer special insight regarding the industries as well as relevant valuation issues.
- Discussions with the FOP as to the market for the company's shares or the underlying assets, including consideration of possible strategic acquirers (including, but not limited to, the acquiror and the "distinctive material value" that might accrue to it); efforts of the company to divest of the securities or the underlying assets; and comparable transactions, if any.
- Request for the FOP's draft fairness opinion that would have been circulated for critical review and comment by the Independent Committee as well as representatives of Télémedia's management and the acquiror.

In this connection, it is interesting to note the policy of the Ontario Securities Commission ("OSC"), prevailing at the time.⁹

Section 28 of former OSC *Policy Statement 9.1*, "Disclosure, Valuation Review and Approval Requirements and Recommendations for Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions", certainly provided comfort for the valuator's contention that the members of the Special Committee were well placed to provide him with the insight he required for the valuation. (The current OSC rule relating to the Role of Directors is reproduced in Appendix I.)

28. Directors' Valuation Review and Assessment of Fairness

28.1 It is the view of the Commission that an issue involved in a transaction with an interested party is obliged to provide sufficient information to security holders to enable them to make an informed decision. Accordingly, **directors should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction to security holders.**

28.2 In reaching a conclusion as to the fairness of a transaction, the directors should disclose in reasonable detail the material factors on which their beliefs regarding the transaction are based. The disclosure disseminated by the directors should discuss fully the background of deliberations by the directors and any special committee and any analysis of expert opinions obtained, including the directors' assessment of the formal valuation and their view of the various components of the formal valuation.

(9) This has since been replaced by Part 6, "Role of Directors", of Ontario Securities Commission Companion Policy 61-501CP to Ontario Securities Commission Rule 61-501, "Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions".

28.3 The factors which are important in determining the fairness of a transaction to security holders and the weight to be given to them in a particular context will vary with the circumstances. Normally the factors considered should include whether or not the transaction is subject to minority approval, whether or not the transaction has been reviewed and approved by a special committee and whether the consideration offered constitutes value which is fair in relation to the valuation conclusions arrived at through the application of the valuation methods considered relevant for the subject matter of the formal valuation. **A statement that the directors have no reasonable belief as to the desirability or fairness of the transaction or that the transaction is fair in relation to values arrived at through the application of valuation methods considered relevant without more detail will generally be viewed as insufficient for this purpose.**

28.4 Many issuers retain financial advisers to opine as to the fairness from a financial point of view of an insider bid, issuer bid, going private transaction or related party transaction under consideration. The Commission is of the view the opinion should be properly prepared and disclosed in sufficient detail so as to permit the directors and security holders to form a reasoned judgment about a matter. It is the view of the Commission that any fairness opinion relied upon by the directors or included in disclosure materials delivered to security holders must contain a sufficiently detailed review of all material factors considered relevant by the author of the opinion to enable the reader to understand the basis for any view expressed that a proposed transaction is fair from a financial point of view and the meaning the author is attributing to the word "fair". It is also the view of the Commission that in order for an opinion to be given that a transaction is fair from a financial point of view, it is necessary for appropriate valuation or appraisal work to be done or relied upon. The valuation or appraisal work prepared or relied upon in support of the fairness opinion should be prepared and summarized in the disclosure materials delivered to security holders in accordance with the requirements for valuations in Part VI of this Policy Statement, including the requirements respecting the selection of the valuer in section 23 of this Policy Statement. The Commission is of the view that disclosure of this information is material to security holders and is necessary to permit them to form a reasoned judgment concerning the fairness opinion and the subject matter before them for consideration.

29. Directors' Recommendation

29.1 The recommendation of directors of an issuer involved in a transaction with an interested party generally plays an important role in the decision of security holders. Accordingly, the Commission expects that in the case of a transaction involving an interested party a useful recommendation to security holders will be made by the directors in respect of the proposed transaction. **A statement that the directors are unable to make or are not making a recommendation with respect to the transaction, without detailed reasons, will generally be viewed as insufficient disclosure for this purpose. Disclosure should be made of the review conducted by the directors and any special committee, of the report of the special committee, and of any disagreement or contrary view of any member of the special commit-**

tee, or any director or between the special committee and the directors.¹⁰
(Emphasis added.)

The Special Committee would therefore have been in an ideal position to critically review the fairness opinion provided by the FOP to the Independent Committee. An interview with each of the members of the Independent Committee may have even disclosed to the valuator possible contrary views or disagreements among some of them. Accordingly, *considering the critical role of the Independent Committee in assessing the fairness of the value of the shares of Telemedia*, their comments and insight on their decision-making process would be a highly instructive complement to the valuation process.

The foregoing reasons were incorporated in the motion made, on behalf of the minority shareholders, that the Quebec Superior Court:

Grant an Order permitting [the business valuator] to interview the following members of the Board of Directors of Télémedia Inc. who are also members of the Independent Committee ... to be examined about all facts relating to the fair value of Class A Subordinate Voting Shares of Télémedia Inc. as at October 30, 1997 and to produce value-related documents, information and professional opinions that they were provided with and which was not made available to [the issuers of the fairness opinion], if any.

The court added:

For purposes of this discussion, one thing should be remembered: That one or other of the parties, i.e., the controlling group or the minority shareholders, will possibly be required in future (unless they can settle) to make their case before the Court in this matter. In my opinion, there is one important point which will be the basis of my decision and that is something which has been considered by the Quebec Court of Appeal in *Kruger Inc. v. Michelle Hermitage et al*, 1991 RDJ 259.”

In referring to the comments of the Quebec Court of Appeal in *Kruger (supra)*, that the company’s minority shareholders were “members” of Télémedia and, as such, should have access to the pertinent information, the court stated:

(10) Extracted from Ontario Securities Commission *Policy Statement 9.1*.

And I am mindful of this aspect that appears to me to be of the utmost importance. The minority shareholders are the members of the company, Telemedia, and, accordingly, they have the right of access to pertinent information. In my humble opinion, **why should they not have the right to the same sources of information that the controlling shareholders would have?**

In my opinion, **the minority's experts have the right to have access to the very same sources of information as the experts for the majority shareholders.** The *Canada Business Corporations Act* has introduced **the concept of fairness in the legislation such that neither group of shareholders should be disadvantaged vis-à-vis the other.** For this reason, the Court grants the request of the minority shareholders.¹¹ (Emphasis added.)

Télémedia sought leave to appeal this decision, but leave was denied.¹² The minority shareholders' valuator was finally able to interview members of the Independent Committee. The matter was settled shortly thereafter.

2.4 The Maple Leaf Gardens Case

The *Maple Leaf Gardens* case involved a valuation, commissioned by the Attorney General of Ontario and the Public Trustee of Ontario, of the Toronto Maple Leafs hockey club, for purposes of determining the price at which the controlling shares of the company (which was publicly traded) could be purchased from the Estate of Harold Ballard by one of its executors, Mr. Steve Stavro. The Attorney General's/Public Trustee's valuator was constantly being blocked and checked! There were numerous motions and applications made to the court for access to relevant documents and information. The business valuator was finally able to interview Maple Leaf Gardens' management, but only after an Order was issued by the Ontario Superior Court of Justice.

Some of the difficulties and frustrations that went on in the valuator's attempt to value the Toronto Maple Leafs hockey franchise for the Public Trustee and the Attorney General of Ontario might be highlighted from the following extract from Theresa Tedesco's book, *Offside: The Battle for Control of Maple Leaf Gardens*:¹³

(11) *10079 Canada Inc. et al v. Télémedia Inc. et al*, Quebec Superior Court (No. 500-05-038643-985), December 7, 1998.

(12) Quebec Court of Appeal, February 12, 1999.

(13) Theresa Tedesco, *Offside: The Battle for Control of Maple Leaf Gardens*, Penguin Books Canada Ltd. (Toronto: 1996), p. 247.

[The Public Trustee's counsel] was still being stymied. He couldn't get the Estate [of Harold Ballard] or anyone else in Stavro's camp¹⁴ to hand over documents, not even to the independent business valuator, Richard Wise, he hired from Montreal. Stavro's people knew Wise's job was to help the Public Trustee evaluate the \$34-a-share offer. So they'd have to think about acceding to his requests for interviews with Gardens management and its auditors at Peat Marwick. Nonetheless, the court-appointed independent valuator produced a preliminary report on July 6, severely criticizing the two appraisals assembled for Stavro's takeover offer by [two] Bay Street brokerages However, Wise was unable to determine a fair market value because he didn't have pertinent information. [The Public Trustee's/Attorney General's lawyer] shoved Wise's report in the faces of his legal counterparts and received a tentative reaction: Stavro and Maple Leaf Gardens would provide access to management and the information Wise needed.

The latter never happened. In mid-July, Wise met with senior representatives of the two brokerage houses, who weren't accustomed to having their work criticized. 'Mr. Wise, I resent all this. No one questions our evaluation opinions', was how Wise recalled [the Vice-Chairman of one of the houses] greeted his firm's visitor

David Matheson, the Gardens lawyer, was an old acquaintance of Wise. Matheson was a tax lawyer [who] had met Wise when the Montreal valuator was working as a Special Assistant to [former Deputy Prime Minister] Herb Gray, when [Gray] was Minister of National Revenue during the early 1970s Liberal government of Pierre Trudeau. In fact, Matheson did the rounds with Wise, following the former senior partner at Deloitte & Touche to the afternoon session with the Vice-Chairman of [one of the Bay Street Brokerages] And Matheson was also present when Wise met with the independent Gardens directors. The meetings didn't change the findings of Wise's initial critique and he was still not able to assemble his own appraisal.¹⁵

The troubles encountered by the business valuator are exemplified by the following extract from Theresa Tedesco's book:

The transcripts of the discoveries read like a script in a soap opera: constant interruptions, thinly veiled insults, badgering, grandstanding and **refusals to produce documents**, especially from [Mr. Steve] Stavro's side. With every objection, they hauled each other before Justice Ground, the case management judge assigned to fast-track this extremely complicated case through the court. ...

With each refusal for material from either camp, the litigators' strategy was to file motion records crammed with all kinds of documents putting out onto the public record as much damning evidence as they could. ...

(14) Steve Stavro was the grocery store magnate and executor of Harold Ballard's estate who had made a controversial takeover bid for Maple Leaf Gardens.

