

# BILL NO. 143

(as passed, with amendments)



*2nd Session, 58th General Assembly  
Nova Scotia  
51 Elizabeth II, 2002*

Government Bill

## **Partnership Act (amended) and Partnerships and Business Names Registration Act (amended)**

CHAPTER 37 OF THE ACTS OF 2002

The Honourable Michael G. Baker, Q.C.  
Minister of Justice

[First Reading](#): November 1, 2002 (LINK TO BILL AS INTRODUCED)

Second Reading: November 12, 2002

[Third Reading](#): November 19, 2002 (WITH COMMITTEE AMENDMENTS)

Royal Assent: November 28, 2002



# **An Act to Amend Chapter 334 of the Revised Statutes, 1989, the Partnership Act, and Chapter 335 of the Revised Statutes, 1989, the Partnerships and Business Names Registration Act**

Be it enacted by the Governor and Assembly as follows:

**1** Chapter 334 of the Revised Statutes, 1989, the *Partnership Act*, is amended by adding the heading "PART I" immediately before Section 3.

**2** Chapter 334 is further amended by adding immediately after Section 47 the following heading and Sections:

## PART II

48 In this Part,

(a) "distribution" means, in relation to partnership property, a transfer of money or other partnership property by a partnership to a partner or an assignee of a partner's share in the partnership, whether as a share of profits, return of contributions to capital, repayment of advances or otherwise;

(b) "extra-provincial LLP" means a partnership registered under Section 59 as an extra-provincial limited liability partnership;

(c) "governing jurisdiction" means, in relation to a partnership, the jurisdiction whose law governs the interpretation of the partnership agreement by operation of law or through a provision in the partnership agreement or another document created by the partnership;

(d) "liability insurance" means either or both of

(i) a policy of insurance that covers the payment of professional liability claims against a partner in a limited liability partnership, and

(ii) another method, required under the regulations or by a professional governing body referred to in Section 51, of ensuring the availability of funds to pay professional liability claims against members of the profession;

(e) "Nova Scotia LLP" means a partnership registered under Section 51 as a Nova Scotia limited liability partnership;

(f) "partnership obligation" means any debt, obligation or liability of a partnership, other than debts, obligations or liabilities of partners as between themselves or as between themselves and the partnership;

(g) "professional liability claim" means a claim against a partner

(i) with respect to that partner's negligence, wrongful act or omission, malpractice or misconduct occurring in the ordinary course of practising a profession in a Nova Scotia LLP or an extra-provincial LLP, or

(ii) with respect to another person's negligence, wrongful act or omission, malpractice or misconduct for which Section 57 does not protect the partner from liability;

(h) "Registrar" means the Registrar of Joint Stock Companies and includes the Deputy Registrar of Joint Stock Companies.

49 This Part applies only to Nova Scotia LLPs and extra-provincial LLPs.

50 Part I is subject to this Part.

51 (1) A partnership or two or more persons who have agreed to carry on business in a limited liability partnership may register as a Nova Scotia LLP under the *Partnerships and Business Names Registration Act* if

(a) they carry on business in the Province only for the purpose of practising a profession governed by an Act of the Legislature;

(b) the governing Act or a regulation under this Act permits the profession to be practised in a limited liability partnership; and

(c) the governing body of the profession or a regulation under this Act requires members who are partners in limited liability partnerships to maintain a minimum amount of liability insurance.

(2) The governing body of a profession that is permitted by regulation to practise in limited liability partnerships is authorized to require members who are partners in such partnerships to maintain a minimum amount of liability insurance, notwithstanding anything to the contrary or any lack of authority in the profession's governing Act.

(3) A limited partnership shall not be registered as a limited liability partnership.

(4) The status of a partnership or group of persons as a Nova Scotia LLP takes effect on the day on which the Registrar issues a certificate of registration under the *Partnerships and Business Names Registration Act* and continues so long as the registration is in force or deemed to be in force under that Act.

52 Subject to any agreement between the partners, the registration of a partnership as a Nova Scotia LLP does not cause the dissolution of the partnership, and the Nova Scotia LLP continues as the same partnership that existed before the registration.

53 Without delay after being registered as a Nova Scotia LLP, a partnership shall send to all of its existing clients a notice advising of the registration and explaining in general terms the potential changes in liability of the partners that result from the registration.

54 (1) A Nova Scotia LLP shall at all times have a registered office in the Province.

(2) The registered office must be the business premises of the Nova Scotia LLP or of a person or firm that has agreed to act as the partnership's registered office.

(3) A Nova Scotia LLP shall ensure that its registered office is accessible to the public during normal business hours.

55 A Nova Scotia LLP shall keep at its registered office a list of the partners and shall, without delay, provide the following information without charge to any person who requests it:

(a) a list of the partners;

(b) a list of the persons who were partners in the Nova Scotia LLP on a date specified in the request.

