By John H. Shevchuk, Barrister & Solicitor, C. Arb.
Member, Appeal Committee

Eroding professionalism?

Appraisers accepting assignments as expert witnesses in courts and real property tribunals should appreciate that a significant number of judges and tribunal members hold abiding suspicions about the reliability and trustworthiness of expert witnesses generally, and of appraisers more specifically. One trial judge wrote that, "although the Court as an institutional tribunal has much experience with the evidence and testimony given in a variety of cases by realty appraisers, the Court is itself not invested with what passes for expertise in this inexact, pseudo-scientific profession whose members are constantly called to contradict each other in solemn form, rarely agreeing on any significant matter."[1] Harsh words, no doubt, but they are in line with what has been written about expert witnesses generally:

The professional witness is always partisan, ready and eager to serve the party calling him/her. This fact should be ever-present in the mind of the cross-examiner. Encourage the witness to betray partisanship, volunteer statements and opinions, and give unresponsive answers. Jurors always look with suspicion upon such testimony.[2]

Expert witnesses become so warped in their judgement by regarding the subject in one point of view that, even when conscientiously disposed, they are incapable of expressing a candid opinion.[3]

Despite the more rigorous rules of court applied to expert witnesses over the past few years, and the direction provided by the *Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP),* recent decisions of courts and real property tribunals continue to decry the lack of professionalism among some appraisers appearing as expert witnesses. In this context, lack of professionalism may exhibit itself in the form of inattention to detail, lack of competence in the particular subject matter, lack of objectivity, or assuming the role of advocate, to name a few examples.

If the rules of court and professional standards are insufficient reasons to maintain one's professionalism, perhaps there is another, more powerful, reason. When a court or tribunal comments on an appraiser's lack of professionalism, that becomes a public mark that is difficult, if not impossible, to totally eradicate. Apart from the immediate adverse publicity that will be generated, it is almost certain that the negative comments will be thrust at the appraiser time and again in future expert witness assignments.

Many appraisers are aware of the fact that there are two times when litigators research appraisers' pasts: 1) when they are retaining appraisers as expert witnesses, and 2) when they are preparing to cross-examine appraisers appearing as expert witnesses. Appraisers have to expect that previous negative statements about their work product or their appearance in the witness stand will be discovered.

In short, each time an appraiser is castigated by a court or a real property tribunal for a lack of professionalism, there is damage done to the profession as a whole and to the individual's reputation and pocket book.

Traits which help establish the elements of objectivity, credibility and lack of bias include:

- thorough knowledge of the subject matter,
- preparedness,
- even-handed gathering of data,
- even-handed analysis of the data,
- forthright answering of questions,
- adopting the role of supplier of information, and
- avoiding advocating the client's position.

While courts and other tribunals are not as effusive in their praise of appraisers as some are harsh in their criticism, most recognize that real property appraisal is an endeavour requiring the combination of experience and expertise that professional appraisers can offer. Great weight is put on carefully formulated opinions of value. It is a matter of fulfilling your retainer in keeping with the traits of a professional.

Trite to say, professionals live by their reputations. Good reputations are hard to win and distressingly easy to lose.

End notes

1. *Leighton v. Canada*, [1987] F.C.J. No. 937 (QL)
2. Francis L. Wellman, *The Art of Cross-Examination*, 4th ed. (New York: Macmillan Publishing Company, 1936) pp. 125-6
3. ibid, at page 94

Appeal Committee
Leonard Lee, AACI – Chair
Allan Beatty, AACI, Fellow
John Shevchuk, Associate
Andrew Chopko, AACI
Gordon J. Tomiuk, AACI, Fellow
To contact this committee, email:
appeal@aicanada.ca

click HERE to return to table of contents