(15) *Supra*, footnote 13, *op. cit.*, pp. 18 and 19.

...

... For eight months, the Public Trustee had been demanding that its opponents hand over confidential documents in the [Toronto-Dominion] Bank's files ... every time ... the TD Bank's lawyers had steadfastly refused, supported by a battery of lawyers.

...

... TD Bank had its own reasons for refusing to oblige. The threat of being named as a co-defendant in such a high profile and controversial legal battle could severely undermine its credibility with its other clients. Like many in this case, the country's fifth largest bank feared the media spin 'We didn't want to hand over sensitive documents to a government agency You'd be asking for trouble by exposing [the documents] to the public'. (Emphasis added.)

3. FORENSIC VALUATIONS

In a divorce case before the Quebec Superior Court, *L.(S.) v. G.(H.)*,¹⁶ the Applicant's (wife's) business valuator requested substantial information in order to permit him to determine, among other things, the value of the husband's (Defendant's) assets for purposes of alimentary support. The following lists the types of information and documents requested as well as the related reasons. The business involved large, successful bowling centres at several locations, operated by the husband and his father, who was the founder, chief executive and controlling shareholder. In his attempt to obtain the information, the valuator also cited the Practice Standards of the CICBV to demonstrate to the court that many of the types of data being requested were those typically required pursuant to the Practice Standards of the CICBV, and this did certainly not smack of a "fishing expedition". In particular, reference was made to Standard 120 (Scope of Work Standards and Recommendations), Standard 130 (File Documentation Standards and Recommendations), Standard 310 (Expert Reports — Report Disclosure Standards and Recommendations), Standard 320 (Expert Reports — Scope of Work Standards and Recommendations) and Standard 330 (Expert Reports — File Documentation Standards and Recommendations):

7. The documents and the information enumerated in the subpoena *duces tecum* for Defendant, along with the reasons why they are relevant and germane, as set forth below:
 - (a) Personal balance sheet of Defendant as at December 31, 1998 or schedules of any nature whatsoever, prepared for whatever reason, including personal finan-

(16) 2002 QCCS 13762, July 2, 2002.

cial data filed with any banks or other financial institutions, wherever located and for whatever purpose (including guarantee of loans made to third parties whether or not at arm's length, etc.).

This is basic information and a necessary starting point for purposes of establishing the true net worth and financial state of affairs of Defendant as at December 31, 1998, including income-generating assets.

- (b) Federal, Quebec (and United States Federal and State, where applicable) personal income tax returns, as well as respective notices of assessment (and reassessment, if any) and any correspondence to and from the respective income-tax authorities.

The information contained in these documents is relevant for identifying income by source, the assets generating such income and the disposition of capital assets during the period under review. The notices of assessment and reassessment contain the income tax authorities' revisions to Defendant's declared income, based on information they might possess. Correspondence with the taxation authorities may include detailed explanations by them and/or by Defendant relating to the appropriateness and/or legitimacy of certain deductions, assessments, etc., pertaining to the income reported on his respective tax returns.

- (c) Listing, including insurance coverage, of works of art owned.

Helps establish the true net worth of Defendant as at December 31, 1998. Insurance coverage generally provides an indication of the replacement value of the works of art.

- (d) Listing, including insurance coverage, of jewellery owned.

Helps establish the true net worth of Defendant as at December 31, 1998. Insurance coverage generally provides an indication of the replacement value of the jewellery.

- (e) Particulars as to all life insurance policies, retirement savings plans, trusts, pension plans and other similar types of savings beneficially owned by Defendant or his children.

This information is relevant for purposes of establishing the true net worth of Defendant as at December 31, 1998 in that it would disclose his direct, indirect and/or beneficial interest in such plans, trusts and similar vehicles.

- (f) Statement indicating Defendant's ownership and/or interest in any life-insurance policies, indicating the names of the insurance companies, the sum insured, the type of insurance and the cash surrender value of each of the said policies whether such assets are owned by Defendant personally or by a private company in which Defendant has an interest.

This information is relevant for purposes of establishing the true net worth of Defendant as at December 31, 1998 and may provide an indication of his own view as to his net worth in that the policy(ies) may have been acquired to provide liquidity for estate planning purposes and/or fund the post-mortem acquisition of his private-company shares and other investments which may generate a return to Defendant.

- (g) (i) List of all bank accounts, deposit receipts, treasury bills, certificates of deposit, guaranteed investment certificates, and any other type of cash, cash equivalents or marketable securities beneficially owned, directly, indirectly or in any manner whatsoever by Defendant, wherever located and in whatever currency.

This information is necessary for us to establish the true net worth of Defendant as at December 31, 1998. In addition, this information is required for purposes of obtaining a full and complete picture of cash in-flows and cash out-flows during the requested period for purposes of determining Defendant's real income.

- (ii) List of all bank accounts closed or transferred.

This information is relevant for determining the complete pattern of cash in-flows and cash out-flows during the requested period for purposes of determining Defendant's real income.

- (iii) List of all safety deposit boxes in Defendant's name or registered in other names but over which he has signing authority, located throughout the world, along with the address of each location and schedule of visits.

These details are relevant in establishing the location of Defendant's assets and may provide information as to when safety deposit box contents may have been added or removed, providing a clearer perspective as to cash in-flows and cash out-flows during the requested period, as well as his net worth as at December 31, 1998.

- (h) Cancelled cheques and bank statements of all personal chequing, savings and other bank accounts, whether or not in Canadian currency, located throughout the world.

These items will assist in my analysis of Defendant's cash receipts and disbursements for purposes of establishing his real income. More specifically, they would help establish his sources of income receipts; his living expenses; the allocation of his funds; his lifestyle; the existence of non-arm's length payees, if any; and investments and other assets acquired.

- (i) Schedule of all shareholdings (in both private and public companies) and all bonds, debentures, share warrants, stock options, etc., beneficially owned, directly, indirectly or in any manner whatsoever by Defendant in all companies, entities, foundations, etc., wherever located and however registered.

These items are relevant and have a direct bearing on Defendant's net worth and income-earning capacity as at December 31, 1998.

- (j) Statement of all sums received by Defendant and/or paid or credited to him by any third persons, companies, firms or corporations either as salaries, bonuses, dividends, profit-share redemption and/or sale of shares, reimbursement of loans, advances, liquidation or sale of assets, payment and/or reimbursement of expenses or any other form of payment or remuneration whatsoever.

This information is relevant for obtaining a complete perspective of all cash in-flows and out-flows of Defendant during the requested period for purposes of determining his real income, sources of receipts, disposition of assets and existence of other assets.

- (k) Statement indicating all payments made on Defendant's behalf and/or for his benefit by any firms, companies or corporations in which he has any interest with respect to his use of credit cards such as Diners Club, Visa, American Express, Master Card or any others of a similar nature including all bills in support thereof.

This information is relevant for purposes of determining Defendant's real income. It is critical because it assists in the analysis of the nature and amount of expenses paid by the family-controlled companies on behalf of Defendant, thereby forming part of his real income (whether directly, indirectly or constructively received or enjoyed), as well as for determining the value of the companies for purposes of establishing his net worth. In addition, expenses paid by the family-owned business on Defendant's behalf or

expenses claimed by such business which are not of an operating nature or effectively connected therewith and are untaxed benefits in his hands, should be added back to the payor's (business') income, thereby increasing the company's value and, hence, the value of Defendant's interests therein.

- (l) List of all personal credit cards held in Defendant's name, or that/those of his nominee(s) with respective account numbers, as well as monthly statements of his credit cards for the 24-month period ended December 31, 1998.

This information is relevant in determining Defendant's level of living expenses, lifestyle, source of payments made, etc., which in turn help establish his real income.

- (m) Schedule of all out-of-town travel (business and pleasure) during the immediately preceding 36 months, with details as to method of travel and the hotels used.

This information is relevant in that it will assist in analyzing expense items of the companies such as travel, promotion, etc., which may, in fact, be of a personal, non-operational nature and which may have to be adjusted on the books of the business(es) in determining the value thereof for purposes of establishing Defendant's true net worth. Moreover, this information is relevant for establishing, more accurately, the real income of Defendant, as such benefits form part of the recipient's income.

- (n) Copy of all pages of Defendant's passport and, if his passport has recently been renewed, copy of preceding passport.

This information may assist in measuring more accurately the indicated real income of Defendant by providing details (e.g., destinations and length of visits) of his personal travel charged to the business but enjoyed by him as a benefit.

- (o) All documentation whatsoever with respect to Defendant's remuneration, including anything paid by any third party to any holding or management company or entity on his behalf, as well as all benefits of any nature whatsoever, for the years mentioned above.

This information is relevant for purposes of obtaining a complete perspective of all cash in-flows and out-flows of Defendant during the requested period for purposes of determining his real income.

- (p) Copies of all applications ever submitted by Defendant to any third party or financial institution with respect to his balance sheet or net worth.

This information is relevant in that applications for credit are serious documents which provide Defendant's own representations and assessments of his income and net worth.

- (q) Financial statements (audited, if available) of each of the undernoted related companies for each of the fiscal years:

- (i) A Corp.;
- (ii) B Corp.;
- (iii) C Management Ltd.;

including any other company, partnership, joint venture or associations wherein Defendant has a direct or indirect interest.

Financial statements contain basic financial information and are typically a necessary starting point for purposes of valuing business interests, as such relate to establishing Defendant's true net worth at December 31, 1998. As Defendant is a shareholder in the Companies, it is necessary to value the issued and outstanding shares of each entity on an en bloc basis in order to value of Defendant's shareholdings therein. The Defendant derives his principal source of income from the Companies.

- (r) Federal, Quebec (and United States Federal and State, where applicable) corporation income tax returns of the Companies, along with respective notices of assessment and schedules (and notices of reassessment, if any).

Notices of assessment and reassessment may contain the taxation authorities' revisions to the Companies' respective declared incomes, based on information the tax authorities might possess. The schedules appended to the corporation income tax returns of the Companies may contain other information relevant from a valuation standpoint, such as tax cost bases, tax credits, loss carryforward balances and the existence of other associated corporations, related parties, etc. the information contained therein may impact the value of the Companies and, as the Defendant derives his income mainly from these family-controlled entities, such information will also assist in measuring his income-earning capacity.

