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# FSAT NEWS

FINANCIAL SERVICES ADVISORY TEAM

FALL/WINTER 2021

Welcome to our 26th issue of FSAT News, a newsletter published by DJB's Financial Services Advisory Team (FSAT) to better inform and help you manage your business's potential.

If you wish to receive further information regarding the services discussed in this issue, please contact a member of our team:

**Brent Pyper**, CPA, CA, CFF, CFP®  
bpyper@djb.com  
905.928.1912

**Robert Plenderleith**, CPA, CA, CBV, CFF  
rplenderleith@djb.com  
905.525.9520

**Colin Cook**, CPA, CA, CBV  
ccook@djb.com  
905.941.5684

**David Grebenc**, CPA, CA  
dgrebenc@djb.com  
905.681.6900

## Virtual Trials – Expert Evidence: From an Accounting Expert's Point of View



It's hard to believe we are still looking at holding virtual trials here in the fall of 2021. I provided evidence, via Zoom, at a virtual trial about a year ago, and then again in the spring of this year. In addition, I participated in a virtual mediation in April 2021 and gave virtual evidence in an arbitration in May-June 2021. I think we all hoped this would be behind us by now. And maybe there is hope. Dave Grebenc of our office gave "live in-person" expert evidence at a trial last month. So an end may be in sight.

However, having said that, I believe there may be times when virtual evidence may continue to be utilized

even after this Covid issue is wrestled under control. For example, it may no longer be necessary to fly an expert in to give evidence. It is possible that evidence could be provided virtually instead. We have experience with this now and have seen that it can work. I'm not suggesting it is necessarily the 'preferred' method, but there may be times when it continues to make sense.

I am not a lawyer, but perhaps some comments from an expert witness may help other experts, or help lawyers prepare their experts for virtual trial. This is the goal of this article.

In general, I felt the process worked very well. I credit this, at least in part,

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to the preparation of the lawyers in organizing their documents so that they can be readily opened up “shared”, and then being able to move quickly through those documents to find the relevant page.

Virtual court certainly had some definite advantages. No travel was required, and I did not have to spend time sitting idle, waiting in the court hallway/waiting room. Many times I have shown up at court, but then had to wait, sometimes for hours, to be called into the court room. With virtual court, I could at least sit at my desk and work on administrative work, including clearing emails, while I waited. In addition, this was the first time I attended court where I didn't have to shine my shoes first!

The following notes provide some thoughts on the preparation for, and attendance in, virtual court. Although many of the items may seem intuitive, hopefully it may serve as a good checklist of items to consider in preparing for virtual court.

### **Prior to court date**

- 1) Have a discussion with your lawyer to ensure you understand the virtual court process, and determine what information you can have on your desk. You should likely clear off your desk completely, other than for a copy of your report and any other notes that you would generally take into a court room.
- 2) Review your schedules or other demonstrative evidence with your lawyer. Tables, etc that are fairly legible on paper, may be more difficult to read on screen. You may want to simplify your schedules. It is a good idea to have a practice Zoom (or other software) meeting with your lawyer. As a note to lawyers – don't assume your expert has a good set up, or familiarity with the technology.
- 3) Ensure you have a clean copy of your report that doesn't have

notes on it, in case they specifically require it.

- 4) Ensure you have the Zoom link and password.
- 5) Have a Bible, or desired Holy Book with you, if you desire. You may not normally have one in your office.
- 6) Dress appropriately. The process is a little less formal, but you shouldn't be.
- 7) Ensure you have plenty of extra water on hand, at your desk. There won't be a court assistant to refill your water.
- 8) Close Outlook / Messenger / Teams / etc on your computer. You don't want the 'ding' of messages coming in while you are testifying. Put your office / house phone on Do Not Disturb, if possible.
- 9) Set up your computer so the camera is in front of you and you are speaking directly to the camera. Especially if you have multiple screens. You don't want to have the camera on one screen, while you are facing a different screen.

### **During court**

- 1) The process is a little less formal.
  - a) You don't stand when the judge enters.
  - b) Some lawyers don't wear their robes.
  - c) Most lawyers don't stand at a pedestal, they just remain seated.

