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The Role of a Chartered Business Valuator (CBV) in Separation and Divorce

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Whenever someone asks what I do as a Chartered Business Valuator (“**CBV**”), my answer usually starts with, “How much time do you have?”

The truth is a CBV does many different things dependent on the context in which they have been retained, and the relative financial sophistication of the parties involved. In the domain of family law, the CBV can take on a variety of roles - from a trusted advisor to an independent expert witness.

When a CBV is hired to assist in circumstances surrounding a couple’s separation or divorce, we are most often retained to:

- Calculate guideline income for spousal or child support;
- Calculate the fair market value of business interests and/or trust interests;
- Assist with the preparation of Form 13.1 and Net Family Property Statements;
- Calculate notional contingent personal disposition costs (often mostly taxes);

- Trace and prove assets excluded or deducted from net family property (inheritance, gift);
- Value stock options and/or restricted stock units (“**RSUs**”);
- Critique or rebut other expert opinions; and/or
- Quantify division of assets/liabilities under different proposals.

While a CBV’s services are not limited to the above list, we find that these are the most common types of engagements in matrimonial matters.

It is important to note that, no matter the circumstance, **a CBV is a financial professional and cannot provide legal advice.**

A CBV can be hired by a lawyer, on behalf of a separating party; by the separating party directly; by the court; and/or jointly by both separating parties and their lawyers.

When a CBV is hired to prepare formal reports calculating guideline income and/or the fair market value of a business, we are generally retained in the capacity of independent and objective experts - meaning that we can attend mediation, arbitration, or trial for the purposes of providing expert testimony.

As noted, CBVs can be retained by a single party or by joint retainer or collaboratively¹, that is by both parties and their legal counsel.

When retained by a single party, the process and ease of gathering information and communication may vary. Specifically, when hired by a single party, the CBV likely only has access to the information in the retaining party’s possession and can only communicate with the opposing party and their advisor(s) through respective counsel, if allowed to do so.

¹Collaborative Practice, sometimes referred to as “Collaborative Law”, is defined by the Ontario Association of Collaborative Professionals (“**OACP**”) as “a customized, respectful alternative to traditional adversarial divorce”. References to the “collaborative” process herein are to be taken in the context of a formal Collaborative Practice retainer (Participation Agreement).

In a joint retainer or collaborative process, the CBV should enjoy the benefit of access to both party's knowledge and information without opposition or delay.

It is important to be aware that a joint retainer is similar, yet still different, than a formal retainer through the collaborative process. If electing to proceed in a collaborative manner, one must ensure that the professionals engaged (both financial and legal) are collaboratively trained.

There is no steadfast rule that says a CBV is required for every separation or divorce case. It depends on the circumstances of the case and each case is different. There are cases where the services of a CBV are required, and sometimes even mandated by the Court, and there are cases where only legal professionals are required. Although other financial professionals are sometimes retained to assist (i.e.: financial planners), the valuation of business interests, complex financial instruments (such as stock options and RSUs), and tax related calculations are generally best suited to a CBV.

If you require an independent "court ready" report on such issues, it can be beneficial to retain a financial expert with a CBV or other recognized credential.

In situations where no independent expert work is required, it may be useful to retain a CBV in any event to provide less formal advisory services to assist in negotiations between the parties.

Advisory services may also involve circumstances when the CBV is not required to be an independent neutral.

As an advisor, independence and objectivity is not required, and partisan advice may be provided. However, in such circumstances the CBV would not issue their own expert report and may simply advise counsel by providing analysis of existing reports, and with respect to other relevant needs such as providing cross-examination questions of opposing experts or parties.

To illustrate, the advisor CBV could review the work of another CBV retained by the same party, as a shadow valuator who would provide comfort on the existing CBV's work.

Specifically, the advisor CBV could provide counsel and their client comments on the existing CBV's work and related calculations and could provide an alternative view or agree with the existing or opposing CBV's work. In complicated litigation, this is sometimes necessary to protect the court's perception of the independence of the testifying CBV.

Ultimately, a CBV in a family law matter assists clients and counsel in determining income for support purposes and valuing business interests. CBVs are able to act independently, jointly, in a collaborative environment, or an advisory role and can be an asset in matrimonial proceedings.

This article has been prepared for the general information of our clients. Please note that this publication should not be considered a substitute for personalized advice related to your situation.

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Based in Toronto, Crowe Soberman is one of the leading public accounting firms in Canada. The firm has been in business over 60 years and has built a strong reputation in the community because of the excellent work our teams of dedicated professionals produce.

Our core services are in Audit, Tax, and Advisory. Along with these, we have professionals who specialize in Business Valuation, Claims Valuation, Corporate Recovery & Turnaround, Forensics, Estates & Trusts, Global Mobility Services, HR Consulting, Commodity Tax (HST), International Transactions & Consulting, International Tax, Litigation Support, M&A Transactions, Management Services, Personal Insolvency and Succession Planning. Members of our various specialty services groups are available when required as a technical resource to assist the client service team.

Crowe Soberman is an independent member of Crowe Global. As a top 10 global accounting network, Crowe Global has over 200 independent accounting and advisory firms in 145 countries. For almost 100 years, Crowe has made smart decisions for multinational clients working across borders. Our leaders work with governments, regulatory bodies and industry groups to shape the future of the profession worldwide. Their exceptional knowledge of business, local laws and customs provide lasting value to clients undertaking international projects. At Crowe Soberman LLP, our professionals share one commitment: to deliver excellence.