- (s) Minute books of the Companies, including articles of incorporation, amendments, by-laws, as well as minutes and resolutions of shareholders and directors during the period mentioned above.

This information is relevant for ascertaining the rights, privileges, restrictions, obligations, etc., attaching to the shares of the Companies, as set out in the articles of incorporation, by-laws and minutes and resolutions, and the existence of contracts and shareholders' agreements. These factors, in turn, may have a direct, material impact on the value of the shares of the Companies held by Defendant. To the extent that these documents refer to dividend rights, profit-sharing, bonus arrangements, management fees and possible other potential and/or possible income distributions, I believe that these are relevant.

- (t) Copies of auditors' or accountants' year-end working papers, including journal entries, in respect of each of the Companies for each of the fiscal years mentioned above.

This information is relevant to the valuation of each of the Companies, as a review of these auditors' or accountants' working papers may provide information with respect to adjustments which may be necessary for valuation and income-measurement purposes. As a Chartered Accountant, I am aware of the required contents of audit and accounting working papers and am able to obtain meaningful information therefrom, as it relates to my valuation of the Companies.

- (u) Copies of all shareholders' agreements to which either Defendant or his nominee(s) or any affiliated company was party, currently in existence, as well as those that were previously in effect.

The shareholders' agreements may contain buy-sell provisions which may contain a formula or other mechanism to acquire shares of the Companies, and may contain references to price/value. They may also include provisions restricting the transferability of shares, and provisions as to payments and distributions of profits and gains.

- (v) Detailed breakdown of management remuneration paid by the Companies including all bonuses, benefits, perks, emoluments and expense allowances/accounts of any nature whatsoever, direct or indirect, or in any other manner.

This information is relevant for valuing the Companies as it will allow us to assess the remuneration paid on an individual basis, particularly given the

private, family-owned nature of the Companies, and the discretionary nature of such remuneration, in order to determine if such remuneration was paid at prevailing market rates in return for bona fide services performed for the Companies. To the extent that any remuneration and/or benefits was/were paid in excess of market rates or for non-operational services, such amounts should be added back to the income of the payor company, thereby increasing corporate value. In addition, such information will allow me to corroborate the nature and amount of benefits received and/or enjoyed by Defendant from each of the Companies for purposes of establishing his real income.

- (w) Copies of all bank, mortgage loan and government grant applications of the Companies during the period mentioned above, including all documentation filed with the particular lending institution(s) in connection with the Companies.

This information is relevant for valuing Defendant's interests in each of the Companies, as such relates to my establishing his true net worth at December 31, 1998. Applications for financing are serious documents which may provide management's representations as to its own assessment of income and value. This information is relevant, as the Defendant derives his primary source of income and value from the Companies.

- (x) All particulars concerning the operations of the Companies, including without limitation:
- (i) Date of incorporation (see also Item (s)).
 - (ii) Description of business.
 - (iii) Share register.
 - (iv) Management remuneration during the period mentioned above (see also Item (v)).
 - (v) Assessments and reassessments, if any, received from the United States Internal Revenue Service (see Item (r)).
 - (vi) Copies of offers, if any, for the assets/shares/business of each of the Companies (see also Item (ii)).

This information is relevant for purposes of obtaining a better understanding of the nature and operating history of each of the Companies for purposes of my valuing same, as well as of the rights, privileges, restrictions, obligations,

etc., attaching to the shares thereof. To this extent, the share register will provide information detailing the number of shares and class of shares owned by each of the Companies' shareholders. This information will, in turn, assist in providing information as to the degree of control represented by Defendant's shareholdings in each of the Companies. Furthermore, to the extent that information has not already been requested elsewhere the said subpoena duces tecum, obtaining particulars concerning the operations of the Companies, including a description of their business, will provide greater understanding as to the nature of their operations, customers, operating history, the extent to which inter-company transactions may exist, experience and depth of management, etc. These types of factors, in turn, may influence corporate value. Moreover, copies of any offers received for the assets/shares/business of the Companies during the requested period may corroborate the value of the Companies. Also, as management remuneration (Item (iv)) is discretionary, it is a typical and essential starting point for purposes of establishing the true income an earning power of a business. As Defendant's income and net worth are derived principally from the Companies, such information is, in my professional view, relevant.

- (y) Copies of all contracts and agreements to which the Companies were party as of December 31, 1997 and December 31, 1998.

This information is relevant to the valuation of the Companies as it will facilitate the assessment of the nature and amount of any contractual benefits or obligations of the Companies, as the case may be, for purposes of valuing same. Further information which may be provided from these contracts and agreements may include the length of time over which such benefits may be received or, alternatively, obligations may exist. For purposes of my valuation, a materiality threshold could be applied, limiting my request to all contracts and agreements involving a consideration of \$10,000 or greater.

- (z) Details with respect to the following operating expenses in the 1997 and 1998 fiscal years:
- (i) Repairs and maintenance.
 - (ii) Wages — officers.
 - (iii) Wages — other employees.

These details will assist in determining Defendant's real income through verification of the amounts of personal (or other non-business) amounts included in Items (ii) and (iii) and to assess the amount and quality of the income generated by each of the Companies using Items (i), (ii) and (iii) for valuation purposes.

- (aa) Copy of insurance policy (or summary sheet) with respect to the Companies' fixed assets (other than land) and inventory for 1997 and 1998, including business interruption.

This information will help corroborate the value of the Companies' tangible assets, as well as the Companies' profitability and the goodwill thereof. The business interruption portion of the policy is relevant in that it will indicate what the Companies themselves consider to be their level of profitability. The profitability directly impacts corporate value and the ability of the Companies to make corporate distributions of income.

- (bb) Copy of 1997 and 1998 municipal valuation for land and building.

This information will help corroborate the value of the Companies' tangible business assets, which in turn impact the value of Defendant's shares.

- (cc) Copies of any appraisals of the Companies' real estate commissioned since January 1, 1994.

This information will help corroborate the value of the Companies' real properties, which in turn impact the value of Defendant's shares.

- (dd) List of competitors of the Companies in 1997 and 1998, including respective locations.

This information is relevant for valuation purposes because the degree and quality of competition is typically a critical factor in the valuation of any business. Any entrepreneur is aware of its major competitors in terms of their identity, location and degree of competition, etc. The businesses of the Companies provide the Defendant's primary source of value and income-earning capacity.

- (ee) List of all leagues which use the Companies' facilities (as appropriate), and frequency of bowling by each league for 1997 and 1998.

This information is relevant in the valuation of a bowling center, in that it serves to identify the size, quality, stability and profitability of its customer

base and sources of revenue. The Defendant's principal sources of value and income are from the Companies.

- (ff) Extent, if any, to which bowling revenue may include food and beverages.

This information is relevant in the valuation of a bowling center in that it represents an important source of revenue and will assist in determining the composition of the overall revenue base. To this extent, the composition of the revenue base (e.g., pinball machines, vending machines, video games, leasing of shoes and other equipment, pro-shop sales, food and beverages, lane-use fees, etc.) are critical elements in the valuation of a bowling center, as each source may have differing profitability levels. Moreover, a bowling-center lounge will frequently attract non-bowlers, and may contribute significantly to profitability. Profitability affects value and the ability of an operating concern to pay benefits and make corporate distributions to its shareholders.

- (gg) Number of vending machines and video games, if any, on the premises during the 1997 and 1998, along with related revenue for each year.

This information is relevant in that it represents an important revenue source to the Companies and/or their shareholders and will assist in determining the composition of the overall revenue base for corporate valuation purposes as well as for income-earning purposes of Defendant.

- (hh) Copies of any offers received since January 1, 1996 for the Companies' business and/or their real estate.

This information provides corroboration of the indicated value of the Companies and/or their assets, as arm's length, open-market transactional market data provide a good indication of price/value.

- (ii) Date of last upgrading and/or remodelling of the Companies' premises.

This information is relevant as it will provide information relating to the nature and condition of the fixed assets of the Companies, which in turn impacts corporate value. Moreover, this information will help establish the level of "sustaining capital reinvestment" (the level of annual investment necessary to maintain the Companies' operations at their current level, for valuation purposes) and, hence, the operating cash flow of the businesses, which provide the ability to make income distributions.

- (jj) Description of electronic automatic scorekeeping equipment.

This information is relevant as it will provide information relating to the nature and condition of the fixed assets of the Companies and the extent to which there is “state-of-the-art” equipment. These, in turn, have a bearing on value. The Defendant’s principal source of asset value and income is derived from the Companies.

- (kk) Number of lanes.

This information is important with respect to the valuation of a bowling center, in that the number of lanes will frequently impact other operating characteristics, as smaller bowling centers are often owner-operated while larger centers are usually owned by individuals, investor groups or corporate chains. The Defendant’s principal source of asset value and income is derived from the Companies.

- (ll) Number of pin spotters.

This information is relevant with respect to the valuation of a bowling center in that the number, age, condition and energy-efficiency of the pin spotters will impact customer perception of the center. Moreover, pin spotters may be either owned or leased by a bowling-center operator, thus impacting the value of the tangible business assets of the Companies’ business. The Defendant’s principal source of asset value and income is derived from the Companies.

- (mm) Lineage.

Lineage (the number of paid games per lane per year) is an important measure with respect to the valuation of a bowling center. This statistic is a commonly-used industry term pertaining to the per-lane utilization of a bowling center, representing an approximate basis of comparison to other centers. This has a bearing on the value of the Companies’ business. The Defendant’s principal source of asset value and income is derived from the Companies.

- (nn) Details of any non-arm’s length, or related party, transactions of the Companies during the 1997 and 1998 fiscal years.

These details are relevant in determining Defendant’s notional income through verification of the amounts of personal (or other non-business) amounts and to assess the amount and quality of the income generated by

each of the Companies. Moreover, given the closely-held, family-run nature of the Companies, any non-arm's length or related-party transactions involving consideration not at fair market value or non-operational in nature may distort the true income-generating ability and, hence, value of the Companies. The Defendant's principal source of asset value and income is derived from the Companies.

- (oo) If the Companies have a line of credit with their respective banks, copies of all applications and accompanying documents.

This information is relevant for establishing the true net worth and financial position of the Companies as at December 31, 1998. Applications for credit are serious documents which provide management's representations as to its own assessment of income and value. The Defendant's principal source of asset value and income is derived from the Companies.