However, 'you' should treat it just like regular court.

- 2) Enter the virtual waiting “room” early, but ensure you turn your video and microphone “off” until invited into the room. Be cautious because you may be invited in unexpectedly. Remember to turn your video and microphone back on once in the room. Also, it is good practice to turn the video and microphone back off while if you have to leave the room, such as during break, lunch, or if they ask

you to leave the room for a while.

3) You will likely be asked to confirm that there is no-one else in the room with you.

4) You will likely be asked to confirm that you don't have any materials, or documents on your desk. Remember, depending on the angle of your camera, they may be able to see part of your desk.

5) In my first zoom court case, I was allowed to have and refer to my own copy of my report. For the second trial, I was told not to look at my own copy of my report unless specifically asked to. However, when they started to refer to my schedules, I advised them the print was too small for me to see well, and so I was allowed to refer to my own copy.

6) A close-up of your face will be on the screen all the time. Therefore, be more cautious of facial reactions and expressions.

7) Everyone can see where your eyes are looking. If you try to have notes on a second screen, or on your desk, everyone will know you are looking there.

8) You can generally see everyone's face, right in front of you. This includes the judge, both lawyers, etc. This is a great advantage, as it is easier to watch their facial expressions and reactions, to ensure they (especially the judge) are understanding what you are saying. However, if/when someone shares their screens and puts reports / exhibits on the screen, you will likely see fewer people. At one point, I could not see the judge at all.

9) As an accountant, I would likely not have to 'share' documents during trial. The lawyer has the documents and they share them. However, during the virtual arbitration I attended, I often shared my screen, so it is a good idea to know how to do this.

*[article continued on page 3]*

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10) When documents are shared on screen, especially charts of numbers, the print may be very small, making it very difficult to read. Don't hesitate to ask them to enlarge the image.

### **Standard Zoom tips and items to consider**

- a) If at home, ensure pets and children are not in the room.
- b) If at home, ensure your family knows you are in Court, and not to come in.
- c) Turn your cell phone off.
- d) I used my laptop / desktop, rather than a cell phone or iPad. It is larger screen, and you don't have to hold it up to your face.
- e) Ensure the camera is positioned so that your whole face shows on the screen.
- f) Consider the use of head phones and / or microphone.
- g) Pay attention to your background. Avoid having a lot of distracting clutter in the camera's view.
- h) Avoid using 'computer fake backgrounds'. They often don't work that well.
- i) Be careful of talking over other people. It is worse on Zoom, than in real life. You need to be more careful not to start talking until the other person has completely finished speaking.

*I personally hope to be back into live court settings again very soon. Although the virtual process works, and it is important that we continue to hold trials during the pandemic, it is far less personable than live court. However, as noted above, I can see where the use of virtual attendance may continue post pandemic, in some situations.*

Article written by:

**Brent Pyper**, CPA, CA, CFF, CFP®  
Partner, Financial Services  
bpyper@djb.com  
905.681.6900

## Discount Rate Remains at 0% for trials in 2022



For the 3rd year in a row, the discount rate to be used to calculate future economic losses will remain at 0% for the first 15 years, and 2.5% thereafter.

Each year the Ministry of the Attorney General of Ontario publishes the discount rates to be used for the calculation of awards for future pecuniary damages in Ontario under rule 53.09 of the Rules of Civil Procedure. The rates are based on calculations set out in the Rules of Civil Procedure.

For trial scheduled to commence on or after January 1, 2022, the rates are as follows.

- For amounts expected to increase with inflation (e.g. salary), the discount rates to be used remain at 0% for the first 15 years and 2.5% thereafter.

- For amounts that are static (that don't increase with inflation), such as Income Replacement Benefits (IRBs) or many Long-Term Disability benefits, a higher discount rate would be warranted. Based on the Attorney General published inflation rates, the discount rates for such amounts will be 1.8% for trials beginning in 2022, up from 1.0% for 2021. As this discount rate has increased, the present value amount will be slightly lower under the new rates.

