

# MEMORANDUM

---

To: LLP Committee  
From: Stuart Rennie, Legislation and Law Reform Office  
Re: BC LLP Legislation Amendments to BC Statutes

---

Date: November 12, 2000

At our last meeting, I agreed to review, analyze and recommend legislative amendments to BC statutes as a result of the proposed BC LLP legislation, a first draft suggested by Bill McAllister, QC of the LLP Committee in November 2000.

## **First Draft: BC LLP Legislation**

Bill McAllister's able draft LLP does not amend specific statutes, preferring to leave that to regulation. Bill has reviewed the Ontario and Alberta legislation in creating this first draft of the BC LLP legislation.

The Alberta and Ontario LLP statutes take different approaches to amending legislation.

## **Alberta LLP Legislation**

The Alberta LLP legislation makes amendments to these statutes other than the Alberta *Partnership Act*:

- *Certified General Accountants Act*;
- *The Certified Management Accountants Act*;
- *Chartered Accountants Act*;
- *The Chiropractic Profession Act*;
- *The Dental Profession Act*;
- *The Legal Profession Act*;
- *Medical Profession Act*; and
- *Optometry Profession Act*.

## **Ontario LLP Legislation**

The Ontario LLP legislation does not make consequential amendments or amendments to statutes other than the Ontario *Partnership Act*.

Outside of the Ontario LLP legislation in the *Partnership Act*, LLPs are expressly referred to in these Ontario statutes:

- *Business Names Act*; and
- *Law Society Act*.

The LLP Committee, as Bill suggests, will need to consider how to approach amendments of BC statutes. The Ontario and Alberta LLP legislation provides useful models for consideration.

## **Statutes Requiring Amendment as a Result of a Limited Liability Partnership in BC**

Three BC statutes will likely need amendments as a result of the Limited Liability Partnership in BC, as defined in Bill's first draft:

1. *Proposed Business Names Act*;
2. *Finance and Corporate Relations Statutes Amendment Act, 1999, S.B.C. 1999, c. 33 (Bill 71)*; and



# MEMORANDUM

## The Canadian Bar Association, British Columbia

3. *Fee Statutes Amendment Act, 1999*, S.B.C. 1999, c. 32 (Bill 94).

### **Proposed Business Names Act**

As part of the general *Company Act* reform, the government intends to pass a *Business Names Act*. Passage of this major commercial law reform will not occur prior to Spring 2001 at the very least.

### **Finance and Corporate Relations Statutes Amendment Act, 1999, S.B.C. 1999, c. 33 (Bill 71)**

Bill 71 provides for registration of partnerships by electronic means in sections 34-38 (in force August 2, 1999 (B.C. Reg. 252/99)).

For statutory consistency, Limited Liability Partnerships in BC will also need to be able to be registered by electronic means.

That means that Bill 71 will likely need to be either amended in the BC LLP legislation or dealt with by regulation (see below, Registration of a BC LLP by Regulation).

### **Fee Statutes Amendment Act, 1999, S.B.C. 1999, c. 32 (Bill 94)**

Bill 94 sets fees for registration under section 93 of the following *Partnership Act* statutes which were effective on Royal Assent for the:

- *Partnership Act*, R.S.B.C. 1960, c. 277 (in section 48 of Bill 71 which is deemed retroactive November 24/78 and section 49 deemed retroactive November 28/78);
- *Partnership Act*, R.S.B.C. 1979, c. 312, in:
  - sections 50 and 51 of Bill 71 deemed retroactive May 17/80;
  - section 52 deemed retroactive August 3/87;
  - section 53 deemed retroactive April 1/88;
  - section 54 deemed retroactive June 1/89;
  - section 55 deemed retroactive September 15/89;
  - section 56 deemed retroactive November 1/90;
  - section 57 deemed retroactive May 1/92;
  - section 58 deemed retroactive September 1/93;
- *Partnership Act*, R.S.B.C. 1996, c. 348 in:
  - sections 59 and 60 of Bill 71 deemed retroactive April 21/97; and
  - section 61 deemed retroactive May 1/99

In Bill's first draft, a Limited Liability Partnership may be a partnership formed or continued as an LLP. If a BC partnership is continued as an LLP, it may be a partnership governed as to fees under these previous versions of the *Partnership Act*.

That means that Bill 94 will either need to be amended in the BC LLP legislation or the issue of costs dealt with by regulation (see below, Registration of a BC LLP by Regulation).

Another issue for the LLP Committee to consider and recommend to the government is the issue of cost of registering a BC LLP. Should the cost be the same or more or less than registration of general partnerships, limited partnerships and proprietorships?

### **Registration of a BC LLP by Regulation**

As mentioned above, Bill's draft LLP does not amend specific statutes, preferring to leave that to regulation.



# MEMORANDUM

## The Canadian Bar Association, British Columbia

One option is to add a broad, specific provision in the BC LLP legislation to provide for registration by regulation.

In recent statutes, the BC government has consistently employed broad wording to give itself a regulation-making power emanating from the specific Act itself.

I have adapted this wording to include some of the issues the LLP Committee will need to consider if it decides to recommend a regulation-making power in the LLP legislation for registration or related matters. These issues include:

- (a) defining the meaning of words used in the Act but not defined in the LLP Act;
- (b) specifying requirements under other enactments to which the LLP legislation does [or does not] apply, such as for fees to register a BC LLP;
- (c) permitting registration of BC LLPs by electronic means as for other forms of partnership provided for in Bill 71;
- (d) providing a general "catch-all" power for matters the government considers necessary to carry out the intent of the BC LLP legislation.

The draft regulation-making power is as follows:

### **Part X — Regulations**

#### **Power to Make Regulations**

Section XX (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) defining, enlarging or restricting the meaning of a word or expression used in this Act but not defined in this Act;
- (b) specifying provisions of or requirements under another enactment to which this Act does [or does not] apply;
- (c) respecting electronic means to be used for the sending, receiving or retaining of information or records in electronic form if an enactment requires a person to send, receive or retain the information or records;
- (d) respecting other matters or things that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

#### **Transitional Provisions**

The LLP Committee will need to consider and recommend transitional provisions that may apply as a result of the BC LLP legislation.



# MEMORANDUM

The Canadian Bar Association, British Columbia

## Conclusion

I have reviewed, analyzed and recommended the following legislative amendments to BC statutes as a result of the first draft of the BC LLP legislation drafted by Bill McAllister, QC of the LLP Committee in November 2000.

I have made 7 recommendations which the LLP Committee will need to consider, which are to:

1. Specify, or not, amendments to BC statutes in the proposed LLP legislation.
2. Provide for registration of BC LLPs by electronic means as a result of Bill 71.
3. Recommend to government either an amendment to Bill 71 or manage registration by electronic means by a broad regulation-making power in the LLP legislation itself.
4. Recommend to government either an amendment to Bill 94 regarding registration fees or manage fees by a broad regulation-making power in the LLP legislation itself.
5. Recommend to government, that the cost of registering a BC LLP should be one of: the same or more or less than registration of general partnerships, limited partnerships and proprietorships.
6. Determine how broad the regulation-making power under the BC LLP legislation should be.
7. Recommend any transitional provisions that may apply as a result of the BC LLP legislation.

I trust this review and analysis has been helpful.

If you any questions or if I can be of further assistance, please contact me at your convenience.

Stuart

### Stuart Rennie

Legislation and Law Reform Officer, CBABC  
637 Bentley Road, Port Moody, BC V3H 3A4  
Telephone 604.949.1490  
Facsimile 604.949.1491  
Email: Stuart\_Rennie@telus.net or srennie@bccba.org