- (pp) Copies of all credit cards and credit card accounts in the name of the Companies in Canada or U.S. or any other country used by Defendant, including monthly statements for the period mentioned above.

This information is relevant for obtaining a complete perspective of all cash in-flows and out-flows of the Companies during the requested period for purposes of determining his real income. More specifically, it would assist in establishing personal expenses, non-business-related expenses, etc., paid by the Companies. To the extent that any expenses were paid on Defendant's behalf which were not of an operating nature, or effectively connected with the business, they represent benefits to him and should be added back to the payor's income, thus increasing the company's value as well as Defendant's true income.

- (qq) Deeds of Sale with respect to any real estate owned by Defendant directly or indirectly, including the Deeds of Purchase of all residences he resides in or own anywhere in the world.

This information is relevant in establishing the true net worth of Defendant at December 31, 1998.

- (rr) Copies of all contracts and sub-contracts with respect to any and all repairs, renovations and improvements made at any of Defendant's residences or with respect to any real estate which he owns or has an interest in.

This information is relevant as it will provide information as to the amount of expenditures which may have been charged to, and paid by, the Companies, but which were for the personal benefit of Defendant. It may impact both the value of Defendant's shares as well as his real income.

The documents were provided to the wife's business valuator after an "animated" hearing before the Quebec Superior Court in which not only did the husband's attorney raise objections, but corporate counsel for the Companies intervened as well in attempting to quash the subpoena *duces tecum*.

As the business valuation expert retained in divorce litigation or shareholder disputes, often faces an uphill battle — and so do the courts — in trying to determine the facts and arrive at the truth, the following few judgments of the family law courts provide a shining example of the frustrations and challenges faced both by business valuers and the courts. In one case, the Quebec Court of Appeal unanimously affirmed the findings of the trial judge in a matrimonial matter which presented a host of impediments and challenges to the business valuator representing a wife in her claim for alimentary support.

This particular family law case involved an array of financial, valuation and even accounting expert evidence. Some of the comments of the trial judge are included below to show just how difficult and challenging a task the wife's valuation expert had faced.

There were 22 days of trial with 14 persons testifying, including the opposing business valuers. The husband ("Monsieur") filed 115 exhibits and his wife ("Madame"), 90.

As the trial judge noted at the outset of the judgment:

"This is an exceptional case; exceptional as to the meanness of the dispute, attributable to a very large extent to the conduct of [Monsieur].

"The Court uses the word 'mean' on purpose; it has a double significance: 'nasty' and 'stingy'; the Court means both."

The following additional observations may help set the "flavour" of the frustrations of both Madame's business valuator and the trial judge.

Madame's business valuator included the following Scope Limitation in his expert's report filed with the court:

"We have been requesting ... certain information and documents with respect to the various companies in which Monsieur owns shares directly and indirectly, including (but not limited to) Far East Trading Co. and Mexicana Corp. Notwithstanding numerous attempts to procure same, and that Undertakings were given by Monsieur, we have as of the date hereof still not been provided with such information or documents. These relate to a number of factors which would assist us in arriving at a more precise conclusion as to Monsieur's (a) net worth and (b) real income before tax, in order to help establish his financial ability to pay a lump sum and alimentary pension to Madame. It may be that such documents will be provided to us subsequent to the issuance of this report, in which case we reserve the right to provide additional evidence in respect thereof during the continuation of the proceedings, with the permission of the Court.

"We should also note that certain documents and information were requested during the out-of-court Examinations of Monsieur as well as during the trial [which had actually commenced one year earlier but had been suspended after four days of hearing]. In a number of cases, as they were neither available nor produced during these Examinations, they were to be provided through Undertakings. As of the date hereof, they have still not been produced by Monsieur. Those Undertakings relate principally to Monsieur's offshore assets, including (but not limited to):

- Shareholdings in Far East Trading Co., Taiwan;
- Bank account(s) of Monsieur and of his offshore company;
- Accounts in the Cayman Islands [which were revealed in earlier discoveries]; etc.

"Accordingly, we reserve the right to revise our conclusions should such additional documents and/or information be provided to us prior to, or during, the continuation of the Court proceedings.

"By virtue of (a) management remuneration and other benefits emanating from Monsieur's companies being of a non-arm's length nature, (b) such amounts being largely discretionary and (c) there being substantial transactions in the Far East and Mexico with respect to which neither information nor documentation has been forthcoming, [the valuator] arrived at Monsieur's *minimum* net worth and *minimum* real income.

“Production and disclosure by Monsieur of such documents and information would enable us to revise the conclusions arrived at herein and comment upon his financial position and earning capacity during the course of the proceedings.”

The Court, itself, made the following observations in its Judgment after hearing the evidence:

“ ... it was clear that [Monsieur] wanted a divorce on the terms he felt appropriate; when he realized it was not going to work out his way, he dragged his feet; he postponed; he was away on business and not available; documents were not provided; records did not exist; etc.”

...

“What is clear, even striking, is the extent to which personal expenses were paid by the business, either directly, or indirectly, by cash, i.e., undeclared income generated by cash sales and, later, undeclared income from foreign business activities.”

...

“Also, it is clear, as one goes through the credit card and travel statements, that [Monsieur] travels so much that most of his day-to-day expenses are carried by the business. It is true he maintains a home ... , but he really is not there very much.

“As to the amount or level of cash supported expenses, the Court does not accept [Monsieur’s] testimony that there was never very much money in the home safe

“[Madame’s] testimony was that [Monsieur] brought cash home regularly and that there were thousands and thousands of dollars in the safe, which were available to her for the family’s needs; both the second house ... and the third house ... had a built-in safe”.

Madame’s testimony was supported by a fact witness as well as by numerous exhibits illustrating the extent of *cash* payments for living expenses such as clothing, children’s camps, private schools, a TV set, a refrigerator, furniture, etc., which all emanated from undeclared cash sales from Monsieur’s business. As to the personal expenses paid through the business, evidence was provided regarding trips, purchases of furniture, household expenses, liquor, and company-purchased gift certificates at major department stores. As the Court stated:

“In summary, the ... family unit lifestyle was to a large extent made possible by undeclared income (cash in the safe) and company supported expenses. In other words, [Monsieur] had the business pay for many personal expenses either directly, by passing it off as a legitimate business expense, or indirectly, through the non-declared cash revenues; consequently, he could afford to have the business pay him a low taxable salary.

“[Monsieur] himself confirmed this indirectly when he stated that company tax audits usually generated sizeable personal tax reassessments ...”.

In addressing the financial and valuation issues, the Court was sceptical, to say the least, of the information provided by Monsieur:

“In general, [his] testimony is to be examined with a very critical eye. He attempted to mislead the Court as to his capacity to pay. It took him a long time to realize that stonewalling, denying and not remembering would not work; for example, his interest in the [offshore] business; for example, the [offshore] bank account.

“[He] says what he thinks he can get away with. For example, concerning his bank account [offshore], he gave three successive versions ...”.

Evidence was filed with the Court, including faxes between Monsieur and his offshore company in the Far East (in which he had denied having an interest). One of his faxes referred to “my bank account and the bank book you are holding for me.”

The judge then concluded: “[Monsieur] lied to the Court concerning his involvement in [the offshore company]”.

While Monsieur denied that he owned an entity in the Far East, it was not until only a few weeks before the trial was scheduled to begin (which was three and one-half years after the launching of the divorce litigation), that he admitted that he “owned a few shares” and had been a shareholder for about five years.

Responding to Monsieur’s claim that he was unable to obtain financial statements of his offshore company from his co-shareholder, the Court stated:

“This is a very handy excuse: the refusal of the foreign partner ... conveniently located in a jurisdiction sufficiently far away to make it improbable that any serious attempt would be made to verify [Monsieur’s] representations. ... the Court does not accept this explanation.”

...

“ ... [Monsieur] is hard to pin down, even taking into consideration the fact questions related to events years past.

“[He] appears to be incapable of answering a question clearly the first time it is asked; his answers are always hedged; they are couched in terms that prevent us from get-

ting a clear and unequivocal answer: 'To the best of my recollection', 'I believe', 'I assume', 'I think', 'It was a long time ago'; he does not remember, he would have to verify, he would have to check, he can't recall, it is either one or the other, etc.

"Moreover, in the vast majority of cases, a thorough and complete answer to a question only comes after three or four sub-questions are asked. In other words, a first question is asked and it is answered in a general, vague and hedged manner; this answer has then to be further refined by a series a sub-questions. But only when he is confronted with a document, something tangible, something he cannot refute, does [Monsieur] become forthright and his answers become clear.

"Another pattern of [his] mode of testifying is as follows: he will first make a statement which is false and will then, at a later time, after the break, later in the same day, or the next day, or at the next series of days of hearing, rectify or amend or modify or amplify the first original statement".

The two opposing business appraisers had each produced three reports over a three-year period, opining on (a) Monsieur's net worth and (b) his (i) "disposable annual income" and his (ii) "minimum real income before tax" (so-called "notional income"). (Each successive valuation report was the result of information subsequently discovered — all during a five-year period.) At trial, while each of the business valuers testified on the contents of his latest report, both experts nonetheless had to file various amending schedules because of still additional information being produced and/or uncovered with respect to Monsieur's financial position and world income.

Even though Madame's valuator had been able to identify shares in a Far East operating business as well as bank account, the absence of any financial or bank statements made it impossible to even attempt to attribute any values thereto.

There were, of course, the typical opposing views expressed by the two business valuers as to the level of earnings of the Canadian business, the number of years to be used in the calculation of maintainable earnings, the capitalization rate, financial liquidity and so forth.

The following example is taken from the transcript of the proceedings at trial with respect to the offshore business interests which Monsieur had been hiding:

Q. ... in terms of [Far East Trading Co.], which is the [offshore] company that you have an interest in, would you tell [the Court] when did you first acquire your interest in that company, in what year?

A. It was, I believe it was 1986, I believe

Q. And again, the last time we were in Court a year ago, you still owned that interest; I take it you still own the interest today?

A. Yes.

...

Q. Has [your interest] changed at any time during the time that you owned the shares in [Far East Trading Co.]?

A. No.

Q. So it has been constant from the date of acquisition until today?

A. Yes.

Q. All right. I direct your attention to an examination conducted by my associate, under oath of you, [in 1989], ... and I direct you to page 16 ... do you recall having been examined under oath by [my colleague, on that date]?

