

## IS HINDSIGHT ADMISSIBLE IN BUSINESS VALUATION?

It is well established that value is determined as of a specific point in time (or at a specific date) and is a function of facts that existed and events anticipated (or forecasts made) as of that point in time. Because factual evidence from subsequent events that occurred would not have been available to a willing buyer and willing seller at the effective valuation date, it is only what would or would have reasonably been anticipated *vis-à-vis* the future, which is presumed by the parties at the time. That is, as hindsight is not available to a buyer and seller in an *open market* (real-world) transaction, it should not be admissible in reaching a valuation conclusion in *notional market*<sup>1</sup> transactions, e.g., in fair market value determinations for income tax purposes.

The use of hindsight and the degree to which it is admissible for valuation purposes has been considered by the courts in a number of valuation cases. The issues have arisen mainly in three broad areas: (1) taxation, (2) expropriation and (3) shareholder appraisal rights.

While retrospective evidence is inadmissible in reaching valuation conclusions in the *notional* (hypothetical or imaginary) market, it has been allowed by the courts to test (or confirm) the reasonableness of assumptions or projections made in arriving at value as of the effective valuation date. As the United States Supreme Court stated, in *Ithaca Trust Co. v. U.S.*<sup>2</sup>:

"[T]he value of property at a given time, like all values, as the word is used by the law, depends largely on more or less certain prophecies of the future; and the value is no less real at that time if later the prophecy turns out to be false than when it comes out true."

Because the extent to which hindsight is admissible can be a key issue in valuation litigation, comments made by the courts in this regard may be of interest.

In earlier years, the Canadian courts had often considered United Kingdom judicial precedent. More recently, however, particularly in cases involving shareholder dissent as well as taxation, they had begun to look to the U.S. jurisprudence, considering it to be "instructive".<sup>3</sup> This newsletter provides comments as to how the courts in Canada have ruled on the admissibility of hindsight, or retrospective evidence, in valuation.

### Income Tax Litigation

#### United Kingdom

In a 1906 Scottish decision, *Inland Revenue Commissioners v. Marr's Trustees*,<sup>4</sup> the Lord Ordinary stated:

"The property must be valued at the date of death, though it might be imprudent to bring it to the hammer until some months later; the revenue is not entitled to have a valuation based on the result on the actual sale."

This is the inaugural issue of a periodic newsletter that will be published by Wise, Blackman, an independent, Canadian valuation firm, established in 1979, serving clients across North America and overseas.

In *Holt v. Inland Revenue Commissioners*<sup>5</sup>, a British decision, Justice Danckwerts stated:

"It is necessary to assume the prophetic vision of a prospective purchaser at the moment of the death of the deceased, and

firmly to reject the wisdom which might be provided by the knowledge of subsequent events."

However, as noted from other jurisprudence cited below, post-valuation date evidence may assist the court in deciding whether a *notional-market*<sup>6</sup> valuation opinion is reasonable. For example, the U.K. Court of Appeal, in *Baxter v. F.W. Gapp & Co. Ltd.*,<sup>7</sup> accepted evidence of a resale price — two years after the valuation date — to be *prima facie* evidence that the notional valuation was too high.

### Canada

The admissibility of hindsight has been considered in a number of Canadian cases which are well known to members of the business valuation profession. In a capital gains tax matter relating to the valuation of publicly-traded shares held by a taxpayer, *Her Majesty The Queen v. National System of Baking of Alberta Ltd.*,<sup>8</sup> which involved the takeover of a public company ten months after the valuation date, Mr. Justice Mahoney of the Trial Division of the Federal Court of Canada stated: "I expressly rejected the validity of hindsight as probative of fair market value at a given date and took nothing that occurred after [the valuation date] into account."

Shortly thereafter, in *Connor v. The Queen*<sup>9</sup>, Justice Mahoney was again asked to consider subsequent events in determining value as of the valuation date. After his review, His Lordship stated: "The reasonableness of *projected* earnings may be measured against the yardstick of *actual* results without arriving at those projections by application of hindsight." (Emphasis added.)