*Our Financial Services team has significant experience preparing these present value calculations. If you have any questions or require assistance with a calculation, please contact a member of our team.*

# Thinking of Selling Your Business: What to Expect and When



**M**any business owners are asking about and considering what steps are needed to sell their businesses and get the best price. Over the past two years, business owners have spent time reflecting on their priorities, goals, and lifestyles. A large number have had to delay exiting their business, instead they are focusing primarily on business survival and maintaining cash flow. While some of these owners have since decided that they are now ready for retirement, others have decided to divest their businesses in the pursuit of new ventures and “pivot” in a different direction. At the same time, the business sale market has exhibited incredible strength for sellers; many eager buyers have entered the market, bringing with them large amounts of capital and a strong demand for profitable and growing businesses. This has also created many opportunities for business owners who may be receiving unexpected and unsolicited offers to purchase their business.

Meanwhile, many family-owned businesses are evaluating when the best time is to transfer ownership to the next generation. Recently proposed changes to the taxation of intergenerational transfers of family businesses have led many to ask about strategic estate planning opportunities.

The process for selling a business varies depending on who the potential buyer may be, the structure of the sale, and when the sale will take place. However, the following steps are common in many transactions and are important for business owners to understand in order to ensure they receive the best price and terms.

## Preparing to sell

Whether you are retiring, passing on the business to family, or moving on to another endeavour, the process of selling your business can be complex and there are many issues to consider. When considering the sale of your business, it is important to examine these key issues.

- **Is the business ready to sell?** In a successful sale process, buyers want to see that the business has a history of profitability and growth, a clean balance sheet (i.e., only operational items without related party and shareholder balances), defined processes and procedures for operations, a stable customer base, and future growth plans.
- **Who will buy your business?** Whether selling to family members, outside buyers, or key managers/employees, it is important to examine the pros and cons of each exit strategy and the appropriate steps to take when planning for each.
- **Who will run the business after the sale?** Businesses that rely less on their owner to manage daily operations are generally seen as more attractive. There is value in having a strong management team with defined operational processes in place so that when you do sell,

a buyer will be able to transition seamlessly without interruption.

Once you have decided to sell, it is important to begin the planning process as early as possible. Planning early on will give you the best chance of maximizing your business value before a sale and will better prepare you for the exit process. Business owners that do not take the necessary time to plan for their exit are often faced with less favourable results, such as a lower sale price, deferred payments (i.e., earnouts, contingent considerations and vendor take-back), or a failed family transfer. Proper planning gives you the best chance of successfully closing a sale and receiving the highest price available.

## Putting together a team

One of the most important steps is to put together a team of trusted and knowledgeable advisors to assist you throughout the sale process. Specialists, such as accountants, lawyers, and other professional advisors will all play key roles in ensuring you successfully sell your business and maximize the after-tax proceeds. Additionally, many business owners also consider whether to enlist a Mergers and Acquisitions (M&A) advisor or Business Broker to assist in marketing and negotiating the sale.

## Knowing your value

In order to evaluate offers and successfully navigate the negotiation process, it is important to know the value of your business. A Chartered Business Valuator (CBV) can provide a better understanding of the common question, “What is it worth?” and can help you better understand the key drivers of value.

Even if you do not intend to sell in the immediate future, understanding these key value drivers will better prepare you to build a valuable and growing business, and will help ensure

you receive the best price possible when the time does come for a sale. For instance, while it is generally preferable to begin the planning process for a sale as early as possible, this is not always feasible; sometimes, buyers approach sellers with unsolicited offers. If you ever receive an unsolicited offer for your business, it is also likely you will be given a limited timeframe to assess the offer, leaving you with little time to implement changes to your business that will increase its value in preparation for the sale. For this reason, business owners should constantly be evaluating their business, and should make changes that will increase value when given the opportunity. Additionally, certain steps need to be taken a year or more in advance such as tax planning/structuring and getting the proper management in place.

It is also important to examine your personal financial situation and goals to determine whether a sale will provide you with adequate proceeds to fund your future endeavours, whether it be retirement or another venture. If it will not, then it is important to take steps now that will generate future value growth. This can often be done by identifying opportunities and making investments in areas of the business that will drive future sales growth, or by optimizing the operational and financial processes of the business to reduce costs and improve profitability at current volumes. However, many of these changes can take time to implement, reaffirming the importance of starting the planning process well in advance.