A. I remember being, I don't remember the date, but I'll take your word for it.

Q. ... at line 24, Question:

'[Far East Trading Co.], have you ever head that name?'

Your answer:

'Yes.'

Question at the bottom of the page:

'What are your interests in that company?'

Answer on page 15:

'I buy from them.'

'Do you have an interest in that company?' What do you own in that company?'

'I don't own anything in that company.'

'So you are saying that all you do is buy from that company, that's all?'

'Yes.'

'Are you informed of the financial situation of that company?'

'We are friends, and there are times that [the owner] might tell me something about the company.'

'But not more than that?'

'No.'

...

- Q.** So then, that statement under oath was false.
- A.** That statement was corrected later. In ...
- Q.** That statement was corrected later?
- A.** Yes it was.
- Q.** That statement at the time was false was it not?
- A.** Yes, at that time it was.
- Q.** Thank you.

In another matter before the Quebec Superior Court, an interim judgment was rendered in connection with certain motions made by the wife's attorney prior to trial. The judge had this to say:

"To the Court, [the husband's] position that he and his family lived the way they did on his declared income is preposterous: a home in [a well-to-do area], a country home on a lake in [a mountain resort area], a governess for children, private schooling for them, etc.;

"When asked why he did not pay bills by cheque or credit card, [the husband] explained that he likes to have money on him, and that he pays by money order as father used to do; he added that he does not like to write cheques and balance cheque books.

"The Court does not believe [the husband]: the nature of his business, which he owns with members of his family, which brings in cash, his shunning cheque books and credit cards, his preference for cash and money orders, his lifestyle, his other investments, all point to unacknowledged resources and undeclared revenue."

The matter was immediately settled out of court.

In a family law case tried in the Province of Ontario, the judge felt it incumbent upon him to report the undeclared taxable income by sending the Canada Revenue Agency (“CRA”) a copy of the judgment:

“During argument I asked the parties whether they thought it would be appropriate for me to send a copy of these reasons to Revenue Canada. Neither clearly objected although the idea obviously discomforted them.

“I noted that they not only evaded paying taxes — part of which taxes are used by government to fund the court system — but also they incurred significant public expense by exhaustively litigating their many disputes in the court system which they saw fit not to support with their share of taxes. They also seemed to take the position that I should not take into account the past evasion of taxes or assumed the evasion will stop in the future when I determine the value of the shares in the business and determine the amount of child support.

“I do not find this acceptable. I believe it would bring the administration of justice into disrepute if I were to simply ignore these matters.

“So far as I could, I have attempted to make my assessment as to past and future matters on the assumption that taxes will be paid. If the tax authorities do not learn of the evasion then these assumptions will not be realistic.

“I am discomforted by being put in a position where I feel I should bring the evasion of taxes to the attention of the authorities. On the other hand, the evidence put before me was adduced in a public courtroom and any member of the public and any public official would be entitled to observe or to publish a report of the proceeding. All the evidence is now in the public domain.

“Simultaneously with their release, I am sending a copy of these reasons to Revenue Canada and the Ontario Ministry of Revenue. They may order a transcript of the evidence or review the exhibits filed at trial as they see fit.”

The CRA provides its tax auditors (field auditors) and special investigators with a *Taxation Operations Manual*. It is available to the public for inspection at various District Taxation Offices, but much of the sensitive data have been removed. In any event, the types of conduct, symptoms or improprieties that might be uncovered by the CRA’s auditors (the “front-line” troops for enforcement), possibly triggering an “audit” by agents of the Special Investigations Branch, include:

- Backdating;
- Misleading characterization;

- Oral (rather than written) agreements;
- Creating documents;
- Offshore wealth;
- Use of nominees or frontmen;
- Multiple financial steps;
- Unusual expenses;
- Special allowances;
- Alteration of records;
- Disregard for books and records;
- Using cash instead of bank accounts.

While none of the foregoing, or even a combination thereof, will necessarily trigger a special investigation, it will not doubt raise a “red flag”, with the matter being addressed only at the field-audit level.

Under-reporting income and/or overstating expenses affects, among other things:

- The value of a business and, hence, a business ownership interest;
- The position of the company’s shareholders;
- The position of the company’s creditors;
- The position of the (divorcing) spouse of a shareholder;
- The public treasury.

I read an article in *FairShare* a few years ago about a forensic valuator in a matrimonial matter who was investigating a basic delicatessen operation which catered to a breakfast and lunch crowd and derived most of its income from the sale of pastrami, corned beef and other sandwiches as well as coffee and various small grocery items. With the husband-owner being sued for alimentary support, and being the type of cash business that it was, not everything was recorded in the deli’s books.

The business appraiser’s client, the deli owner’s wife, tipped off the appraiser that there were two cash registers with the proceeds of only one being reported. When confronted by this allegation,

the husband acknowledged that he had two registers but one was “inoperable”. He did, however, comply with the accountant’s request for a copy of the cash register tapes from the register that was operable. These tapes tied into the income reported on the husband’s tax return.

However, a physical visit to the deli by members of the valuator’s firm revealed that both registers were being actively operated. The husband, during his interview with members of the valuation firm, explained to them how much product goes into the sandwiches. Subsequently, other members of the valuation firm whom the husband had not seen before, went to the deli and ordered a few sandwiches to take out. The valutors took the sandwiches back to their office where they dismantled and weighed them on two separate postage scales. On this basis, they were able to calculate the cost of the ingredients that went into the sandwiches. This was used as a model for determining (at least with respect to the sandwich portion of the business) gross profit. The respective gross profits from other segments of the business were determined by applying other methods.

In reconstructing the cost of a sandwich, a breakdown was made as among:

- The roll;
- Meat (in ounces);
- Cheese (in ounces);
- Tomato, lettuce, oil and vinegar.

Naturally, different types of sandwiches have different ingredients and adjustments would be made as appropriate.

Having estimated the cost of a sandwich and knowing the selling price from the menu, the cost percentage can be determined which, when viewed in the context of the total business, can yield the weighted average cost percentage. For example, if the aggregate cost of the ingredients were \$1.80 and the selling price of the sandwich \$3.50, the cost ratio would be 51.4%. Assuming that sandwich sales equal 45% of the business, the weighted average cost ratio would be 23.13% (45% x 51.4%).

Separate calculations were made by the valutors with respect to potato chips and packaged cakes, soft drinks, cigarettes, milk, grocery and sundry as well as coffee. For example, the calculation with respect to coffee was analyzed on the basis of the number of packages and the yield in terms of cups (e.g., 80 packages yielding 560 cups). Milk, cream and sugar would be factored in so that a cost of 560 cups of coffee could be determined and, in a manner similar to that with respect to the sandwiches, a weighted average cost ratio could be determined. (Based

on discussions and a review of various data, it was assumed that coffee comprised 6% of the total business.)

Finally, an “error rate” and “wastage allowance” was calculated at 6% of cost in arriving at the “reconstructed cost of goods sold as a percentage of total sales”. This percentage was then applied to the total cost of sales during the period under review in order to determine estimated total sales, as reconstructed from the cost of goods sold. For example, if total cost of goods sold for a nine-month period is \$150,000, and the cost of goods sold as a percentage of total sales is, say, 65% (based upon the weighted average cost ratio determined earlier), estimated total sales would then be \$230,770. If reported sales for the period are \$186,000, then implied unreported sales would be \$44,770 (\$230,770 - \$186,000). For the full twelve months the implied unreported sales would be 12/9ths or \$59,690. The matter was settled.

Incidentally, having two (or more) cash registers) with one (or more) being used for unreported sales as in the “deli case” is not unique. For example, in a Canadian case (which involved a retail video store operation), the judge commented as follows:

“ ... It is also in evidence and not contradicted that, in the operation of the business, two cash registers were used, one primarily for VHS cassettes and the other for Beta cassettes. Apparently it was agreed between the three partners that the Beta cash register would be used for unrecorded cash receipts and also by the partners in order to withdraw cash from the business. It also appears that certain expenses were paid from the receipts in this cash register. It is also in evidence and uncontradicted (and I must assume that this figure is correct), that each of the three shareholders withdrew from this cash register a sum of approximately \$8,000 during the period aforementioned in partial repayment of the loans of \$30,000 which each of them had made, leaving a balance owing to each partner of approximately \$22,000.”¹⁷

Assuming that the forensic business appraiser is confronted with a similar situation, where complete disclosure is not forthcoming (whether in a divorce matter, shareholder dispute, or other purpose), the valuator must “construct” or “reconstruct” the financial statements of the subject enterprise — and this is only a starting point. I have used a detailed checklist geared to a restaurant and bar establishment as well as other, more general, areas requiring the use of “forensics” in the valuation process. As will be noted, I have not focused at all on the balance sheet, as the assumed scenario is strictly income related. Naturally, each investigative analysis will be tailor-made.

(17) *Del Papa v. Ponari*, Quebec Superior Court, Meyer J.

4. INDIRECT METHODS OF DETERMINING INCOME

“Most business appraisers rely on some type of industry information to verify the level of expenses experienced by the company being valued. The most common source of information is Robert Morris Associates *Annual Statement Studies*. This is yearly publication listing financial information for industries, classified by their Standard Industrial Classification (SIC) code. RMA provides, among other things, average gross profit margins, pretax profit margins, and key expense items, all expressed as a percentage of sales and broken down into different groups by asset and sales size.

“Industry associations can also provide a source of industry operating standards. Business appraisers often experience difficulty in determining exactly what an expense item should be, due to the questionable nature of the financial statement reporting of the subject company. Industry operating standards are very useful in deciding what a “normal” operating level of a company should be.

...

“Another way in which industry standards can be useful is in determining if accounts are being “padded”. If most companies in an industry have gross profit margins of 45 percent, and the subject firm has varying amounts, all under 45 percent, a close examination of the cost of goods sold category is warranted. Other accounts where businesses tend to bury items are travel and entertainment, bad debt, and promotional expenses. Industry averages are very helpful in determining what appropriate levels should be.”¹⁸

The IRS provides guidance to its income tax examiners in various publications it releases. In *IRS Internal Revenue Manual*, it states that indirect methods of determining income involve the development of circumstantial proof of income through the use of bank deposits, source and application of funds, net worth or other methodologies.