The Federal Court of Appeal decision in *Edmund Littler, Sr. v. The Queen*<sup>10</sup> addressed the valuation of shares for Canadian federal gift-tax purposes (when gifts used to be taxable under the provisions of the pre-1972 *Income Tax Act*). Two of the three Appeal Court justices held that the fair market value of the shares of Walter M. Lowney Company Ltd. (a Canadian public company) was the eventual \$68 takeover price by Standard Brands of the U.S. and not the \$24 stock market price on the valuation date. Such view was

taken without the benefit of hindsight, being based, instead, on *facts actually existing* at the valuation date. The Court of Appeal, affirming the decision of the Trial Division, stated:

"The Minister [of National Revenue] had every reason to attribute to the value of a share in Lowney's a figure of \$68.22 quite apart from what eventually took place in May 1968 ... . As far as the Minister's decision is concerned, *it was not ... a case of hindsight at all. It was based on substantial facts existing prior to the transaction challenged herein.*" (Emphasis added.)

Hence, the court in *Littler* contrasted (a) the use of retrospective evidence with (b) the availability of facts "actually existing" at the valuation date.

Because value is often determined in a "notional" market<sup>11</sup> — say, for income tax purposes — it may be acceptable to use facts or information (regarding an actual sale) subsequent to the valuation date to help determine whether the valuation was reasonable, provided that there were open (actual) market circumstances that would not render the subsequent facts irrelevant (e.g., a sale under distress conditions).

An important issue that was raised by the Federal Court in the *Dominion Metal* case was whether, at the relevant valuation date, the buyer, Ogilvie Mills, was a special purchaser in the notional market. That is, at the time Ogilvie acquired a property (that was the subject of the valuation) from Dominion Metal in 1974, it was a special purchaser<sup>12</sup>; however, as of the relevant valuation date in 1971, there was no evidence led supporting the proposition that it was a special purchaser on the valuation date:

"The special purchaser theory, as all theories, requires some evidentiary base before it may be applied. As I have observed before, Ogilvie Mills had been a neighbour of the subject lands for generations, without any covert or overt, or presumed intentions to acquire more property. There is no evidence of Ogilvie Mills exerting any acquisitive clout or giving the mere impression of it to alert the notional buyer that at [*the valuation date*] the subject lands

might have a considerably enhanced value over other locations simply because they were located next door to it. There is no evidence of notional movement by Ogilvie Mills in any direction. Even if one might establish the presence of Ogilvie Mills as a special purchaser [18 months subsequent to the valuation date], I cannot readily see where as at [the valuation date], Ogilvie Mills can fit into the special purchaser category.

...

"... In the cases cited by the plaintiff and to which lengthy reference was made, there were facts which gave credence to the presence of special purchasers not only at the date of acquisition but at the relevant valuation date as well. In the case before me, I fail to find that kind of foundation upon which the presence of a special purchaser in the notional market [at the valuation date] may be reasonably established. I can only ascribe the excellent price paid for the subject property in 1974 to a fortuitous combination of a self-compelled buyer on the one hand and an astute and obviously knowledgeable seller on the other." (Emphasis added.)

In *W.H. Crandall v. MNR*,<sup>13</sup> Chairman Flanigan of the Tax Review Board, citing the Federal Court — Trial Division decision in *Produits LDG Products Inc. v. MNR*<sup>14</sup> as authority, said that it was appropriate to use hindsight in arriving at his decision and to review what had occurred after the organization of a "deferred pension plan" when assessing the intent of the parties at the time the plan was established. Similarly, the Tax Appeal Board, in *Taylor Estate v. MNR*<sup>15</sup>, allowed hindsight evidence.

Other cases that found hindsight to be inadmissible include *Brunelle v. MNR*,<sup>16</sup> in which case Chairman Cardin of the Tax Review Board stated:

"In evaluating shares at a specific prior time there can be no doubt that it is a proper evaluation procedure to consider the company's actual earnings for the past three to five years. It is also proper to project the future earnings of the company on the basis of its past performance and that is done as accurately as possible by means of the weighted averages and the use of a realistic

multiplier. However, in my opinion, which is supported by other members of this Board, it is not proper in evaluating shares as of a prior date to use the company's actual record of surplus or extra earnings which occurred subsequent to [the valuation date] and which are not known or expected on [the valuation date]. In my view, this hindsight evaluation, whether it increase or decreases the value of the shares, cannot and does not establish the fair market value of the shares as at [the valuation date] and should not be employed in an evaluator's calculation ... . (Emphasis added.)

...

