

# Marmer Penner Inc. Newsletter

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## HOW TO SAVE COSTS WITH “DRAFT CALCULATIONS”

Do you have clients who are fee sensitive, yet still require the services of an experienced litigation accountant? Are any of your clients looking to keep professional fees to a minimum, yet still require valuation expertise? If expert testimony is not yet contemplated but your client still requires an indication of value or income, “draft calculations” without a report might be the answer. If you have any clients that fit this description, then read on – this newsletter is for you.

The Canadian Institute of Chartered Business Valuators (“CICBV”) issues mandatory practice standards related to the preparation of both “Valuation Reports” and “Expert Reports”. These standards require these reports to be prepared by a valuator who is acting independently and apply if they are not clearly marked as being in draft. These standards require the completion of narratives that

contain the usual list of disclosures familiar to most readers. In even moderately complicated matters, the preparation of reports with all the required disclosures can add significantly to a party's costs. Calculations clearly marked as "draft", however, are currently excluded from the standards, and as such, can be issued without a written report.

Marmer Penner Inc. provides "draft calculations" in cases where it is appropriate to do so, which results in cost savings for clients. In many cases, we find that a client needs to determine if the other party is "in the ballpark" – this can be done with the less expensive "draft calculations" alternative. In other cases, clients have no current intention of taking a dispute to trial, and therefore have no use for a full-blown trial-ready report with all the required disclosures. In a collaborative family law setting, or in a joint retainer setting (where it is the intention to settle a case from the outset), a trial-ready report may not be necessary. In these cases, "draft calculations" are a cost-effective option.

Clients who require draft calculations must be made aware that less research and analysis is undertaken than with a trial-ready report. Sometimes, draft calculations are subject to the accuracy and completeness of information, which may not be followed up because

of cost constraints. Often draft calculations are subject to outstanding disclosure requests. Subsequent analysis and research (which might be warranted if a trial-ready opinion was required) may lead to amendments and/or corrections. Clients must also understand that draft calculations have a limited use. For the most part, they are only useful for obtaining an indication of value or income. They are useful to determine if the other side is “in the ballpark”. They are useful in attempting to achieve settlement in the preliminary stages of matrimonial litigation. They are useful in a joint retainer or a collaborative family law setting. However, draft calculations cannot be submitted to the courts for purposes of providing expert testimony. In general, the work to prepare draft calculations is insufficient to stand up to the rigours of trial.

We were recently asked by a client if it could be possible to take draft calculations that we had prepared and append them to a Form 13.1 that was going to be submitted to the court. We were reluctant to agree to this because we were concerned that attaching draft calculations to a Form 13.1 might be construed as a submission to the courts that could be deemed as our expert opinion. Instead, we recommended that our draft calculations be used to prepare the Form 13.1, but not attached to it. We further recommended that if the value was questioned, the other party should be invited to attend

at our office to review the draft calculations. This way, our draft calculations could not be misconstrued as our expert opinion, and, the client could still achieve the cost savings.

We continue to believe that “draft calculations” have an important role in matrimonial litigation, as long as their use is carefully considered and limited appropriately. Marmer Penner Inc. continues to prepare “draft calculations”, and issue them without a report when it is agreed that they will not be submitted to the courts for the purpose of providing expert testimony.

*This newsletter is intended to highlight areas where professional assistance may be required. It is not intended to substitute for proper professional planning. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at [www.marmerpenner.com](http://www.marmerpenner.com).*