56 (1) The name of a Nova Scotia LLP must end with the phrase "Limited Liability Partnership" or its abbreviation "LLP" or "L.L.P.", or with the phrase "société à responsabilité limitée" or its abbreviation "srl" or "s.r.l."

(2) A Nova Scotia LLP shall not carry on business under a name other than its registered firm name.

57 (1) Subject to subsections (2), (4) and (5), a partner in a Nova Scotia LLP is not individually liable, directly or indirectly by means of indemnification, contribution, assessment or otherwise, for debts, obligations or liabilities of the partnership or another partner that arise from the negligence, wrongful act or omission, malpractice or misconduct of

(a) another partner; or

(b) an employee, agent or representative of the partnership,

occurring in the ordinary course of carrying on practice in a profession referred to in subsection 51(1) while the partnership is a Nova Scotia LLP.

(2) Subsection (1) does not operate to protect a partner from liability if

(a) the partner knew of the negligence, wrongful act or omission, malpractice or misconduct at the time it was committed and failed to take reasonable steps to prevent its commission; or

(b) the negligence, wrongful act or omission, malpractice or misconduct was committed by another partner or an employee, agent or representative of the partnership for whom the partner was responsible in a supervisory role.

(3) A partner in a Nova Scotia LLP is not a proper party to a proceeding by or against the partnership that claims relief in respect of negligence, wrongful acts or omissions, malpractice or misconduct described in subsection (1).

(4) The protection from liability given to a partner by subsection (1) does not protect the partner from claims against the partner's interest in the partnership property.

(5) The protection from liability given to a partner by subsection (1) does not protect the partner from liability for partnership obligations that arose before the partnership became a Nova Scotia LLP.

58 (1) Partners in a Nova Scotia LLP are personally liable for any partnership obligation for which they would be liable if the partnership were a corporation of which they were the directors.

(2) Where a corporation is a partner in a Nova Scotia LLP, the directors of the corporation are jointly and severally liable for any liability incurred by the corporation under subsection (1).

59 A partnership formed under the laws of a jurisdiction outside the Province may register as an extra-provincial LLP under the *Partnerships and Business Names Registration Act* if it

(a) has the status of a limited liability partnership under the laws of a jurisdiction outside the Province; and

(b) consists of partners who practise a profession that partners in a Nova Scotia LLP may practise.

60 The status of a partnership as an extra-provincial LLP takes effect on the day on which the Registrar issues a certificate of registration under the *Partnerships and Business Names Registration Act* and continues so long as the registration is in force or deemed to be in force under that Act.

61 A partnership that has the status of a limited liability partnership under the laws of a jurisdiction outside the Province shall be treated as an ordinary partnership with respect to rights and obligations that it acquires or incurs under Nova Scotia laws while carrying on business in the Province without being registered as an extra-provincial LLP under the *Partnerships and Business Names Registration Act*.

62 (1) Without delay after being registered as an extra-provincial LLP, the partnership shall send all the existing clients of its Nova Scotia practice a notice advising of the registration and explaining in general terms the potential changes in liability of the partners that result from the registration.

(2) Where an extra-provincial LLP has sent a notice similar to the notice described in subsection (1) to all of its existing clients as a result of being registered as a limited liability partnership or an extra-jurisdictional limited liability partnership in another jurisdiction, the notice required by subsection (1) is only required to be sent to the partnership's existing clients in the Province.

63 (1) An extra-provincial LLP shall at all times have a registered office in the Province.

(2) The registered office must be the business premises of the extra-provincial LLP or of a person or firm that has agreed to act as the partnership's registered office.

(3) An extra-provincial LLP shall ensure that its registered office is accessible to the public during normal business hours.

64 An extra-provincial LLP shall keep at its registered office a list of the Nova Scotia partners and shall, without delay, provide the following information without charge to any person who requests it:

(a) a list of the Nova Scotia partners;

(b) a list of the persons who were Nova Scotia partners in the partnership on a date specified in the request, which must be after it was registered under the *Partnerships and Business Names Registration Act*.

65 (1) The name of an extra-provincial LLP must contain the words and abbreviations required under the laws of its governing jurisdiction.

(2) An extra-provincial LLP shall not carry on business under a name other than its registered firm name.

66 (1) Except as provided in another Act or in subsections (2) to (4), the law of the governing jurisdiction of an extra-provincial LLP applies to

(a) the organization and internal affairs of the partnership; and

(b) the liability of the partners for debts, obligations and liabilities of or chargeable to the partnership.

(2) A Nova Scotia partner of an extra-provincial LLP has the same individual liability as a partner of a Nova Scotia LLP does for debts, obligations or liabilities arising from the partner's own negligence, wrongful act or omission, malpractice or misconduct.