"On the basis of the evidence presented to the Board in the appeals, there are no special facts or circumstances that existed on [the valuation date] which might permit anyone to expect or to foresee at that time any marked increase in the company's earnings in subsequent years."

Facts subsequent to a 1971 valuation date were admitted by the Federal Court — Trial Division in *J.A. Carruthers v. The Queen*<sup>17</sup> in order to test an assumption:

"The validity of this conclusion, which would be reasonable to make as of [the valuation date], can be verified by the fact that [Mr. Carruthers] did in fact leave the company in 1976 following the sale of his shares ... in 1975 ... ."

The court also noted that in expropriation cases, sales subsequent to the date of expropriation — but not too long thereafter — of comparable properties may be admitted into evidence. The court found no apparent reason why an assumption which could be made concerning the 1971 valuation date, i.e., that Mr. Carruthers would not remain long in the employ of the company should he and his wife have chosen to dispose of their shares, cannot find some support in the fact that this is what eventually took place:

"The price paid ... to the Carruthers for their shares is of course in no way relevant to the valuation as at [the valuation date], for [the purchaser] was obtaining full control of the company and moreover during the intervening years between 1971 and 1975 the com-

*pany continued to prosper and the shares increased in value.*" (Emphasis added.)

In *McClintock v. The Queen*<sup>18</sup>, the Tax Court relied on hindsight, concluding that it was appropriate given the particular facts of the appeal. In the opinion of the Court, the trial judge must exercise discretion as to whether or not to apply hindsight to assist in adjudicating fair market value — particularly when there are no transactions of comparable properties immediately preceding the valuation date.

**Timing of Valuation on Death of Taxpayer**

There are requirements for income tax purposes, where fair market value must be determined as of a precise point in time — a split-second can make a material difference in the valuation conclusion reached.

More specifically, the provisions of the *Income Tax Act* ("ITA"), which contains deemed-disposition rules that apply on the death of a taxpayer, stipulate five individual and precise points in time for fair market value determination in such circumstances, depending on the type or quality of income deemed to be triggered:

| <u>Description</u>                                | <u>ITA Section</u> | <u>Timing of Deemed Disposition for FMV Purposes</u> |
|---|--------------------|--|
| Accrued periodic amounts (interest, rent, etc.)   | 70(1)              | Day of death   |
| "Rights or things" (receivables, etc.)            | 70(2)              | Time of death  |
| Capital property (investments, personal property) | 70(5)              | Immediately before death                             |
| Transfer (rollover) to spousal trust              | 70(7)              | Immediately after death                              |
| Disposition by spousal trust                      | 104(4)             | At the end of the day on which the spouse dies       |

Hence, a business valuator may be engaged on behalf of an estate, in which there might be different specific points in time as of which fair market value must be determined.

Because four of those different points in time are used in the very same section of the ITA (section 70), the legislators obviously had every intention of distinguishing among them when requiring value determinations for a decedent's final tax return.

The specific point in time as of which fair market value had to be determined for tax purposes was decided by the Federal Court of Appeal in *The Queen v. Mastronardi Estate*,<sup>19</sup> where at the time of Mr. Mastronardi's death, his corporation was owner and beneficiary of a term life insurance policy that provided for the payment to the company of \$500,000. The policy was dated September 25, 1972 and had no cash surrender value. Mr. Mastronardi was required by the insurance company to have two independent physical examinations, which he had on August 28, 1972. He died suddenly, and without prior warning, of cardiac arrest on February 20, 1973 at the age of 51. Neither the deceased nor his immediate family was aware prior to his death that he was a likely or suspected candidate for the heart attack brought on by arteriosclerotic cardiovascular disease. The issue before the court was whether the shares held by Mr. Mastronardi were to be valued on the basis of taking the insurance policy into account at the instant of death (as a redundant or excess asset of the corporation).

The Federal Court of Appeal agreed with the Trial Judge that there was a two-step "fiction" under subsection 70(5) of the ITA (which deems property to be disposed of immediately before a taxpayer's death at fair market value):

"The first fiction is that the taxpayer after he dies is deemed to have disposed of the subject property 'immediately before [the taxpayer's] death'.

"The second fiction is that he is deemed 'to have received proceeds of disposition therefor equal to the fair market value of the property at that time'.

"The problem is to determine what was the legislative concept ... of the [ITA] and apply such to the facts of this case."