The *IRS Internal Revenue Manual* also states that:

“Irregularities in a taxpayer’s books, inconsistencies between reported income and personal living expenses, increases to net worth not supported by reported income, or cash [‘T’ accounts] that cannot be balanced are not unusual. These inconsistencies may lead examiners to conclude that the taxpayer’s tax return and supporting books and records do not accurately reflect the total taxable income received. *These conclu-*

(18) S.F. Stone, MBA, “Analyzing and Adjusting Financial Statements”, *Valuation Strategies in Divorce*, Third Edition (Ed. R.D. Feder), John Wiley & Sons (New York: 1993), pp. 8 and 9.

sions may be confirmed by using an indirect method to reconstruct income.”¹⁹
(Emphasis added.)

According to the IRS, indirect methods should be considered when, among other things:

- Gross profit percentages change significantly from one to another or are unusual or *low for that business*.
- The taxpayer does not make regular deposits of income, but uses cash instead.²⁰

The U.S. Department of Justice, Tax Division, *Criminal Tax Manual*²¹, states:

“Many defendants leave a paper trail of admissions which present a view of their financial situation drastically different from that reflected on the income tax returns filed with the IRS. For example, most defendants file financial statements with lenders to obtain mortgages, loans, credit cards, and credit accounts with retailers. In these situations, it is in the best interest of the defendant to portray his financial situation in as favorable a way as possible. Consequently, these financial statements can be very helpful in proving that the defendant was well aware he had more income than was reported.”²²

In an article²³, *Unreported Income and Hidden Assets*, the author, Mark Kohn, CPA, states:

“5. Look at the industry

There are statistics available for many businesses, and the statistics of the subject business should be compared with others similar to it. In particular, the gross profit margins should be compared, and the overall profitability should be compared. If in the industry, it costs fifty cents for each dollar of sales, and in the subject business, it

(19) U.S. Internal Revenue Service, Department of the Treasury, *Internal Revenue Manual*, Part 4, Chapter 10, Section 4, “Examination of Income”, Section 4.1.10.4.6, “Indirect Methods of Determining Income — Overview”.

(20) *Ibid.*, Section 4.10.4.6.2.

(21) 1994 Edition.

(22) Section 30.06, “Defendant’s Admissions”.

(23) Posted at www.divorcesource.com.

costs sixty-five cents for every dollar of sales, then one should examine the expenses to see if they are inflated by personal or unusual expenses. It may be that there is a logical explanation for the variance of the subject business from the industry norm, but the variance itself is an indication that something is unusual, and deserving of special analysis.” (Emphasis added.)

The United States Internal Revenue Service has issued to its agents guides that were developed by members of the Market Segment Specialty Program. The following are excerpts from some of these guides.

With respect to estimating sales revenues in one industry, the following comment is made:²⁴

“The average discount received on factory parts by body shops and the repair shops examined was 20 percent to 25 percent off retail. This is equivalent of a mark up of 25 percent to 33.3 percent. Examination of purchase invoices *from a cross section of suppliers* used by a specific business will enable the use of a more accurate figure, but the preceding percentages will put you in the ballpark.” (Emphasis added.)

In another of its training manuals,²⁵ the IRS notes that the particular industry (in this case, gas retailers) “*follows certain patterns that stay constant*” (only to be changed by outside sources such as, in this case, a new freeway exit, a new mini mart or much cheaper products). It provides “Useful Industry Ratios for Service Stations”, taken from:

- Robert Morris Associates *Annual Statement Studies*
- Industry norms and key business ratios
- IRS corporate industrial financial ratios.²⁶

In an earlier edition of this training manual,²⁷ *industry statistics* are given with respect to:

(24) “Auto Body and Repair Industry”, Internal Revenue Service *Market Segment Specialty Program*, TPDS No. 83999S, p. 5-9.

(25) “Gas Retailer”, Internal Revenue Service *Market Segment Specialty Program*, TPDS No. 89466A.

(26) June 2001, p. 3-6.

(27) TPDS 89466A, August 1993.

- self-service stations;
- full-service stations;
- cash sales;
- credit sales;
- mark ups on oil;
- mark ups on tires, batteries and accessories;
- mini marts mark ups;
- gross profit per mechanic/service bay.²⁸

In *Income Reconstruction: A Guide to Discovering Unreported Income*,²⁹ published by the American Institute of Certified Public Accountants, the respective authors of a number of case studies comment as follows:

1. **Case Study I — Restaurant**³⁰

“[The wife’s attorney] astutely noted the husband’s lifestyle, his incredible ability to live lavishly out of the humble restaurant profits and meager salary of \$500 per week. The husband’s other investments did not account for his style of living, either.

“Once [the wife’s CPA/business valuator] received the tax returns, he quickly noted that food costs were averaging 55 percent of sales. This figure was in the line with what the husband was professing all along; however, it seemed extremely high for [the valuator’s] comfort. [He] decided to dig deeper into the numbers.

“According to [his] own experience and *several industry sources*, restaurant food costs typically fall between 28 percent and 40 percent of sales, depending on the style of restaurant. ... Given this knowledge, [he] questioned why the costs were so far out of line with *industry norms*. There were four scenarios likely to cause such a significant discrepancy:

(28) P. 4-8.

(29) *Income Reconstruction: A Guide to Discovering Unreported Income*, American Institute of Certified Public Accountants (New York: 1999).

(30) *Ibid.*, R.N. Pulliam, CPA, ABV; V. Horner, CPA/ABV, “Case Study I — Restaurant”, p. 119.

- "1. Low prices ...
- "2. Large or excessive food portions ...
- "3. Employee theft ...
- "4. *Unreported sales ...*." (Emphasis added.)

2. **Case Study L — Landscaping**³¹

"... we had to calculate net income for 1995. Using the foregoing information, we are able to construct an income and expense statement, beginning with gross income and working through to net profit. Our results were again *compared with the Robert Morris Associates Annual Statement Studies*. We concluded that our results were reasonable." (Emphasis added.)

3. **Case Study N — Accounting Practice**³²

"Another method valuation analysts often use to make income-statement adjustments is to consult publicly available statistical reference sources providing industry 'norms' with which a subject firm may be compared. Examples of reference sources containing *industry benchmarks* are—

1. Internal Revenue Service, Superintendent of Documents, *Corporation Income Tax Returns: Statistics of Income and Statistics of Income Source Book* (Washington, D.C.: U.S. Government Printing Office, annual).
2. Dun & Bradstreet. *Cost of Doing Business — Partnerships and Proprietorships and Industry Norms and Key Business Ratios* (New York: Dun & Bradstreet, annual).
3. Financial Research Associates, *Financial Statement Studies of the Small Business* (Orland Financial Research Associates, annual).
4. National Society of Public Accountants, *Income and Fees of Accountants in Public Practice* (Alexandria, Va.: National Society of Public Accountants, triennial).
5. Schonfeld & Associates, *IRS Corporate Financial Ratios* (Lincolnshire, Ill.: Schonfeld & Associates, annual).

(31) *Ibid.*, S.M. Heller, CPA; and R.S. Peare, CPA, "Case Study L — Landscaping", p. 152.

(32) *Ibid.*, D.S. Dorweiler, CPA, ABV/CBV, ASA, CFE, Wise, Blackman, "Case Study N — Accounting Practice", pp. 169 and 170.

6. AICPA and Practitioners Publishing Company, *Management of an Accounting Practice Handbook* (Jersey City, N.J.: American Institute of Certified Public Accountants, annual).
 7. California Society of Certified Public Accountants, *Management of an Accounting Practice Surveys* (Redwood City, Calif.: California Society of Certified Public Accountants, annual).
 8. Texas Society of Certified Public Accountants, *Practice Management Survey: National Results* (Dallas, Tex.: Texas Society of Certified Public Accountants, annual).
 9. Robert Morris Associates, *RMA Annual Statement Studies* (Philadelphia, Penn.: Robert Morris Associates, annual).
 10. Neil Sheflin, Ph.D., *Tax and Financial Statement Benchmarks* (Somerset, N.J.: John Wiley & Sons, Inc., annual).
- Leo Troy, *Almanac of Business and Industrial Financial Ratios* (Engelwood Cliffs, N.J.: Prentice Hall, annual).

4. **Case Study R — Car Stereo Systems**³³

“Our first step was trying to reconstruct the actual sales revenues. Though most of the records had been destroyed, we were able to obtain a limited amount of records—including some purchase and sales invoices. From those records, *along with inquiries of others in the industry*, we were able to determine that the gross profit should have been 56 percent—that purchases would have been 44 percent of sales. Based on the physical presence of the location, it was likely that inventory did not change all that much, and even if it was understated in the tax returns, the understatement was not relevant as long as there was an approximate consistency from year to year, for purposes of income generation.

“Using purchases as constituting 44 percent of sales, based on the purchases as reflected in the tax returns, *we then backed into what sales had to have been* to justify that extent of purchases.

“We also did a detailed analysis of certain relationships involving gross profits and increases and decrease in sales and purchases from 1992 through 1995. (See appendixes A and B.) The analysis very clearly highlighted that the gross profit was wildly understated and that the only reasonable explanation for the figures presented in the tax returns was a significant degree of unreported income.” (Emphasis added.)

(33) *Ibid.*, K.A. Barson, CPA, ABV, CBA, CFE, “Case Study R — Car Stereo Systems”, p. 218.

5. **Case Study T — Stunt Pilot**³⁴

“We decided to compare the information we obtained from the daily and monthly income and expense reports with *industry statistics*. We called the Roller Skating Rink Operators Association and obtained these statistics by purchasing a booklet designed to help individuals make decisions on whether to open a skating rink. *Industry statistics* indicated that the typical profitable skating rink obtained 40 percent of its revenues from admissions and skate rentals, 30 percent from concession sales, 10 percent from skate and novelty sales, and 20 percent from games. These statistics presumed that the skating rink owned its own games. Because Regal Roller Rink operated games owned by an outside operator and split revenues evenly with that operator, we adjusted these percentages to 45 percent from admissions and skate rentals, 34 percent from concession sales, 11 percent from skate and novelty sales, and 10 percent from games.

“We compared these percentages with those actually recorded by Regal Roller Rink during the three months we examined. Regal reported 38 percent of its revenues as coming from admissions and skate rentals, 20 percent from concession sales, 22 percent from skate and novelty sales, and 20 percent from games. These percentages were derived from daily and monthly income and expense reports.” (Emphasis added.).

