Canadian Cultural Property Export Review Board

Consultation on the proposed

Guide for Monetary Appraisals

The purpose of the following comments is to draw the Board's attention to the consequences of the decision to adopt the definition of "fair market value" as the criterion for appraising all types of cultural property and in particular to the difference between the expressions "fair market value" and "market value" in various areas of property appraisal, including art works, books, real estate, equipment and companies.

A careful reading of all the sections in the proposed *Guide for Monetary Appraisals* reveals that the requirements set out in the *Guide* are often more stringent than the requirements for "fair market value" and spill over into the conditions of "market value". Before addressing the various sections more specifically, I would like to draw a clearer distinction between the two concepts on the basis of preliminary research, to which I will add further details once the pandemic restrictions allow me to visit libraries more freely.

There is no intent to challenge the definition of "fair market value" suggested by CCPERB. In French, it is: "L*e prix le plus élevé, exprimé en espèces, qu'un bien rapporterait sur le marché libre, dans une transaction entre un vendeur et un acheteur consentants qui seraient prudents, indépendants l'un de l'autre et qui agiraient en toute connaissance de cause.*" In English, it is: "*The highest price, expressed in terms of money, that a property would bring, in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other."* Although the English wording differs in some minor respects from the French, they are consistent with one another and their meaning is clear.

The expression "le marché libre" is reasonably close to "an open and unrestricted market". In both languages, the definitions explain the meaning of "marché libre" and "open and unrestricted market" without specifying any requirement to establish a purchase price or a commercial sale; nor do they provide an equivalent for "market price" or "market value".

In both instances, all the verbs used in the definitions are conditional, which is highly significant when compared to the manner in which other similar definitions are expressed, i.e. in the present tense or the past tense. Despite their similarities, the expressions "fair market value" and "market value" are intended for different applications and used to obtain distinct outcomes.

Beyond the words used in the phrasing of these definitions, research into their applications confirms their different functions and how they are applied in their respective fields of application for various types of monetary appraisal. We were able to establish from our preliminary explorations that the expression “fair market value” refers to all the fundamental factors that contribute to the determination of the value of an item of property, including market value, production costs, reproduction costs, use, rarity, and demand. Thus “market value” is not a synonym for “fair market value”, but rather only a possible component thereof. In its explanation of the meaning of “market value”, Wall Street Mojo states that:

> *Market value is not an appropriate method to judge the true value of an asset as it is highly dependant (sic) on the forces of demand and supply, which is very fluctuating and is dynamic. On the contrary fair value is not dependant (sic) on the forces of any demand and supply and is purely dependant (sic) on what is the true value of the asset.*
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> *Another significant difference is that the fair value of the asset is always adjusted for an impairment, which is due to the asset to arrive at the true value of the asset. On the other hand, market value is the value which is determined by the two parties when they meet. After negotiation, they arrive at a deal price which is not always logically driven and (are) [is] often irrational.*
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> *The model of fair value is often the model of the fundamental valuation of an asset or a company etc. The fundamental value of an asset is known as the fair value and what (should) the asset [should be] worth. Market value is the value which is decided by the market and is not derived fundamentally.* (https://www.wallstreetmojo.com/fair-value-vs-market-value/ consulted on 23 September 2020, at 16:46)

At the Appraisal Course Associates website, in response to the question, "What’s the Difference Between Market Value and Fair Market Value?”, the following explanation is given:

> *Market value is an opinion of the most probable buy-sell price. It reflects the probable amount of money a buyer would pay and a seller would accept for an item of property under specific conditions as noted in the following definition:*
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> > *“The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: the buyer and seller are typically motivated; both parties are well informed or well advised, and acting in what they consider their best interests; a reasonable time is allowed for exposure in the open market; payment is made in terms of cash in United States dollars or in terms of financial arrangements*

> *comparable thereto; and the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale." (Federal Register Vol. 55, No. 163, August 22, 1990. This definition has also been adopted by the International Association of Assessing Officials for tax assessment purposes.)*

Market value presumes the transfer of property as of a certain date and under the above noted typical and normal assignment conditions. (…)

Fair market value is a specific type of market value. It is defined by a legal or regulatory jurisdiction and varies with individual jurisdictions. For federal uses such as estate and gift tax or charitable contributions, fair market value is defined by Treasury Regulation §1.170A-1(c)(2) as:

> *"…The price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts."* (https://www.appraisalcourseassociates.com/1265/ consulted on 23 Sept.2020 at17H00)

Topics for review

9. Valuation Methodology

By restricting the valuation methodology to the sales comparison method and the cost method, the guide unduly contravenes the definition of "fair market value" by allowing only "market values", even though such market values are only one of the possible components of "fair market value".

10. Market Context

The "Market Context" heading presumes that the existence of a commercial market is a requirement for assigning a "fair market value", whereas the very purpose of "fair market value" is to establish a value that is not contingent upon commercial transactions defined in terms of auctions, retail sales or any other type of commercial market.

11. Market Information and Comparable Sales

The previous comments about the pre-existence of a commercial market are presented as a *sine qua non* for determining a "fair market value", with the further addition of a need for recent commercial transactions to qualify. References to an international market add nothing to a determination whose parameters are national in scope. For "objects" that consist of a limited number of items, it is relatively easy to compare content, but for "objects" like archival fonds and collections, how can one determine whether such “objects” share similar contents? Why should an appraiser have to demonstrate “that a potential market for that type of object does exist…and that it should not be conflated with such non-monetary values as historical or research values”, when archival institutions acquire records specifically for their historical and research value, and not because of any form of commercial value established by collectors.

One might well ask at this stage whether the primary purpose of the Cultural Property Export Review Board is to encourage “the transfer of outstanding examples of Canada's artistic, historic, and scientific heritage from private hands to public collections” or rather to serve commercial interests.

13. Reasoned Justification

Reasoned justification should not be applicable only to arguments used to establish an estimated fair market value, but to all factors pertaining to the contents being valued in order to explain how the appraiser arrived at the proposed determination. For a credible appraisal, it must always be possible to communicate confidential information to CCPERB in accordance with confidentiality requirements. Appraisals are always dependent on the sincerity and experience of appraisers and the relevance of comparables and benchmarks.

Having to refer to an international market for which it is virtually impossible to demonstrate the similarity of records being valued violates the elementary rules of the appraisal process, and, to be sure, the ethics of the exercise.

These comments are intended as helpful suggestions to CCPERB in its efforts to come up with useful guidelines for monetary appraisals. As with the NAAB brief, the purpose is to clarify monetary appraisal requirements in realistic and appropriate terms. We are at the disposal of the Review Board for any questions or for further discussion.

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