The Trial Judge reached the following conclusions:

"The words 'immediately before his death' ... should not be construed as meaning the equivalent of the instant of death; and also those words do not import a necessity of valuing [the shares] taking into account the imminence of death.

"In my view, therefore, ... [the valuation] must be considered as having taken place at some other time rather than at the instant of death ... and no premise of imminence of death of the deceased should form any part of such valuations."

The court held that it was not necessary to take into account the amount of the insurance proceeds in valuing the shares of the corporation, because it concluded that the words "immediately before the death", in paragraph 70(5)(a) of the ITA do not require the imminence of death to be taken into account in valuing the shares, as discussed below.

(The ITA was subsequently amended to provide that, for deaths occurring after December 1, 1982, the value of a policy immediately before death would be its cash surrender value at that time; however, if the death occurred prior to that time, the insurance policy, as a component of the assets underlying the shares, would be valued "in accordance with normal valuation practices taking into consideration all facts relevant to the particular case".<sup>20</sup> In this regard, the value established for the insurance policy immediately before death must be based on relevant factors relating to the deceased shortly before death, e.g., the day prior to death, and should include "the life expectancy of the insured based on mortality tables" and "the state of the health of the insured as it would be known to other persons".)

Therefore, in valuing the shares that were held by a decedent in a corporation that was beneficiary of an insurance policy on his or her life, relevant factors must be considered. The Canada Revenue Agency ("CRA") states, for example, that the value of an insurance policy

could approach its face value if it were known that the insured had a terminal illness or was critically injured as a result of an accident and was not expected to recover. Conversely, it would have little added value if a person in apparently excellent health were to die unexpectedly as a result of an accident or heart attack. For valuation purposes, the insured's state of health prior to death would override the effect of an unexpected death due to a cause unrelated to any known health problem. Therefore, if a person with terminal cancer died from an unexpected heart attack, the actual cause of death would not be relevant in the valuation, but the fact that the person had terminal cancer would.<sup>21</sup>

The courts in effect chose to value the shares a split-second before the instant of death. Hindsight, or the retrospective evidence that surfaced a split second later (i.e., the taxpayer's death), was clearly inadmissible!

The foregoing cases relate to income tax, where fair market value is determined in the notional market. In expropriation matters, however, the courts tend to accept the limited use of hindsight in deciding valuation issues. This is particularly true when it comes to testing the validity of projections or estimates actually existing at the valuation date and on which the valuator had relied. The court's apparent inclination to be more flexible about the use of post-valuation-date facts presumably has to do with the purpose of the valuation. That is, in expropriation and shareholder-dissent cases, a court must decide on a "fair value"<sup>22</sup> standard — that is, on a just and equitable value. Unlike the Tax Court, the courts that adjudicate with respect to expropriation, shareholder appraisal rights or damages can exercise their equitable jurisdiction. However, the Tax Court does not have that flexibility and must decide on fair market value (invoking the "willing-buyer/willing-seller" standard) rather than fair value (the "just and equitable" standard). In valuations for tax purposes, the courts must consider "fair market value", where the word "fair" qualifies the *market* and not the *value*, as in "fair value".

Hence, in both expropriation matters and shareholder disputes, value is not simply the result of a notional-market valuation under a willing-buyer/willing-seller scenario, e.g., for

purposes of measuring a capital gain; rather, it is to compensate an owner of real property or shares, who is being forcefully deprived of them. Stated differently, “fair market value” for tax purposes contemplates a hypothetical “willing” seller. “Fair value” for providing equitable compensation to a dissident shareholder contemplates an “unwilling” seller.

The following decisions show the apparent willingness of the courts, in exercising their equitable jurisdiction, to admit the (limited) use of hindsight in cases involving (a) expropriation and (b) shareholder dissent.

### Expropriation

In *Roberts and Bagwell v. The Queen*<sup>23</sup>, a compensation case, the Supreme Court of Canada stated:

“ ... evidence of sale after the enactment can, in the absence of special circumstances, be relevant to the value prior to the enactment. The sale must be shown to be free in all respects from extraneous factors such as prior sales and made within such time as the evidence shows prices not to have changed materially from those before the critical date. In other words, *the mere circumstance of the sale being before or after a particular date cannot nullify the reference of subsequent sales while the general market conditions have remained the same.* The rule should allow *the Court* to admit evidence of such sales as it finds, in place, time and circumstances, to be logically probative of the facts to be found.” (Emphasis added.)

