



# MEMORANDUM

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To: Limited Liability Partnership Committee  
From: Stuart Rennie, Legislation and Law Reform Officer  
Re: Policy Arguments for LLPs in British Columbia

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Date: September 28, 2000

## Introduction

This memo presents the relevant policy arguments in support of enacting legislation for Limited Liability Partnerships ("LLPs") in British Columbia.

There are strong policy arguments in favour of LLP legislation for British Columbia. LLPs in British Columbia would:

- modernize and strengthen partnership law and business in British Columbia;
- eliminate the uncertainty as a result of currently having no LLPs in British Columbia;
- stop the loss of jobs, taxes and business control flowing to competing jurisdictions with LLP legislation;
- harmonize British Columbia and federal law;
- enhance British Columbia's competitive position;
- amend the *Partnership Act* in an efficient and cost-effective law reform solution;
- further strengthen the strong small business and service sectors of the British Columbia economy;
- provide protection for lawyers to continue to be active members of the strong small business and service sector in British Columbia; and
- support lawyers to continue to provide thousands of jobs in British Columbia.

Each policy argument will be developed in turn.

## Modernize and Strengthen Partnership Law and Business in British Columbia

There is a critical need to modernize and strengthen partnership law and business in British Columbia because:

### Globalization

Globalization of professional services is a fact of business and professional life. Competition for highly skilled and educated professionals is global. There is a need to encourage the retention of the "best and brightest" in British Columbia. LLP legislation would encourage that. LLPs would, in turn, attract these high-income earners to British Columbia. These "best and brightest" would not only make a valuable contribution to British Columbia and its economy through payment of high taxes, among other things, but they would attract other of the world's "best and brightest" to live and work in British Columbia.



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## **Sophisticated Business Environment**

With globalization comes the need to encourage the development of a sophisticated business environment in British Columbia. LLP legislation would encourage that.

## **"LLP" Widely Used in British Columbia and Causes Confusion to the Public**

The term LLP is widely used in British Columbia by professionals and in particular, by large Toronto based law firms and accounting firms.

The wide use of the term LLP must create considerable confusion to the public. The public's uncertainty with respect to the status of LLPs should be resolved by bringing British Columbia in line with most other North American jurisdictions and specifically permitting the use of LLPs.

## **Uncertainty with No LLPs in British Columbia**

British Columbia partners are fully subject to vicarious liability while the Alberta and Ontario partners are not. This increases the exposure of British Columbia partners in multi-jurisdictional partnerships. It is an anachronism that partners are vicariously liable for the malfeasance of their partners and employees. This anachronism has been recognized in Alberta and Ontario and in most of the states in the United States which have enacted LLP legislation. It does not serve the public interest to expose British Columbia partners to liability for the malfeasance of their partners or employees when there is no commercial reason to do so.

Professionals, including lawyers, need the legal protection provided by LLPs because of the inadequacy of available insurance. LLPs would permit professionals to properly carry on business in British Columbia.

## **Loss of Jobs, Taxes and Control to Competing Jurisdictions if no LLPs in British Columbia**

Multi-jurisdictional partnerships are often in a position to determine where the work will be performed on a particular file. The fact that Alberta and Ontario partners enjoy additional protection if the file is opened and worked on in those jurisdictions means that British Columbia's jobs, provincial income tax revenues and social service tax revenues are being reduced for no good reason.

## **Need to Harmonize British Columbia and Federal Law**

The *Income Tax Act (Canada)* is being amended specifically to facilitate the use of limited liability partnerships. In order to meet the accepted law reform goal of practical and well-developed laws, the legislation in British Columbia should be amended to be harmonized with the federal legislation.

## **LLPs Would Enhance British Columbia's Competitive Position**

Legal services are a worldwide commodity and subject to trade pressures from the World Trade Organization, so LLPs are needed to maintain and protect British Columbia's competitive position worldwide.<sup>1</sup>

Removing uncertainty around liability helps to instill business confidence to grow the British Columbia economy.

