



FSAT NEWS

FINANCIAL SERVICES ADVISORY TEAM

FALL/WINTER 2023

Welcome to our 30th 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

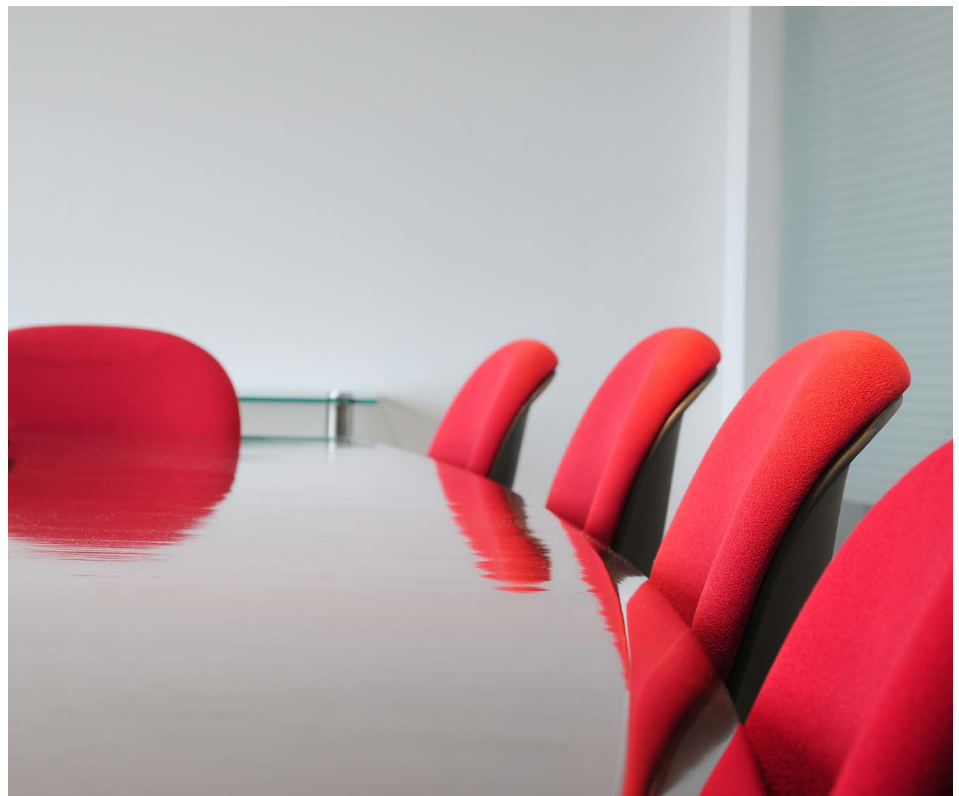
Colin Cook, CPA, CA, CBV, CFF
ccook@djb.com
905.941.5684

Praveen Perera, CPA, CA, CBV
pperera@djb.com
905.525.9520

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



Minority Shareholdings – Does a Minority Discount Apply?



Who are minority shareholders?
A minority shareholder is any shareholder who does not own a controlling interest in a public or privately-held company.

What is a minority discount?

In a notional valuation context, a minority discount is when the pro rata value of a particular minority

shareholding is reduced to reflect the disadvantages of owning a minority interest of an asset or security as a whole. Typically, a minority shareholding realizes a discount for:

- The inherent lack of marketability or illiquidity, which refers to assets or securities that cannot be sold and converted to cash without a loss in value. Minority

shareholdings are generally viewed as less marketable or liquid than a controlling interest, therefore attracting fewer potential buyers resulting in a discount. Sometimes referred to as Discount for Lack of Marketability or DLOM; and

- The lack of control over the company's operations and the ability to influence the future direction of the company and the distribution of profits/dividends. Sometimes referred to as Discount for Lack of Control or DLOC.

The level of minority discount can range significantly depending on the facts of the particular situation and ownership interest held.