In *Pawson v. The City of Sudbury*,<sup>24</sup> the judge stated:

“For myself, I do not know of any principle by which evidence of subsequent sales should be excluded. Evidence that is relevant is admissible. A sale of nearby and comparable lands made, say, the day following the expropriation, and without any knowledge by either the vendor or the purchaser of the expropriation, would be in my opinion very cogent and relevant evidence as to the value of the expropriated lands the day before.

“The mere accident that such a sale was made on the day after rather than the day before the expropriation should not render evidence of the sale inadmissible. The remoteness of the dates of sale, either before or after the expropriation, will of course affect the weight of such evidence.”

### Shareholder Litigation

In *Re Domglas Inc.*,<sup>25</sup> one of the classic going-private cases involving the amalgamation squeeze-out of minority shareholders, the Quebec Court of Appeal unanimously affirmed the Quebec Superior Court’s decision to admit post-valuation financial results and accord them some weight because they confirmed the projections (which the court factored into the weighted-average earnings figure to be capitalized):

“ ... the 1978 projections are very useful; and their reasonableness may properly be measured against the yardstick of 1978 actual results. Hence, evidence of such actual results is both relevant and admissible for such purpose. The Petitioner’s objections to that evidence are accordingly hereby dismissed.”

In *Cyprus Anvil Mining Corp. v. Dixon*,<sup>26</sup> a shareholder remedy case, Chief Justice McEachern of the British Columbia Supreme Court accepted hindsight evidence in the form of drilling reports, made subsequent to the valuation, as acceptable information in determining physical quantity and quality of ore in the ground (tonnage and grade). The court, however, rejected the use of hindsight in establishing components of the discounted cash flow analysis in respect of metal prices and the cost of mining and transportation.

In *Manning v. Harris Steel Group Inc.*,<sup>27</sup> the court considered it appropriate to use information such as an actual sale subsequent to the valuation date to assist in deciding whether a notional-market valuation opinion was reasonable (even though, generally, the courts had held that such information should not be considered in determining value).

Finally, in a British Columbia shareholder-dissent case, *Diligenti v. RWMD Operations*

*Kelowna Ltd. (No. 2)*,<sup>28</sup> in accepting the use of hindsight strictly to assess the validity of financial forecasts and assumptions of the experts, Justice Fulton stated:

" ... Both valuers made projections of earnings, and assumptions on which they based their choice of the price/earnings multiple, but their estimates as reflected in their respective reports differ widely. With this in mind, I rule that evidence of actual results subsequent to 30 June 1976 was admissible, *not to establish the value as of the beginning of July, but to test the validity of the forecasts and assumptions of the experts* where those differed, and thus to assist in determining whose forecasts were, and accordingly whose valuation as of 2 July 1976 was, the more valid." (Emphasis added.)

## Conclusion

Although value is determined as of a specific point in time, it would appear that hindsight may be used in arriving at *notional* valuation conclusions in some cases where:

- Subsequent facts support projections or estimates actually existing at the valuation date.
- An arm's length sale of the subject property has occurred in the open market within a reasonably short period following the valuation date and there was no material change in conditions up to the time of sale.
- The valuator places weight on forecasts or projections.
- It is used to test other assumptions about facts that had a bearing on the conclusions (for example, the bankruptcy of the sub-

ject company's largest customer less than a month after the valuation date, which was "foreseen" or "assumed" as of the valuation date).

- The only possible way to measure value at the relevant date is to work backwards from a subsequent sale, using an amortization method and (other things being equal) taking into account, say, inflation.

In summary, the courts, if they were to consider hindsight, would appear to admit it only in matters where "fairness" is involved, such as in expropriation and going-private squeeze-outs of minority shareholders, each of these situations involving the forcible taking of the owner's property, as well as in family law matters, where fairness (rather than the exacting of tax revenues for the public treasury) is involved.

The valuator may use hindsight in forming his or her valuation opinion only where the retrospective data provide evidence, or further evidence, of conditions that actually existed or could have been reasonably anticipated, at the valuation date.