In another article,³⁵ *Forensic Accounting in Divorce*, the authors, who are Certified Public Accountants, stated:

“The most common situation related to underreporting of assets and income occurs when a ... spouse controls a closely held business. Ways to manipulate financial information and results are only limited by the spouse's imagination. There are, however, recurring patterns in how business owners understate income, assets, and the related value of their closely held businesses. These patterns generally fall into two broad classifications.

“Questionable Transactions

- *Unreasonable owner salary levels*
- *Automobile write-offs*
- *Personal expenses written off as business expenses*
- Petty cash abuses
- Inventory abuses

(34) *Ibid.*, N.L. Bourdeau, CPA, ABV, “Case Study T — Stunt Pilot”, p. 243.

(35) Posted at www.divorcesource.com.

- Large one-time purchases written off
- Things that temporarily drive a business into decline

“Land of the Sham

- Self-dealing and inter-family dealings
- Sudden increases in cost of supplies
- Sudden appearance of new suppliers or new customers
- Sudden decrease in gross income
- New or hidden bank accounts
- *Delaying income until after the divorce*
- Fraudulent bad debt write-offs
- *Unreported cash transactions.”*

“Personal Lifestyle Investigation

“A personal lifestyle investigation can be thought of as a "sanity check" to financial representations made by a ... spouse. *Could the spouse live at the level that he or she is living on the level of reported income? Any shortfall between reported income and lifestyle expenditures should sound a warning.*” (Emphasis added.)

The Canada Revenue Agency (“CRA”) employs indirect methods to prove a taxpayer’s income; in this connection it will question the taxpayer as to the source of funds for living. The CRA has also reconstructed a taxpayer’s financial and fiscal affairs.³⁶

In one case going back to the 1960s, the CRA issued an arbitrary assessment with respect to an illicit call-girl operation.³⁷ Ms. Eldridge, seven other call-girls and two telephone operators were convicted of conspiring to live from the avails of prostitution. The material seized by the Vancouver police conclusively established the guilt of the accused persons, each of whom pleaded guilty to the charges laid against them and they were sentenced to varying terms of imprisonment. The records were obtained from the police by the CRA, which then “undertook an exhaustive and painstaking reconstruction of the respondents’ financial and fiscal affairs”. Such reconstruction formed the basis of notices of assessment being issued for taxes and penalties. The case makes interesting reading, as it goes into extensive detail of Ms. Eldridge’s busi-

(36) CRA *Tax Operations Manual* (No. 11). See, also, *MNR v. Olva Diana Eldridge*, 64 DTC 5338 (Exchequer Court).

(37) *MNR v. Olva Diana Eldridge*, 64 DTC 5338 (Exchequer Court of Canada).

ness operations. While freely admitting that she was engaged in an illegal and illicit business, and agreeing with the CRA's reconstruction of her gross income, Ms. Eldridge told the Court that "it was incongruous that the government should seek to live on the avails of prostitution"! Justice Cattanach retorted by referring to the words of the judge in *Mann v. Nash*³⁸:

"It is said again: 'Is the State coming forward to take a share of unlawful gains?' It is mere rhetoric. The State is doing nothing of the kind; they are taxing the individual with reference to certain facts. They are not partners; they are not principals in the illegality, or sharers in the illegality; they are merely taxing a man in respect of those resources. I think it is only rhetoric to say that they are sharing in his profits, and a piece of rhetoric which is perfectly useless for the solution of the question which I have to decide."

5. UNAUDITED FINANCIAL STATEMENTS (REVIEW ENGAGEMENT)

Reviews are distinguishable from audits in that the scope of a review is less than that of an audit and therefore the level of assurance provided is lower. A review consists primarily of enquiry, analytical procedures and discussion related to information supplied to the public accountant by the enterprise with the limited objective of assessing whether the information being reported on is plausible within the framework of appropriate criteria.³⁹

While "enquiry, analytical procedures and discussion" are normally sufficient for the purposes of considering whether information supplied to the public accountant is plausible in the circumstances, these procedures are not sufficient to provide reasonable assurance that undetected error or fraud does not exist. A review emphasizes enquiries of management, the responses to which the public accountant is entitled to accept as long as such responses appear plausible. *A review does not require the public accountant to seek supporting or independent evidence or to study and evaluate internal control.* As a result, the public accountant's review will not normally include procedures such as physical inspection, observation of client procedures, confirmation from external parties and examination of documents which are usually performed in an audit. ... The public accountant's responsibilities with respect to a review engagement remain as outlined in this section and as agreed with the client.⁴⁰

(38) [1929-1932] 16 TC 523.

(39) The Canadian Institute of Chartered Accountants ("CICA"), Standards and Guidance Collection, Review Engagement, *CICA Handbook*, Section 8100.05. In this section, the word "plausible" is used in the sense of appearing to be worthy of belief based on the information obtained by the public accountant in connection with the review.

(40) *CICA Handbook*, Section 8100.06.

The style of reporting in a review engagement is known as “negative assurance” and is distinguishable from an audit opinion.⁴¹

The agreement with the client in a review engagement normally specifies that, among other things:

- management will provide the information the public accountant requires
- management is responsible for the accuracy and completeness of the information on which the public accountant is to report
- a review engagement cannot be relied on to prevent or detect error and fraud.⁴²

Analytical procedures performed during a review engagement would normally be less extensive than analytical procedures performed during an audit.⁴³

Matters that in the public accountant’s professional judgment are important to support the content of the report would be documented. Supporting working papers would describe the procedures undertaken and any unusual matters considered during the performance of the review, including the disposition of such matters.⁴⁴

6. CONCLUSION

If the valuator is able to provide reasonable, relevant and credible justification for his or her requests for documents and information, there generally should be no reason why — if the opposing side attempts to frustrate business valuator — a court should not accede to the request. The valuator is merely attempting to arrive at the facts and form an objective and reasoned professional opinion; he/she is not on a fishing expedition, but rather is hunting for the truth.

It is also of interest to note that the Standards promulgated by The Canadian Institute of Chartered Business Valuators require that where the valuator was limited in the scope of review or where information provided to the valuator was incomplete, disclosure should be made of the limitation, the reasons given and the potential impact on his or her conclusion. To the extent that

(41) *CICA Handbook*, Section 8100.07.

(42) *Ibid.*, Section 8100.13.

(43) *Ibid.*, Section 8100.19(b).

(44) *Ibid.*, Section 8100.23.

the scope has been significantly restricted or incomplete information provided, the valuator must determine if an unqualified conclusion can be provided.⁴⁵

These are but a few of the more well-known Canadian cases on point. In these types of disputes, the valuator often has to file a lengthy, comprehensive affidavit enumerating each document and piece of information required, while simultaneously providing the court with a credible explanation as to the relevance of each requested item. The “spin” from opposing counsel will be that this is nothing more than a fishing expedition — even an attempt by the valuator to “churn” fees. The valuator must therefore be prepared to satisfy the court that this expedition involves nothing more than hunting for the truth.

(45) Standard No. 110 (Section V).

APPENDIX I

**EXCERPT FROM OSC
COMPANION POLICY 61-501CP
PART 6, "ROLE OF DIRECTORS"**

APPENDIX I
EXCERPT FROM
ONTARIO SECURITIES COMMISSION
COMPANION POLICY 61-501CP
TO ONTARIO SECURITIES COMMISSION RULE 61-501
INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS
AND RELATED PARTY TRANSACTIONS

PART 6 ROLE OF DIRECTORS

6.1 Role of Directors

(1) Paragraphs 2.2(2)(d), 3.2(e), 4.2(3)(f), 5.2(1)(e) and 5.3(3)(f) of the Rule require that the disclosure for the applicable transaction include a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

(2) An issuer involved in any of the types of transactions regulated by the Rule should provide sufficient information to security holders to enable them to make an informed decision. Accordingly, the directors should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction and make useful recommendations regarding the transaction. A statement that the directors are unable to make or are not making a recommendation regarding the transaction, without detailed reasons, generally would be viewed as insufficient disclosure.

(3) In reaching a conclusion as to the fairness of a transaction, the directors should disclose in reasonable detail the material factors on which their beliefs regarding the transaction are based. Their disclosure should discuss fully the background of deliberations by the directors and any special committee, and any analysis of expert opinions obtained.

(4) The factors that are important in determining the fairness of a transaction to security holders and the weight to be given to those factors in a particular context will vary with the circumstances. Normally, the factors considered should include whether the transaction is subject to minority approval, whether the transaction has been reviewed and approved by a special committee and, if there has been a formal valuation, whether the consideration offered is fair in relation to the

valuation conclusion arrived at through the application of the valuation methods considered relevant for the subject matter of the formal valuation. A statement that the directors have no reasonable belief as to the desirability or fairness of the transaction or that the transaction is fair in relation to values arrived at through the application of valuation methods considered relevant, without more, generally would be viewed as insufficient disclosure.

(5) The directors of an issuer involved in a transaction regulated by the Rule are generally in the best position to assess the formal valuation to be provided to security holders. Accordingly, the Commission is of the view that, in discharging their duty to security holders, the directors should consider the formal valuation and all prior valuations disclosed and discuss them fully in the applicable disclosure document.

(6) To safeguard against the potential for an unfair advantage for an interested party as a result of that party's conflict of interest or informational or other advantage in connection with the proposed transaction, it is good practice for negotiations for a transaction involving an interested party to be carried out by or reviewed and reported upon by a special committee of disinterested directors. Following this practice normally would assist in addressing the Commission's interest in maintaining capital markets that operate efficiently, fairly and with integrity. While the Rule only mandates an independent committee in limited circumstances, the Commission is of the view that it generally would be appropriate for issuers involved in a material transaction to which the Rule applies to constitute an independent committee of the board of directors for the transaction. Where a formal valuation is involved, the Commission also would encourage an independent committee to select the valuator, supervise the preparation of the valuation and review the disclosure regarding the valuation.

(7) A special committee should, in the Commission's view, include only directors who are independent from the interested party. While a special committee may invite non-independent board members and other persons possessing specialized knowledge to meet with, provide information to, and carry out instructions from, the committee, in the Commission's view non-independent persons should not be present at or participate in the decision-making deliberations of the special committee.