Minority shareholders in a publicly traded company vs. a privately-held company

Minority shares in a publicly traded company, where shares are widely held and large volumes of share are frequently traded, usually has a minimal illiquidity discount. While minority shareholders have no control over the direction of the public company, they can choose whether to sell or hold the company's shares. As a result, there is often no significant discount for illiquidity or lack of control.

In contrast, a privately-held company's en bloc value may already reflect a general illiquidity discount as there is no ready market available to buy or sell shares in a privately-held company. A further discount for illiquidity may apply specifically to a minority shareholder, compared to a controlling shareholder of the same privately-held company.

Factors influencing discount

While the specific methods and possible empirical evidence are outside of the scope of this article, the quantum of the discount for lack of control and lack of marketability, which are sometimes combined

into one discount, is dependent on several factors, including the following factors:

- Shareholder's level of involvement in the business.
- A shareholder who is on the board of directors or involved in the daily operations of the business would generally have a lower quantum of discount than a shareholder who has no involvement in the business operations or governance.
- Relationship and size of the shareholding relative to the other shareholdings.
- In scenarios where there are no controlling shareholder, the relationship and combination of the size of the subject shareholding with other minority shareholders must be considered to determine if the subject shareholder can influence decisions.
- Additionally, the applicable minority discount may be less or a potential premium may be available, if the other minority shareholders want to purchase the subject's shares in order to become a majority shareholder.

Shareholders' agreements

- Clauses that influence liquidity or control will have influence on the quantum of a discount, such as restrictions on share transfer, rights of first refusal, or tag-along/drag-along provisions.

Nuisance value

- Shareholders who hold just enough shareholdings to prevent or delay the plans of a controlling shareholder are considered to have "nuisance value" and may have a lower quantum of discount.
- It is difficult to determine the discount for nuisance value in a notional valuation.

Family or group control

- Shareholders who act in concert and in aggregate owns over 50%

of the shares, may not have an applicable minority discount. However, a third party who enters into a shareholder agreement may have a significant minority discount applied to the value of their shares.

Dividends

- A history of dividend distribution is an indication of return on investment and may indicate less of a minority discount.

Prior sales of minority shareholdings

- Prior transactions provide insight regarding the quantum of any minority discount.

To apply a minority discount or not?

To determine whether a minority discount applies, consider the following two factors: the purpose of the valuation and the valuator's professional judgment. If the valuation were to determine the value of the minority's interest for the purpose of a sale to a non-related party, a minority discount would apply. The quantum of the discount that applies to the sale requires a valuator's professional judgment and analysis.

In shareholder disputes involving oppression, one of the remedies is to have the corporation purchase the oppressed minority shareholder's interest at fair value. In this case, a minority discount would not apply.

If you have any questions or require assistance with determining if a minority discount is applicable and the quantum of the discount, please contact a member of our Financial Services Advisory Team (FSAT) team.

Article written by:

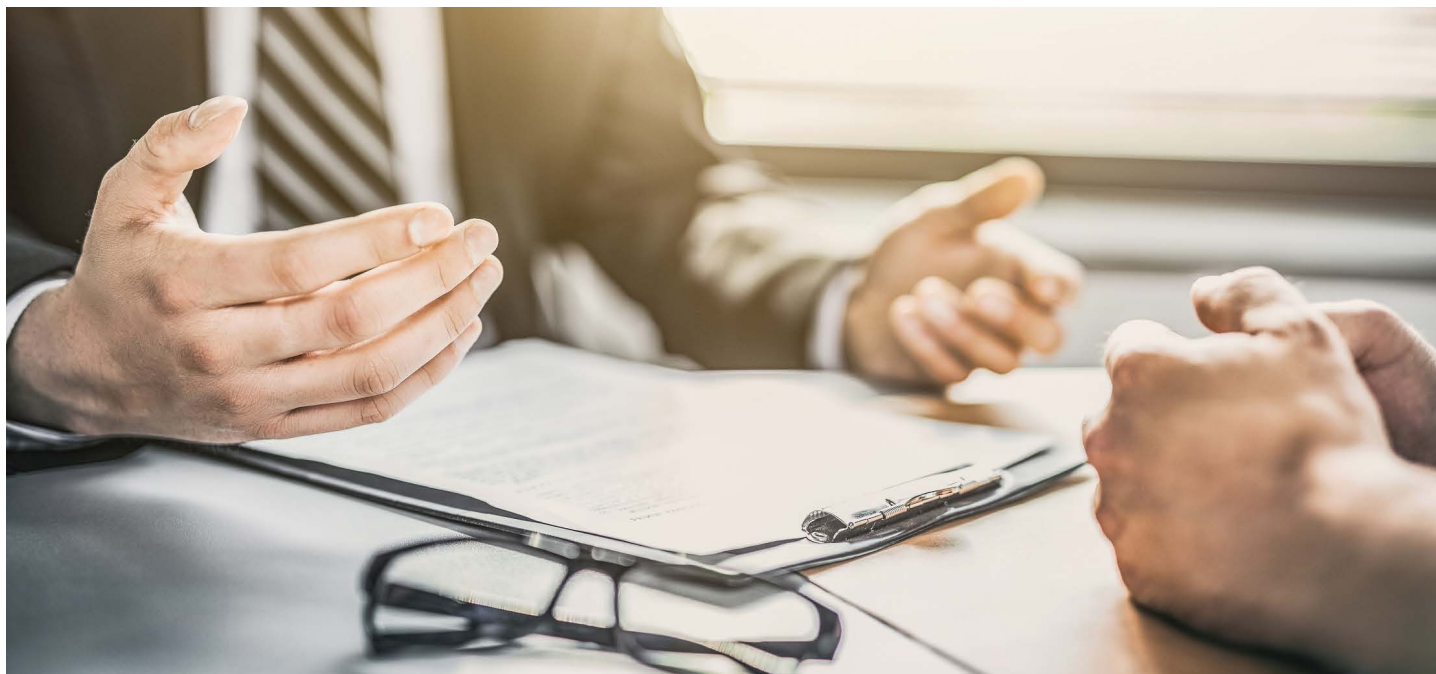
Rachel Mak

Associate, Financial Services

rmak@djb.com

905.681.6900

CBVs and Legal Matters



In this article, we discuss some of the ways a Chartered Business Valuator (CBV) is often asked to assist in various legal matters.

CBVs and Litigation

In litigation, CBVs are often involved as either independent “expert witnesses” or non-independent litigation consultants.

Expert Witnesses

- An expert witness is an opinion witness of the court. An opinion witness does not have direct involvement in the matter that is before the proceeding until after the incident occurred, and is relied on to provide an opinion on the matter based on their specific expertise. This is different from a fact witness, which is a person who has direct involvement in the matter.
- An expert is a person with specialized skills, knowledge, experience, or training in a specific subject matter area that is pertinent to the legal proceeding. To be an expert witness, the expert must be clear of any conflicts.
- Prior to becoming an expert

witness, the expert prepares an expert report to be used as evidence in litigation. Experts must be accepted by the court and qualified as an expert witness at the time of trial to testify in a proceeding related to matters of their specific expertise.

- An expert witness must be independent and objective, and it is their duty to assist the court impartially on matters relevant to their area of expertise.

CBVs as Expert Witnesses

CBVs are regularly relied on in legal proceedings to assist in the following areas:

- Disputes where a business valuation is required;
- Dispute-related matters such as shareholder, intellectual property, contract, and matrimonial disputes;
- Quantification of economic/financial losses; or
- Other conclusions of a financial nature.

A CBV may be asked to prepare an independent written report, which will be entered as an exhibit

in litigation. This report is known as an “expert report”, which is a written communication containing a conclusion as to the quantum of financial loss, or any conclusion of a financial nature in the context of litigation or a dispute, prepared by an expert acting independently. In situations where the fair market value of a business or asset/liability is required, an expert report may contain a valuation conclusion.