## Recommendation

For income tax purposes, it is advisable to commission an independent valuation proximate to the valuation date (transaction date) when there is a non-arm's length transfer of a business or other economic interest. This should not only help to avoid a possible third-party civil penalty under Section 163.2 of the ITA, but also help avoid being considered as "self-serving" (as, for example, a valuation that is commissioned after a reassessment has been received).

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**ENDNOTES**

- (1) For a discussion of the notional market, see Richard M. Wise, "Canada-U.S. Mobility of Residence and Immobility of Fair Market Value", *Business Valuation Review*, Vol. 19, No. 3, September 2000; and R.M. Wise, "The Effect of Special Interest Purchasers on Fair Market Value in Canada", *Business Valuation Review*, Vol. 22, No. 4, December 2003.
- (2) 7 AFTR 8856 (49 S.Ct. 291).
- (3) R.M. Wise, "Shareholder Dissent: Canada Looks to the U.S.", *Business Valuation Review*, Vol. 19, No. 4, December 2000; and R.M. Wise, "Valuation Issues Relating to the Shares of Private Corporations", *2004 Conference Report, Report of Proceedings of the Fifty-Sixth Tax Conference*, Canadian Tax Foundation (Toronto: September 26-28, 2004), pp. 13:1-13:40, at p. 13:4.
- (4) (1906), 44 Sc. LR 647.
- (5) [1953] 2 All ER 1499, at 1501.
- (6) See R.M. Wise, "Canada-U.S. Mobility of Residence and Immobility of Fair Market Value", *Business Valuation Review*, Vol. 19, No. 3.
- (7) [1939] 2 All ER 752.
- (8) [1978] CTC 30; 78 DTC 6018, at 6024.
- (9) [1978] CTC 669; 78 DTC.
- (10) [1978] CTC 235; 78 DTC 6179.
- (11) *Supra*, footnote 6.
- (12) For a detailed discussion regarding special purchasers and their effect on fair market value, see, R.M. Wise, "The Effect of Special Interest Purchasers on Fair Market Value in Canada", *Business Valuation Review*, Vol. 22, No. 4, December 2003.
- (13) [1974] CTC 2289; 74 DTC 1204.
- (14) [1973] CTC 273; 73 DTC 5222.
- (15) [1967] Tax A.B.C. 555; 67 DTC 405.
- (16) [1977] CTC 2506; 77 DTC 326.
- (17) [1982] CTC 5; 82 DTC 6009.
- (18) 2003 DTC 576 (TCC).
- (19) [1977] CTC 355; 77 DTC 5217 (FCA); aff'g [1976] CTC 572; 76 DTC 6306 (FCTD).
- (20) CRA *Interpretation Bulletin IT-416R3*, dated July 10, 1987, "Valuation of Shares of a Corporation Receiving Life Insurance Proceeds on Death of a Shareholder".
- (21) *Ibid.*, paragraph 5 (in the case of the death of a shareholder before December 2, 1982).
- (22) See, for example, subsection 190(3) of the *Canada Business Corporations Act*.
- (23) [1957] SCR 28.
- (24) [1953] OR 988.
- (25) (1980) 13 BLR 135; 1980 CS 925 (Que. SC); aff'd (1982) 138 DLR (3d) 521 (QCA).
- (26) (1982), 20 BLR 21 (BCSC); 40 BCLR 180; (1986), 8 BCLR (2d) 145.
- (27) [1987] 1 WWR 86 at 91; aff'd [1990] 1 WWR 346.
- (28) (1977), 4 BCLR 134.

# Wise, Blackman on the Road

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### Upcoming Presentations by Richard Wise

- May 10, 2006** "Valuation-Related Issues in Estate and Tax Planning", STEP Atlantic Branch, Halifax, Nova Scotia
- May 11, 2006** "Valuation-Related Issues in Estate and Tax Planning", STEP Atlantic Branch, Moncton, New Brunswick
- June 6, 2006** «Le rôle des experts dans la gestion des litiges fiscaux : les considérations indispensables pour mieux gérer vos dossiers», L'Institut Canadien, Montréal, Québec
- June 20, 2006** «Évaluation de leurs projections financières», Federated Press, Montréal, Québec
- July 15-19, 2006\*** "Shareholders' Agreements/Valuation", *Owner-Manager Conference*, Canadian Tax Foundation, Quebec City
- July 29, 2006** "Expert Witness Preparation and Testimony", Center for Advanced Valuation Studies, American Society of Appraisers, New York
- September 11 & 12, 2006\*** "Valuation and Deal Structures", *Annual M&A Skills Summit*, Federated Press, Toronto, Ontario
- October 19 & 20, 2006\*** "Critical Valuation Provisions of Buy-Sell Agreements", The Canadian Institute of Chartered Business Valuators/American Society of Appraisers, Toronto, Ontario.
- November 23 & 24, 2006\*** "The Financial Expert's Role in the Litigation Process" (with Me Dominic Jaar, Bell Canada), *In-House Counsel Congress*, Canadian Institute, Toronto, Ontario

