

# Lawyers can now incorporate!

Just like the Order of Chartered Accountants, the Quebec Bar followed in the same footsteps by submitting a regulation to the Quebec government. Indeed, the *Regulation respecting the practice of the profession of advocate within a limited liability partnership or joint-stock company and in multidisciplinary*<sup>1</sup> (hereinafter the “Regulation”), which came into effect on May 6, 2004, permits lawyers to practice their profession within a limited liability partnership (L.L.P.) or a joint-stock company, alone or with other professionals.

This Regulation forced the review of the *Code of Ethics of Advocates* in order to adapt it to the new methods of practicing law. Thus, also came into effect the *Regulation amending the Code of Ethics of Advocates*.<sup>2</sup>

Please note that the designation of L.L.P. in the Regulation differs from the *Regulation respecting the application of the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*, in that the abbreviation G.P.L.L. or “general partnership limited liability” is used instead of L.L.P.

## L.L.P.: A Question of Liability

Lawyers who have less time to ponder upon questions relating to corporate law will perhaps ask themselves what are the implications of practicing law under this new legal entity. It is essentially a general

partnership, as we know it, but governed by specific rules provided for by the *Professional Code*, which entity was created by *said Code*.

Section 187.14 of the *Professional Code* defines the term “limited liability”. A lawyer carrying on his or her legal profession within a L.L.P. is not personally liable for fault or negligence on the part of the other professional or the other professional’s servant or mandatary in the course of their professional activities within the partnership. The lawyer is however liable for his or her own fault or negligence committed in the course of his or her professional activities.

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An existing general partnership may wish to continue into a L.L.P.

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Subject to the provisions of the *Professional Code*, a L.L.P. shall be governed by the same rules as a general partnership pursuant to the provisions of the *Civil Code of Quebec*.

An existing general partnership may wish to continue into a L.L.P. according to the terms and conditions established in the new Regulation.

## Joint-Stock Company

Many questions arise regarding the creation of a company for lawyers. For instance:

- Can the company to be formed be either federal or provincial?

Yes. Nothing in the Regulation or the *Professional Code* prevents you from incorporating under the federal or provincial jurisdiction. It is therefore allowed to form a company either pursuant to the *Quebec Companies Act* or the *Canada Business Corporations Act*.

- What are the rules applicable to the corporate name of such a company?

Contrary to a partnership, which must include the abbreviation L.L.P. or the expression “limited liability partnership” in its name, a company does not have to include any specification in its name except for, of course, those specified in the rules governing all corporate names.

Section 7.01 of the *Code of Ethics* specifies that the name of the company shall not be misleading, deceptive or contrary to the honour or dignity of the profession. Moreover, a lawyer cannot practice law under a numeric name (e.g.: Quebec Inc. or Canada Inc.). The old section 7.01, which mentioned that the firm name should be comprised of

## What's new...

### British Columbia Moves Online

On March 29, 2004, a new *Business Corporations Act* took effect in British Columbia and the Corporate Registry implemented a new online computer system. The purpose of this Web site is to provide the information clients need for interacting with the Corporate Registry under the new Act. New forms are now available on the Internet and it is mandatory that filings that are

available online, such as incorporations, are submitted electronically.

Forms for extra-provincial companies can still be submitted on paper to the Corporate Registry except for the annual report (Form 35), which has to be filed online only. We are pleased to report that the process for registering an extra-provincial company in B.C. has been greatly simplified. Before the amendment, you had

to file Form 13 - Statement on Registration - with certified copies of the certificate of incorporation and any amendments thereof, and the company's by-laws. And all documents that were submitted had to be in English. Today, all you need to file is Form 33 - Registration Statement. This amendment was long overdue as B.C. had one of the most burdensome registration procedures in Canada.