APPENDIX II

**EXAMPLE OF
DOCUMENT/INFORMATION REQUEST
FOR A RESTAURANT OPERATION**

APPENDIX II
VALUING A RESTAURANT AND BAR OPERATION
HAVING INACCURATE FINANCIAL STATEMENTS

SAMPLE PRELIMINARY LIST OF INFORMATION AND DOCUMENTS
(EFFECTIVE VALUATION DATE: DECEMBER 31, 2003)

1. Copies of leases for premises (and equipment, if applicable), indicating:
 - (a) Date of commencement.
 - (b) Term of lease.
 - (c) Amount of rent (basic plus additional).
 - (d) Renewal options, if any (indicating terms and conditions thereof).
 - (e) Tax and any other escalations (e.g., utilities).
 - (f) Termination provisions.
 - (g) Transfer/assignment provisions.

2. Interim financial statements, if any, for the period January 1, 2004 to May 31, 2004.

3. Copies of all income tax and sales tax assessments (and reassessments, if any) for the 1999 to 2003 taxation years, inclusive.

4. Copy of any bank, mortgage financing, loan or grant applications made from January 1, 2001 to the present date.

5. Detailed breakdown of the following corporate expenses in the 1999 to 2003 fiscal years:
 - (a) Wages and supervision.
 - (b) General restaurant expense and supplies.
 - (c) Advertising.
 - (d) Automobile.

6. Details of administrative remuneration, including (without limitation), bonuses, expense accounts, car allowances, travel allowances, and any other benefits of any nature whatsoever.

7. Details of all non-recurring and/or unusual expenses during fiscal 2001, 2002 and 2003.
8. Details of all related party and/or non-arm's length transactions, if any, from January 1, 2001 to the present.
9. Days and hours of normal operations, broken down between (a) meals and (b) alcoholic beverages.
10. Seating capacity at the establishment, broken down among:
 - (a) Seating at bar.
 - (b) Restaurant seating, broken down by location (e.g., main level, upstairs, downstairs, outdoors).
11. Details of live entertainment offered, if any, including related revenues and expenses..
12. Details of private group functions, including (but not limited to) luncheons and dinners in December 2000, December 2001, December 2002, and December 2003 (number of persons per function and copies of bills for each group function).
13. Breakdown of sales among (a) alcoholic beverages and (b) food and (c) other (e.g., catering, etc.) for the 2001 to 2003 fiscal years.
14. Copy of insurance policy covering the Company's depreciable assets and business interruption as of the valuation date.
15. Company's internal policy covering gratuities to:
 - (a) Waiters and waitresses.
 - (b) Buspersons.
 - (c) Kitchen staff.
 - (d) Cashiers.
 - (e) Bartenders.
 - (f) Other staff (e.g., valet and hat-check person).
16. Deposit books for the period January 1, 2001 to December 31, 2003 as well as bank statements, cancelled cheques and cash receipts journal.
17. Copies of daily Cash Receipt Summaries (including breakdown among Visa, MasterCard, American Express, Diners Club, etc.) for the 2003 fiscal year.

18. Copies of all entries in the General Journal from January 1, 2001 to the present.
19. Copies of:
 - (a) Waiters' sign-out slips (i.e., summary, per waiter, generated by the restaurant computer of the daily guest cheques for customers served).
 - (b) Daily reports (including daily cash reports and tip reports, if not already included in above) from June 1, 2003 to December 31, 2003.
20. Copies of Food Cost Reports for the relevant period (s).
21. Copies of supplier invoices for the 2001 to 2003 fiscal years for (a) liquor, beer, wine and other alcoholic beverages and (b) major food purchases.
22. List of all house accounts, if any, along with respective charges during fiscal 2003.
23. Copies of food menus and price lists prevailing throughout 2002 and 2003.
24.
 - (a) Pricing details of food "specials" (i.e., off-menu items) during the 2003 fiscal year.
 - (b) Pricing details of "Happy Hours", if any.
25. Price list for alcoholic beverages prevailing during the year.
26.
 - (a) Policy regarding spillage allowance.
 - (b) Spillage statistics for 2001, 2002 and 2003.
27. Detailed inventory count, as at December 31, 2003, among: (a) alcoholic beverages, (b) non-alcoholic beverages, (c) soft drinks, (d) food, (e) supplies, etc.
28. Company's policy for employee meals (free, discounted, etc.).
29.
 - (a) Details of any expenses paid in cash and how these are recorded in Company's books.
 - (b) Copy of Petty Cash Journal covering 2001, 2002 and 2003.
30.
 - (a) Details of coin-operated vending-machine contracts (if leased).
 - (b) Details of vending-machine revenue during 2003.
31. Details of checkroom operations, including arrangements with hat-check person.
32. Details of arrangements with parking-lot operator, if restaurant offers valet parking.

APPENDIX III

**VALUING A BUSINESS NOT HAVING
“RELIABLE” FINANCIAL STATEMENTS**

APPENDIX III
VALUING A BUSINESS NOT HAVING
“RELIABLE” FINANCIAL STATEMENTS

PARTIAL DISCOVERY CHECKLIST

1. Financial statements for the five most recent fiscal years.
2. Monthly and quarterly financial statements for the five most recent fiscal years.
3. Copies of corporate income tax returns, including all related schedules, for the five most recent taxation years.
4. Copies of Notices of Assessment (and Reassessment, if any) issued by the taxation authorities (if applicable) with respect to the five most recent taxation years.
5. Copies of all correspondence to/from the Internal Revenue Service and any other taxation authorities, including state revenue departments and other government agencies during the most recent three years.
6. Copies of forecasts, budgets and/or projections as of the valuation date.
7. Business Plan, if any.
8. Copies of all applications made for credit with any financial institution, wherever located, within the immediately preceding 36 months, including all documentation provided to such lending institution(s).
9. Copies of all credit card statements, with underlying details, on a monthly basis, for the immediately preceding 36 months.
10. Schedule of all credit cards held with respect to which the company pays all or a portion of the charges thereon, for the immediately preceding 36 months.
11. Copies of any applications for government grants made within the immediately preceding three (3) years, including all accompanying documentation.
12. Copies of all contracts to which the company was a party at the valuation date, as well as any contracts which have been terminated or have expired within the last five years.
13. Copies of monthly bank statements and cancelled cheques, debit memoranda, deposit slips and other relevant advices for the immediately preceding 36 months, from all banks and other financial institutions, wherever located.

14. Detailed breakdown of management remuneration, including (but not limited to) salaries, bonuses, expense allowances, car allowances, golf club, yacht club and other club dues and expenses, entertainment including sports events and other emoluments provided to management, directly, indirectly or in any manner whatsoever.
15. Access to Sales Journal, Purchases Journal, Cash Receipts Book, Cash Disbursements Book, Fixed Asset Ledger, General Journal, General Ledger and subsidiary ledgers (receivables and payables).
16. Copies of purchase, expense and petty cash invoices for the last three years.
17. List of suppliers.
18. Names and addresses of all travel agents used during the past three years.
19. Schedule of out-of-town travel of owner/manager including:
 - (a) Purpose of visit.
 - (b) Place(s) visited.
 - (c) Duration of stay.
 - (d) Copies of invoices for hotel and other accommodation.
 - (e) Copies of airline tickets.
 - (f) Person(s) accompanied by.
20. Schedule of all related entities and non-arm's length entities.
21. Details of all significant third-party and non-arm's length part transactions within the immediately preceding 36 months.
22. List of all trade associations of which the company is a member.
23. Copies of accountants' working papers, including adjusting and closing journal entries, for the immediately preceding three fiscal years.
24. List of all trade publications to which the company subscribes.
25. Details of all non-recurring and unusual expenses during the immediately preceding five fiscal years.
26. Inventory count and costing sheets.
27. Costing and production records.
28. Approximate cost of trade shows and promotional material (if appropriate).

APPENDIX IV

UNITED STATES INTERNAL REVENUE SERVICE
AUDIT TECHNIQUE GUIDES

APPENDIX IV

INTERNAL REVENUE SERVICE

MARKET SEGMENT SPECIALIZATION PROGRAMS: AUDIT TECHNIQUE GUIDES

The Market Segment Specialization Program (MSSP) focuses on developing highly trained examiners for a particular market segment. A market segment may be an industry such as construction or entertainment, a profession like attorneys or real estate agents or an issue like passive activity losses. An integral part of the approach used is the development and publication of *Audit Techniques Guides*. These *Guides* contain examination techniques, common and unique industry issues, business practices, industry terminology and other information to assist examiners in performing examinations.

- Alaskan Commercial Fishing:
 - ◆ Catcher Vessels
 - ◆ Processors and Brokers
- Alternative Minimum Tax for Individuals
- Architects
- Artists and Art Galleries
- Auto Body and Repair Industry
- Auto Dealerships
- Aviation Tax
- Bail Bond Industry
- Bars and Restaurants
- Beauty and Barber Shops
- Business Consultants
- Car Wash Industry
- Carpentry/Framing
- Child Care Providers
- General Livestock
- Grain Farmers
- Hardwood Timber Industry
- Coal Excise Tax
- Commercial Banking
- Commercial Printing
- Computers, Electronics and High Technology
- Construction Industry
- Drywallers
- Entertainment — Important 1040 Issues
- Farm Hobby Losses with Cattle Operations and Horse Activities
- Farming — Specific Income Issues and Farm Cooperative
- Furniture Manufacturing
- Garden Supplies
- Garment Contractors
- Garment Manufacturers
- Gas Retailer
- Independent Used Car Dealers
- Lawsuits Awards and Settlements
- Low-Income Housing Credit

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- Manufacturing Industry
 - Masonry and Concrete Industry
 - Ministers
 - Mobile Food Vendors
 - Mortuaries
 - Music Industry Handbook
 - Oil and Gas Industry
 - Passive Activity Losses
 - Pizza Restaurants
 - Placer Mining
 - Reforestation Industry
 - Rehabilitation Tax Credit
 - Retail Gift Shops
 - Retail Liquor Industry
 - Scrap Metal Industry
 - Shareholder Loans
 - Sports Franchises
 - Taxicab Industry
 - The Laundromat Industry
 - The Port Project
 - The Wine Industry
 - Tobacco Industry
 - Tour Bus Industry
 - Trucking Industry
 - Veterinary Medicine