### Recent Presentations

Our commitment to the professional community is highlighted not only by our extensive committee involvement, but also by our speaking engagements and presenting technical papers at Canadian and U.S. conferences. Richard Wise has presented the following papers:

- "Intellectual Property Valuation", Intellectual Property Institute of Canada, Montreal Chapter Dinner-Conference (Montreal, March 7, 2006)
- "Due Diligence In The Context Of A Multi-Jurisdictional Or Cross-Border M&A Transaction", *Cross Border Deals Course*, Federated Press (Toronto, February 1 and 2, 2006)
- "Rules for the Business Valuator Giving Expert Witness Testimony", Financial Consulting Group, L.C. (Las Vegas: November 13, 2005) and Eastern Canada Chapter, American Society of Appraisers (Montreal: November 23, 2005)

Cont'd ...

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\* Date to be confirmed.

- ➔ **"Position of the Courts on Admissibility of Hindsight in Canada"**, Valuation Study Group (Bretton Woods, New Hampshire: October 6 to 9, 2005)
- ➔ **"Valuing Interests in Trusts"**, 7th Canadian National Conference, Society of Trust and Estate Practitioners (Toronto: June 6 and 7, 2005)
- ➔ **"Controversial Topics in Business Valuation"**, Canadian Institute of Chartered Business Valuators (Montreal: May 18, 2005)
- ➔ **"Valuing Intangible Assets for Business Combinations & the Annual Impairment Test"**, *6th Annual M&A Valuation for CFOs Conference*, Federated Press (Toronto: March 2005)
- ➔ **"Valuation Aspects of Shareholders' Buy-Sell Agreements"**, Shareholder Agreement Conference, Aird & Berlis (Toronto: February 21, 2005)
- ➔ **"Valuation-Related Issues in Estate and Tax Planning"**, Montreal Branch Practitioners' Seminar, Society of Trust and Estate Practitioners (Montreal: January 27, 2005)
- ➔ **"The Newly Revised Canadian Practice Standards for Chartered Business Valuators"**, The Valuation Study Group (Peninsula Papagayo, Costa Rica: January 13-16, 2005)
- ➔ **"Overcoming Obstacles in Gathering Documents and Information for Forensic Valuations"**, Sixteenth Biennial Business Valuation Conference, The Canadian Institute of Chartered Business Valuators (Ottawa: November 4-5, 2004)
- ➔ **"Valuation Issues Relating to Shares of Private Corporations"**, *Fifty-Sixth Annual Tax Conference*, Canadian Tax Foundation (Toronto: September 26-28, 2004)
- ➔ **"Valuation and Deal Structures"**, *Deal-Maker Summit — 6th Annual M&A Skills*, Federated Press (Toronto: Sept. 8-10, 2004)
- ➔ **"Valuation Issues Relating to Shares of Private Companies"**, *Tax Planning for the Owner-Manager/Estate Planning Course*, Canadian Tax Foundation (Whistler, B.C.: July 3 to 7, 2004)
- ➔ **"Shareholder Dissent & Oppression: Developments in Canada That May Assist U.S. Valuators"**, *2004 Annual Business Valuation Conference*, The Institute of Business Appraisers (Las Vegas: June 7-11, 2004)
- ➔ **"Valuing Hidden Liabilities"**, *5th Annual M&A Valuation for CFOs*, Federated Press (Toronto: February 24-26, 2004)
- ➔ **"Fair Value: Will Your Opinion and Work Papers Withstand the Rigid Scrutiny Required by GAAS"**, The Valuation Study Group (Naples, Florida: February 19-22, 2004)
- ➔ **"Valuation of Intellectual Property"**, *Complex Legal Transactions II*, McGill University, Faculty of Law (Montreal: January 26, 2004)

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