### **Marketing your business for sale**

In order to market your business for sale, your team of trusted advisors will assist you in preparing marketing materials that can be used to attract potential buyers, one of which is called a Confidential Information Memorandum (CIM). This document provides potential buyers with an overview of the business and its operations, historical and projected financial results, and other information pertinent to the sale.

When selling your business, it is normally preferred that the business is marketed for sale confidentially. This is because public knowledge of a sale can often lead to employees resigning or customers leaving for your competition. Before potential buyers can receive confidential information about your business, they will first be given a generic description outlining the sale opportunity. They will then be required to sign a Non-Disclosure Agreement (NDA) in order to receive the CIM and other confidential information about the business. This agreement provides you with legal recourse in the event that an interested party shares confidential information publicly about your business.

### **Due diligence**

Once you have received an offer for your business, there is still a considerable amount of work that is required to ensure the sale closes successfully. Assuming you are satisfied with the offer, you will then enter into a Letter Of Intent (LOI) with the buyer and move on to the next phase of the sale process, called the 'due diligence' phase.

During the due diligence phase, potential buyers will closely examine the operational, financial, and legal aspects of your business. The purpose of this process is to allow buyers to confirm the accuracy of the information presented by you about your business, and additionally allows you to confirm the representations made by them regarding their ability to purchase the business. This process involves the exchange of a variety of documents and supporting information and establishing some baseline business aspects, such as operating working capital amounts. The buyer will then have their own team of advisors review the information.

The success or failure of a business sale is directly related to how prepared the seller is for the due diligence process. Preparing well in advance for this phase of the sale process has many benefits as unidentified issues that arise during the due diligence process are likely to lead to a buyer reducing their offer price, or declining to move forward all

together. Adequately preparing for the due diligence process early in advance allows you the opportunity to recognize and resolve any of these issues that would have been likely to come up later on, increasing the chances that a buyer will pay you full value for your business.

### **Closing the deal**

After a deal has been agreed to and the due diligence phase has successfully been completed, the next step is to execute the sale based on the agreed upon terms. At this stage, closing adjustments are made to the purchase price and necessary legal agreements are drafted. The lawyers and accountants will assist in reviewing all of these important documents to ensure that agreed upon terms are properly documented during the closing process. After all agreements have been reviewed and signed by both parties, the funds will be transferred and the sale will be closed with a few possible post-closing adjustments.

*At DJB, our team of specialists has the professional experience to assist business owners throughout the sale process. Our trusted professionals can assist in all aspects of preparing for a sale, including assessing the complex issues involved in determining the value of a business and preparing the documents and information that will be required during the due diligence process. This will help ensure the sale occurs in a tax-efficient manner, and advising you on steps that you can take to increase your business's value. Our specialists also recognize the importance of not just transitioning a family business, but understanding the soft issues around such an important event.*

Article written by:

**Robert Plenderleith**, CPA, CA, CBV, CFF  
Partner, Financial Services  
rplenderleith@djb.com  
905.525.9520

**Jonathan Corobow**  
Associate, Financial Services  
jcorobow@djb.com  
905.525.9520

# DJB Contacts Interested in Buying & Selling Businesses - October 12, 2021



**W**e have clients and contacts that are interested in buying or selling businesses. If you see a possible fit, please contact us so that we can arrange an introduction for you.