Once modernized and consistent with other jurisdictions, which compete for British Columbia business, LLPs will enhance British Columbia's strong competitive position in the global economy over the long run.

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<sup>1</sup> See current information on Canada's legal services industry at Industry Canada's Strategis Business Information website (<http://strategis.ic.gc.ca/SSG/bp00235e.html>).



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## **Amending *Partnership Act* Efficient and Cost-Effective Law Reform Solution**

An amendment to the existing *Partnership Act* is an innovative, "made-in-British Columbia" solution that is an efficient, cost-effective and practical use of time and resources.

## **LLPs Occupy Position in Strong Small Business and Service Sectors of the British Columbia Economy**

LLPs are available to be used by lawyers, accountants and other professionals in the strong small business and service sectors of the British Columbia economy.

Small businesses employ over 50% of all employment in British Columbia.<sup>2</sup>

Self-employment with paid help has been growing the fastest.<sup>3</sup>

Small businesses account for 33% of British Columbia's Gross Domestic Product; this is the highest in Canada.<sup>4</sup>

## **LLPs Occupy Position in Strong Small Business and Service Sectors of the British Columbia Economy**

The "engine of growth" for the new, future economy is the service sector in number of new businesses and new jobs created.<sup>5</sup>

## **Lawyers are Active Members of the Strong Small Business and Service Sector**

Lawyers in British Columbia are employers, taxpayers and make a valuable contribution to the provincial economy.

They are over 2,700 law firms in British Columbia.<sup>6</sup>

Over 70% of law firms in British Columbia are small businesses with sole practitioners in sole proprietorships.<sup>7</sup>

Lawyers are active members of the strong British Columbia small business and service sector.

## **BC Lawyers pay 7% Social Services Tax**

Lawyers, unlike accountants and other professionals, are required to spend time and money to collect, administer and remit 7% Social Services Tax on legal services. Lawyers paid to the government over \$83 million in this tax for 1998-99 fiscal year. That is expected to rise to \$88 million for fiscal year 1999-2000.<sup>8</sup>

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<sup>2</sup> Page 4, Small Business Profile 2000: A Profile of Small Business Growth and Employment, Government of British Columbia (2000) ("Small Business Profile 2000") at page 4. The Small Business Profile 2000 Profile is available on the Internet (see <http://www.sbtc.gov.bc.ca/smallbus/publications/reports.html>).

<sup>3</sup> Page 5, Small Business Profile 2000.

<sup>4</sup> Page 7, Small Business Profile 2000.

<sup>5</sup> Pages 9-10, Small Business Profile 2000.

<sup>6</sup> Law Society of British Columbia as reported in the 2001 Canadian Bar Association British Columbia Lawyers Directory, Volume 13 (2000) at page 88 (Data are current as at June 30, 2000).

<sup>7</sup> Ibid.



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## **Lawyers provide thousands of jobs in British Columbia**

Lawyers employ thousands of people in thousands of jobs. In 1999, lawyers provided over 18, 900 jobs in British Columbia.<sup>9</sup>

## **Conclusion**

These are compelling and strong policy arguments in favour of LLP legislation for British Columbia. LLPs in British Columbia would not only modernize and strengthen partnership law and business in British Columbia, but LLPs would promote the legitimate interests of lawyers, other concerned professionals, and the public in British Columbia.

Stuart

## **Stuart Rennie**

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<sup>8</sup> Data from Attorney General Petter's (as he then was) address to the Legislative Assembly (May 11, 2000) (Hansard, page 15591-4). Available on the Internet (see, <http://www.legis.gov.bc.ca/2000/hansard/h00511p.htm#15591>).

<sup>9</sup> British Columbia Statistics, Legal Services Industry in British Columbia (1987-99) (Employment by Industry: British Columbia: North American Industrial Classification System (NAICS). Available on the Internet (see, <http://www.bcstats.gov.bc.ca/data/dd/handout/naicsann.pdf>).