A CBV may also prepare a limited critique report, which has the purpose of commenting on another expert’s report but does not include a separate financial conclusion. In a limited critique report, comments are provided with respect to the approach and techniques used and calculations in the original report, subjective matters such as the selection of discount rates, and whether the original report is suitable for the purpose at hand.

CBVs as Litigation Consultants

A CBV can also assist clients in litigation matters as a litigation consultant. In this case, the CBV will act as an advisor to legal counsel to promote the interests of their

client. In this situation, a CBV is not considered independent, and would not be able to act as an independent expert witness during the trial or in other future litigation on this matter.

In this role, a CBV generally acts as an advisor to legal counsel, will provide advice, support their client in various processes, and may advocate on their client's behalf. Because certain valuation principles and topics are often subject to interpretation and professional judgment, the consultant is often relied on to assist the client to advance their own position in the litigation process. The litigation consultant can assist with such issues as strategy and cross-examination.

A CBV acting as a litigation consultant is not independent and will not be required to testify. In some situations where a CBV is engaged as a litigation consultant, the CBV may be covered by litigation privilege.

CBVs and Family Law

CBVs are regularly involved in family law matters. CBVs are most often involved in assisting in valuation determinations related to the division of property on marriage breakdown and the determination of income for spousal or child support purposes.

If you have any questions regarding how a CBV can assist you in legal matters, please contact a member of our Financial Services Advisory Team (FSAT) team.

Article written by:

Jonathan Corobow

Associate, Financial Services
jcorobow@djb.com
905.525.9520

NOTE: This article is not intended to be legal advice. Please contact a lawyer to discuss the legal implications discussed in this article further.

Discount Rate Increases to 1.0% for Trials in 2024



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 for the first 15 years are based on calculations set out in the Rules of Civil Procedure, with the annual rate thereafter fixed at 2.5%. The discount rate is intended to reflect the difference between estimated investment and price inflation rates.

For 2023, the discount rates were set at 0.5% for the first 15 years, and 2.5% thereafter.

For trials scheduled to commence on, or after January 1, 2024, the rates have been increased to 1.0% for the first 15 years, and 2.5% thereafter.

Although not a significant change, the effect will be to reduce our present value calculations for trials beginning in 2024, as a higher discount rate results in a lower present value.

The above-noted rates are to be used for amounts expected to increase with inflation (e.g. salary). 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 3.2% for the first 15 years, and 3.2% thereafter, for trials beginning in 2024. These are up from 2.8% and 2.9% (respectively) for 2023.

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.

Rule 53.09 Rates

	2024	2023
First 15 years	1.0%	0.5%
Thereafter	2.5%	2.5%

Financial Services Advisory Team



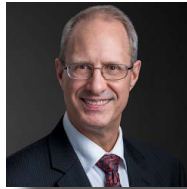
**Connect
With Us**

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

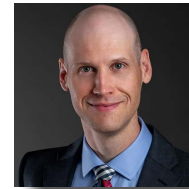
DJB Hamilton
570 Highland Road West
Hamilton, ON
L8W 0C4
Tel: 905.525.9520
Email: hamilton@djb.com

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



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



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



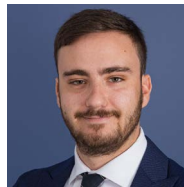
Colin Cook, CPA, CA, CBV, CFF
Senior Manager
ccook@djb.com



Praveen Perera, CPA, CA, CBV
Senior Manager
pperera@djb.com



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



Jonathan Corobow
Associate, Financial Services
jcorobow@djb.com



Rachel Mak
Associate, Financial Services
rmak@djb.com

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

This publication is distributed with the understanding that the authors, publisher, and distributor are not rendering legal, accounting, tax, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. The information in this publication is not intended to be used for the purpose of (i) avoiding penalties that may be imposed under local tax law provisions or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this publication. © 2023