## BUYERS

- ▶ Private Equity Group that buys majority positions in Canadian companies with EBITDA → \$2m for long-term hold and growth.
- ▶ Looking for a cleaning/vacuuming (not janitorial) company in Southern Ontario.
- ▶ Private Equity Group providing capital and strategic partnerships to \$.5 to \$3.0m EBITDA businesses in Cda, primarily Ont and BC.
- ▶ Interested in an owner operator retirement situation with approx \$250k to lever with VTB for acquisition.
- ▶ \$500k to \$4m, in any industry, will consider partnership and investment opportunities, including managing or running a business with a minority stake.
- ▶ Two entrepreneurs backed by 16 investor fund looking for \$1.5m+ EBITDA and => 20% ROC.
- ▶ Wholesaler of welding supplies interested in similar businesses in Canada or USA with an EV up to \$5m.
- ▶ Foreign (US) shareholders' investment company makes acquisitions across North America in the manufacturing and agricultural sectors (large farming corporations) with an EV up to \$5m.
- ▶ Food Producer (Pasta/Pizza sauces, Salsa, etc.) and Distributor with \$4.5m sales looking to buy complementary profitable food production company with about \$1m in sales.
- ▶ Looking to grow by acquiring HVAC or related companies in the \$1-10m sales range in the Hamilton/Halton/Niagara regions.
- ▶ Operates an importing business specializing in household (ie - kitchen) gadgets sold to grocery and box store chains. Interested in complementary businesses as well as Hamilton based real estate investment opportunities.
- ▶ Diversified asset management firm focusing particularly on the technology, media, service, renewable energy, real estate and hospitality sectors.
- ▶ Entrepreneurial investment firm seeking to acquire and grow a small to medium-sized business. Looking for a company with annual revenues from

- \$5 to \$30 m and EBITDA from \$1 to \$5 m, anywhere in Canada.
- ▶ Retired individual looking for business to run part time possibly involving his son.
- ▶ Potential client with \$25m annual revenue in mechanical systems for industrial, commercial and institutional construction looking to acquire complementary businesses in SW Ontario.
- ▶ Investment partnership acquiring Canadian companies with \$1m to \$6m EBITDA.
- ▶ Acquires controlling interests in Canadian companies with \$1m to \$5m EBITDA.
- ▶ Manufacturing business within 100 km of Hamilton, sales \$5m to \$10m, EV \$2m to \$3m, could buy in over time or take a significant ownership % and a senior management role.
- ▶ Up to \$7m to invest in auto dealership, wholesale distribution of electrical or HVAC and/or businesses that serve the construction or manufacturing industries.
- ▶ Broker looking for larger real estate offices for acquisition. Would consider any office over 15 people in the Kitchener, Guelph, Milton, Mississauga or Brampton markets and any office with over 50 agents in the Burlington, Hamilton or Oakville market places.
- ▶ Two partner firm in the GTA looking to acquire \$3m to \$10m EV businesses in the GTA/Hamilton area.
- ▶ Interested in troubled situations, successions or high growth companies in distribution or manufacturing.
- ▶ \$1.5m to lever into a business acquisition.
- ▶ Private Holdco looking for investments in the GTA in the industrial manufacturing or services industry. Revenue → \$8m and pays 3 to 4 times EBITDA.
- ▶ Lives in N-O-T-L with approx \$250k cash to lever into business acquisition.
- ▶ Investment group, enterprise value up to \$12m, within 90 minutes of Kitchener.
- ▶ Investment group, Oakville or West GTA, EV \$1m to \$10m.
- ▶ Investment group with approx \$10m equity to place.
- ▶ Marketing individual looking to become co-owner/manager in small company.
- ▶ Private equity firm, seeking \$10m to \$15m enterprise value, 100% sale, owner-operator looking to transition out, Niagara region.

- ▶ Seeking an enterprise with a strategic fit to their business, serving Industrial Distributors, with sales in the range of \$1m to \$20m.
- ▶ Already made one acquisition in the food service industry and are interested in related industry and/or other good opportunities.
- ▶ Historic earnings with potential, located in the Toronto through St. Catharines area, existing management and price of \$1m - \$3m.
- ▶ Anything profitable. Niagara Falls to Oshawa. Up to \$1m.
- ▶ Investment group looking for companies with \$3m-\$30m in sales, focused on B2B services, Healthcare services and software.

