



September 30, 2010

Sent by email to: CommentLetters@ivsc.org

International Valuation Professional Board
41 Moorgate
London EC2R 6PP
United Kingdom

Dear Sirs:

Re: Comments on IVPB Exposure Draft of Proposed Code of Ethics

The Canadian Institute of Chartered Business Valuators (CICBV) is pleased to comment on the above noted International Valuation Professional Board (IVPB) Exposure Draft.

The CICBV is the largest professional business valuation organization in Canada. It is a self-regulated organization that, in addition to governing its Members with a strict Code of Ethics and Practice Standards, grants the Chartered Business Valuator (CBV) / expert en évaluation d'entreprises (EEE) designation. The CBV/EEE designation is recognized as the premier credential for professional business valuers in Canada, with Members providing a broad range of business valuation services to Canada's business, legal, investment, banking and government communities.

The preface of the Exposure Draft indicates that "IVSC member bodies may not adopt less stringent standards than those in this Code of Ethics". This implies that all of the CICBV's Members would need to comply with the IVSC Code of Ethics. The preface goes on to state "it is incumbent upon IVSC member organisations and/or domestic bodies to write supplemental standards to enforce the principles articulated with this Code of Ethics"

With this framework, we have some fundamental concerns about the Exposure Draft.

1. An overriding concern is whether an IVSC Code of Ethics is within the mandate of the IVPB. It is our understanding that the role of the IVPB is to monitor the education, training and accreditation of valuers. The IVPB's activities are indicated on the IVSC website as including, but not limited to:
 - (a) Supporting the work of the IVSC and promoting education and training relative to the International Valuation Standards;

- (b) Fostering and reviewing the development of educational programmes and materials that are consistent with the IVSC objectives;
- (c) Developing a multi discipline international body of knowledge; and
- (d) Developing a set of international valuation best practices.

It is our view that an IVSC Code of Ethics that would be a mandatory requirement for its member bodies goes beyond this mandate. An IVSC Code of Ethics encroaches on the purview of the IVSC's member organizations. The development of general guiding principles for the development of a member organization's own code of ethics would have been a more appropriate endeavour. Such general guiding principles would cover the fundamental aspects of what constitutes acceptable professional conduct to assist member organizations in their development of an appropriate Code of Ethics. The IVSC Code of Ethics set out in the Exposure Draft goes far beyond such guiding principles.

2. Included with the requirement in the enumerated rules of conduct that a valuer act with integrity (paragraph 3.1.1) is that the valuer must perform assignments with independence. The CICBV Code of Ethics applies to all of its Members regardless of the particular function that they may be performing or the context in which they are performing it. CICBV Members often act in an advisory role or as an advocate. Their function in this role may mean that they are not viewed as being independent of their client. This lack of independence can arise because of existing relationships, being a participant in the development of strategy related to a dispute or a transaction, or because there is a contingent element related to their compensation, to name a few. The CICBV Code of Ethics and Practice Standards specifically provide for these types of engagements, with appropriate disclosure. These advisory roles are of great benefit to the public. Having to comply with a Code of Ethics that restricts activity to matters where independence is required would make it impossible for CICBV Members to continue to be involved in these advisory roles and would not be in the best interest of the profession or those it serves.
3. The Exposure Draft could be interpreted in such a way as to imply that valuers owe a fiduciary duty to their clients. In many legal jurisdictions owing a fiduciary duty carries with it particular legal and liability implications. It is the view of the CICBV that the role of an expert does not extend to necessarily encompassing their having a fiduciary duty to their clients.

Examples where a fiduciary duty may be implied from the proposed Code of Ethics are:

- (a) the introduction to section 3 Rules of Conduct includes the concept that valuers "... must conduct activities in a manner not detrimental to his/her clients ...". A continuing obligation to the interests of a client beyond the provision of a particular professional service may imply the requirement for a fiduciary duty. This duty would extend beyond any professional requirement of confidentiality.

(b) paragraph 3.2.2 refers to “conflicts of duty”. The duty that is potentially in conflict is not explicitly set out, however the paragraph does include the notion that the interests of a client cannot conflict with the interests of another client. Ensuring that the interests of clients from prior engagements are protected goes beyond the role of an expert.

4. The proposed Code of Ethics includes the requirement that “A Professional Valuer must make diligent enquiries and investigation to ensure that the data for analysis in the valuation can be relied upon” (paragraph 3.5.8). The requirement that all data relied upon in a valuation analysis be investigated to ensure such reliance is warranted goes beyond the fundamental tenant that a business valuation is not necessarily based on information about which the valuer has completed any investigation. For example, a business valuator does not audit financial information on which their analysis relies, nor should there be an expectation that such information has been audited. Similarly, business valuations performed in the context of litigation can involve limitations on the information to which the valuator has access and the valuation will necessarily rely on stated assumptions that have not been investigated. The basis of the value conclusion is disclosed in the valuation report. It is a separate matter that a valuator should not rely on information that they have reason to believe was not suitable for such purpose.

Notwithstanding the preceding discussion, the requirement of paragraph 3.5.8 could only be appropriate where one type of reporting level is contemplated. CICBV Practice Standards encompass three different types of valuation reports that are distinguished in part by the valuator’s scope of work and the level of assurance provided by the conclusion. The requirement of the proposed Code of Ethics that all critical information relied upon be vetted in some way (paragraph 3.2.8), without being disclosed as a limiting condition, would preclude CICBV Members from continuing to use reports that provide varying levels of assurance.

5. The proposed Code of Ethics (at paragraph 3.2.9) seems to require that a valuer must consider and evaluate all “Projections, assumptions, modelling and methodology used by clients or other parties ...” and explain any material differences. This is a very broad requirement, particularly as it relates to “other parties”. Further, such matters, if relevant, are in the nature of report disclosure requirements with is the purview of standard setting bodies, such as the IVSC’s own Standards Board.
6. The requirements at paragraph 3.5.2 duplicate similar requirements in the recent IVSC Exposure Draft of proposed Valuation Standards.
7. Paragraph 3.5.6 requires that valuers must ensure that their staff or subordinates assisting on an assignment adhere to the proposed Code of Ethics. To be consistent with the CICBV

Code of Ethics, this obligation would be limited to taking reasonable efforts to ensure adherence.

We hope that this submission is helpful to you. If you have any questions regarding our comments, please do not hesitate to contact Robert H. Boulton, CA, CBV, Director of Professional Affairs.

Yours truly,

A handwritten signature in black ink, appearing to read 'G. McFarlane', written in a cursive style.

Gordon G. McFarlane, CA, CBV
Chair, Professional Practice and Standards Committee