## Turnaround Schedule for Corporate Services as of June 1st, 2004

SERVICES	PROVINCIAL	FEDERAL
TaxExpress™ (GST / QST / QDAS)	10 days	3 - 5 days
Name search with reservation	*24 hours	2 - 6 hours
Name search without reservation	3 hours	—
Certificate of incorporation (paper filing)	*4 - 5 days	2 days
Certificate of incorporation (IncoWeb™ electronic filing)	*4 - 5 days	24 hours 4 - 6 hrs if numeric
Certificate of amendment	*7 - 8 days	2 days
Certificate of continuation, of continuance or of amalgamation	*1 week	3 - 6 days
Certificate of dissolution	3 - 4 weeks	1 week
Notice of change (federal) or amending declaration (Quebec)	7 - 8 weeks	3 - 4 days
Letters patent for non-profit corporation	*1 - 2 weeks	25 days
Attestation / Certificate of good standing and certificate of compliance	*24 hours	48 hours
Revival	—	6 - 8 days
Initial declaration	4 - 5 weeks	—
Declaration of registration	*2 - 3 weeks	—
Annual declaration	*6 - 7 weeks	—
Revocation of striking-off (s. 54 L.P. Act)	*4 - 5 weeks	—

The turnaround times may vary slightly according to each file (\*) = Priority service available.

## FOOD FOR THOUGHT

"Listening is a lost art in our modern society in the midst of a communication revolution." (*Translation*)

*Jean Dion*

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## Lawyers can now incorporate! (cont'd)

names of the members of the Bar only, was repealed and replaced by this new section. The company name needn't be comprised of lawyers' names any longer.

Like all other companies, the corporate name must comply with the Quebec *Companies Act* or the *Canada Business Corporations Act*, as the case may be, and the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*.

- Do you have to indicate certain provisions in the articles of incorporation?

Yes. As appears from section 5 of the Regulation, certain conditions must be listed in the articles of incorporation. They are itemized in the table below:

- What are the obligations to the Bar in order to practice law within a company?

As appears from Schedule B of the Regulation, a document called the undertaking of the company must be filed with the Quebec Bar. This document must be submitted with, among other things, a certificate attesting the existence of the company such as a certificate of attestation for a provincial company or a certificate of compliance for a federal corporation. Under the Regulation, the newly formed company shall publish a notice in the local newspaper and each attorney within the company shall send to the Bar a declaration stating that he or she is engaging in his or her professional activities within such company. These documents are available on the Web site of the *Barreau du Québec* ([www.barreau.qc.ca](http://www.barreau.qc.ca)).

### Conclusion

As of May 19, the Quebec Bar had received only two requests for incorporations from its members. It will be interesting to see if these new opportunities will be sought after by lawyers in Quebec in the pursuit to practice law under these entities and in partnership with other types of professionals.

It could very well depend on which measures other professional orders will take in the future following the example set by the Order of Chartered Accountants and the Quebec Bar on such matters. Which other groups of professionals will follow suit? Only time will tell.

1 (2004) 136 G.O. II 1267 (No. 16, 21/04/04)

2 (2004) 136 G.O. II 1272 (No. 16, 21/04/04)

### Conditions set forth in the articles of incorporation as required by the Regulation:

A member of the Bar is authorized to engage in his or her professional activities within a company if:

- 1) at all times, more than 50% of the voting rights attached to the shares of the company are held by persons contemplated in the Regulation or by legal persons, trusts or any other firm whose voting rights or voting partnership units are held at 100% by one or more persons contemplated in the Regulation;
- 2) the majority of the directors on the board of directors are persons contemplated by the Regulation;
- 3) the board of directors is comprised in the majority of persons contemplated in the Regulation and these persons constitute at all times the majority of the quorum on such board.

### Persons contemplated by Regulation are as follows:

- members of the *Barreau du Québec*;
- persons governed by the *Professional Code*;
- contributors of the *Chambre de l'assurance des dommages*;
- contributors of the *Chambre de la sécurité financière*;
- members in good standing of a law society constituted outside Quebec;
- patent agents registered under the *Patent Act*;
- members in good standing of the Canadian Institute of Actuaries.