



Reduce the cost of valuing a professional practice upon divorce using Collaborative Law

December 12, 2013 by Boutet Family Law

By **Nathalie Boutet**[\[1\]](#)

Valuating a professional practice when there is a separation may be emotionally charged and costly because of the subjective nature of business valuations, especially professional businesses. Read more to find out what elements of a professional practice may have value for division of assets and how to more easily reach agreement on these issues.

The actual job, degree or right to practice which a spouse holds, has no value. This is because these are personal rights and cannot be sold to another person and therefore have no value.[\[2\]](#)

However, items such as capital investment into the firm, earnings, accounts receivable, work in progress, and the hard assets such as real estate, furnishings and equipment, have value which can be easily determined. These will form part of the property division upon a separation or divorce. To calculate the value we take into account the debts and liabilities associated with these assets.

A more complicated question is whether the professional corporation has any “goodwill” with value that can be divided for matrimonial purposes. Goodwill has been defined as follows: “It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of the business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old established business from a new business at its first start.”[\[3\]](#)

There will be value in the goodwill of a professional practice if the professional can transfer his or her practice and client lists to another member of his or her profession for some value. The value of goodwill is generally understood to be what a willing buyer is prepared to pay and a willing seller is prepared to accept.

While this is not true in all cases, the goodwill of the following types of professional practices may have some value: dentist, accounting and architecture. However while there may be “value to owner”, there is rarely transferable goodwill in the practice of a general medical practitioner, a medical specialist, or a lawyer.[\[4\]](#)

How to value the goodwill of a professional practice is complex and based on a number of subjective factors.

Because of the complexity and subjective nature of the valuation process, the non-owner spouse often disagrees with the value presented by the owner’s business valuator. The non-owner spouse may have to hire his or her own expert to value the practice at great cost to the family. Then it becomes a battle of the experts. Judges are then left to either pick one of the two expert reports or disagree with both reports and fix another value. This process can be expensive both financially and emotionally because it prolongs the conflict.

To minimize costs and increase the chances of reaching agreement on these issues, spouses turn to Collaborative Law negotiations. Collaborative Law[\[5\]](#) is a highly evolved negotiation system for separating families that is based on the Harvard negotiation model. The lawyers who practice in this Harvard-based negotiation system are trained to present practical and creative suggestions. In Collaborative Law, the spouses may be encouraged to take steps to minimize the cost of the valuation such as to agree on a common business valuator who would take input about the business from, and share information with, both spouses. The parties could also be lead to come to some agreement regarding certain factors about the business that normally are left to the subjective analysis of the business valuator.

Valuing a professional business can be done efficiently when there is cooperation; separating spouses are encouraged to work within the Collaborative Law system.

[\[1\]](#) Nathalie Boutet, Boutet Family Law, is a leading Canadian family law lawyer and mediator. She is also a Deputy Judge in the Small Claims Court. She regularly provides comments to the media on legal matters.

[\[2\]](#) Caratun v. Caratun, [1992] O.J. No. 1982, (Ont. C.A.)

[\[3\]](#) Lord MacNaughten in Re Commissioners of the Inland Revenue v Muller & Co Margarine (1901).

[\[4\]](#) Anna M. Barrett, B.S.c, CA, C.B.V with Marmer Penner LLP, Business Valuators and Litigation Accountants.

[\[5\]](#) www.oclf.ca