

# Limited Liability for Professionals

## BACKGROUND

- Canadian Institute of Chartered Accountants (CICA) argues that joint and several liability between co-defendants often leaves accountants holding the bag in large commercial suits, as the only defendant with substantial assets. In Spring 1996, CICA proposed to the Senate Banking Committee that the *Canada Business Corporations Act* and federal financial sector legislation adopt proportionate liability for the provision of financial information.
- Professional liability lies on three levels: liability for personal negligent acts or omissions; joint and several liability between co-defendants; and, since professionals cannot incorporate, joint and several liability between partners.
- Senate Banking Committee invited CBA to present its views on proportionate liability. Response was formulated by the Financial Institutions Legislation Committee of the National Business Law Section. Then CBA President Russell Lusk, Q.C., and Alison Manzer appeared before Senate Banking Committee in October 1996. CBA took the view that any review should consider balance of plaintiff interests in recovery of damages with fairness between co-defendants, and for professional partners with no knowledge or control of negligent actions.
- In March 1998, Senate Committee recommended a modified proportionate liability regime for economic loss arising from the preparation of financial statements. It also recommended further study before extending proportionate liability to other professional services.
- CBA Council adopted a resolution in support of limited liability partnerships (LLPs) at the 1998 Mid-Winter Meeting in Victoria.
- Uniform Law Conference of Canada (ULCC) developed a model *Limited Liability Partnership Act*, published in its August 2000 proceedings and available on its website, at <http://www.ulcc.ca/>.
- Amendments to the *Canada Business Corporations Act* and *Cooperatives Act* enacted a modified proportionate liability scheme for losses arising out of an error, omission or misstatement in financial information. John McNinch and Philip Anisman appeared before the Senate Banking Committee on behalf of the National Business Law Section in May 2000. Bill S-11 was given Royal Assent in June 2001 (S.C. 2001, c.14).

## CURRENT STATUS

- Amendments to the provincial legislation and relevant law society acts and rules permit lawyers to practice in limited liability partnerships in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan.

## NEXT STEPS

- CBA/CICA Joint Liaison Committee on Professional Issues will work with CBA Branches as necessary to gain LLP legislation in other jurisdictions.