## SELLERS

- ▶ Medical-legal personal injury graphics business. Sales approx \$1.2m with 10 to 15% pre tax income.
- ▶ Custom brokerage. Sales approx \$900k p.a. Asking \$1.5m for 100% of shares.
- ▶ Security systems and equipment. Sales approx \$1.6m and EBITDA approx \$250k.
- ▶ Engaged in the development, training, and sale and support of business applications software. Revenue of approximately \$4m per annum.
- ▶ Manufacturing business in the Kitchener/Waterloo/Guelph area with approx \$3m in sales and EBITDA of \$250 - \$500k.
- ▶ Retail pet food and supplies store.
- ▶ Corporate group includes a poultry wholesale, distribution and refrigerated logistics company and a boutique retail food store company. Total sales \$7m.
- ▶ Exterior building, vehicle, driveway, sidewalk cleaning service with 2 self contained trucks. Annual revenue approx \$165k.
- ▶ Engaged in removal & disposal of liquid waste & the performance of environmental audits. Sale of 50% interest by one of two shareholders.
- ▶ Restaurant including the land and building. Asking \$3m.
- ▶ Machine shop specializing in large machining and fabricating and also providing comprehensive support services. Sales approx. \$2.9m and EBITDA approx. \$325k.
- ▶ A distribution company with \$5m+ in sales.

**For more information contact:**  
**Colin Cook, CPA, CA, CBV, CFF**  
Senior Manager, Financial Services  
ccook@djb.com  
905.941.5684

# Spotlight - Jonathan Corobow



**Jonathan Corobow**  
Associate, Financial Services

Jonathan joined DJB as an Associate, Financial Services in September 2021, having previously worked at a business valuations and business brokerage firm in Manitoba. He has experience drafting formal business valuation reports, helping buyers and sellers navigate the transaction process, and developing comprehensive business plans and financial models for startups, expansions, and entries into new markets. Jonathan is passionate about providing businesses and their owners with a better understanding of the key drivers that impact business value.

Jonathan graduated from University of Manitoba with a Bachelor of Commerce (Honours) degree. He is a registered student of the Canadian Institute of Chartered Business Valuators (CICBV) and is in the process of completing all requirements to obtain his CBV designation.

In his spare time, Jonathan enjoys exploring off-leash parks with his canine companion, Salo.

## FSAT SERVICES



- Assistance with Business, Acquisitions & Divestitures, Including Due Diligence & Quality of Earnings Reports
- Business Interruption Insurance
- Business Valuation
- Collaboratively Trained Professionals
- Child & Spousal Support Income Calculations
- Economic Loss Calculations regarding Motor Vehicle Accidents, Slip and Fall, Medical Malpractice and Dependency Claims
- Experienced Expert Testimony
- Forensic Accounting
- Income Replacement Benefit (IRB) & Other Accident Benefit (AB) Calculations
- Long-Term Disability Calculations
- Matrimonial Disputes
- Shareholder Agreements & Dispute Resolution
- Value of Future Care Cost Analysis
- Wrongful Dismissal Claims

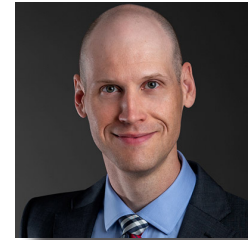


Connect  
With Us

## Financial Services Advisory Team



**Brent Pyper**, CPA, CA, CFF, CFP®  
Partner  
bpyper@djb.com



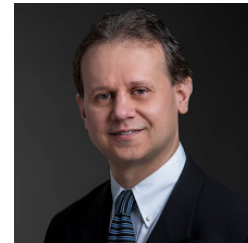
**Robert Plenderleith**, CPA, CA, CBV, CFF  
Partner  
rplenderleith@djb.com

**DJB Burlington**  
5045 South Service Road  
Burlington, ON  
L7L 5Y7  
Tel: 905.681.6900  
Email: burl@djb.com

**DJB Hamilton**  
570 Highland Road West  
Hamilton, ON  
L8W 0C4  
Tel: 905.525.9520  
Email: hamilton@djb.com



**Colin Cook**, CPA, CA, CBV  
Senior Manager  
ccook@djb.com



**Dave Grebenc**, CPA, CA  
Manager  
dgrebenc@djb.com

**DJB St. Catharines**  
20 Corporate Park Drive  
St. Catharines, ON  
L2S 3W2  
Tel: 905.684.9221  
Email: stcath@djb.com

**DJB Welland**  
171 Division Street  
Welland, ON  
L3B 5N9  
Tel: 905.735.2140  
Email: welland@djb.com

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