(3) A Nova Scotia partner of an extra-provincial LLP has no greater protection against individual liability for debts, obligations or liabilities of the partnership or another partner described in subsection (4) than a partner of a Nova Scotia LLP would have against individual liability for similar debts, obligations or liabilities of the Nova Scotia LLP or another partner.

(4) The debts, obligations or liabilities referred to in subsection (3) are those arising from

(a) the negligence, wrongful act or omission, malpractice or misconduct of another partner or an employee, agent or representative of the partnership about which the partner knew at the time of its commission and in respect of which the partner failed to take reasonable steps to prevent its commission; or

(b) the negligence, wrongful act or omission, malpractice or misconduct of another partner or an employee, agent or representative of the partnership for whom the partner was responsible in a supervisory role.

(5) For the purpose of this Section, the governing jurisdiction for an extra-provincial LLP is the jurisdiction under the laws of which the partnership was formed.

67 (1) A Nova Scotia LLP shall not make a distribution of partnership property in connection with the winding up

of its affairs unless all partnership obligations have been paid or satisfactory provision for their payment has been made.

(2) In circumstances other than in connection with the winding up of its affairs, a Nova Scotia LLP shall not make a distribution of partnership property if there are reasonable grounds to believe that after the distribution

(a) the partnership would be unable to pay its partnership obligations as they come due; or

(b) the value of the partnership property would be less than the partnership obligations.

(3) Subsections (1) and (2) do not prohibit a payment made as reasonable compensation for current services provided by a partner to the Nova Scotia LLP, to the extent that the payment would be reasonable if paid to an employee who was not a partner as compensation for similar services.

(4) A Nova Scotia LLP may base its determination of whether a distribution is prohibited by subsection (2)

(a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;

(b) on a fair valuation; or

(c) on another method that is reasonable in the circumstances.

68 (1) A partner in a Nova Scotia LLP who receives a distribution contrary to Section 67 is liable to the partnership for

(a) the value of the property received by the partner; or

(b) the amount necessary to discharge partnership obligations that existed at the time of the distribution, whichever is less.

(2) Any partners in a Nova Scotia LLP who authorize a distribution contrary to Section 67 are jointly and severally liable to the partnership for any amount for which a recipient is liable under subsection (1), to the extent that the amount is not recovered from the recipient.

(3) Proceedings to enforce a liability under this Section may be brought by the Nova Scotia LLP, any partner in the partnership or any person to whom the partnership was obligated at the time of the distribution to which the liability relates.

(4) No proceedings to enforce a liability under this Section may be commenced later than two years after the date of the distribution to which the liability relates.

69 (1) For the purpose of this Part, a new partnership is the successor partnership of an original partnership where

(a) at a particular time, the original partnership is registered as a Nova Scotia LLP;

(b) immediately after that time, a new partnership with different partners is carrying on the business of the original partnership;

(c) one or more of the partners in the original partnership are members of the new partnership; and

(d) there is an express or implied agreement between the partners in the original partnership and new partnership that the new partnership will assume all partnership obligations of the original partnership.

(2) A successor partnership is deemed to be the same partnership as the original partnership for the purpose of this

Part and, without limiting the generality of the foregoing, is subject to all the partnership obligations of the original partnership.

70 (1) When a Nova Scotia LLP dissolves and its affairs are to be wound up, the partnership maintains its status as a Nova Scotia LLP while its affairs are being wound up.

(2) A Nova Scotia LLP is deemed, for the purpose of this Section and subsection 67(1), to have dissolved and to be winding up its affairs if

(a) the partnership ceases to carry on business; or

(b) there is any change in the membership of the partnership and there is not a successor partnership within the meaning of Section 69.

(3) When a Nova Scotia LLP has dissolved and its affairs are being wound up, the Supreme Court of Nova Scotia may, on the application of any interested person, make any order with respect to the partnership that could be made with respect to a corporation under Section 43 of the *Companies Winding Up Act*.

71 (1) The Governor in Council may make regulations

(a) authorizing a profession that meets the requirements of clauses 51(1)(a) and (c) to be practised in limited liability partnerships;

(b) respecting the minimum amount of liability insurance that limited liability partnerships practising particular professions must maintain;

(c) respecting the content of notices required to be sent under Section 53 or 62;

(d) defining any word or expression used but not defined in this Act;

(e) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The Governor in Council shall not make a regulation under clause (1)(b) in relation to a profession unless

(a) the member of the Executive Council charged by the Governor in Council with the administration of this Act considers that the minimum amount of liability insurance required by the profession's governing body does not provide sufficient protection for clients of limited liability partnerships;

(b) the member of the Executive Council requests the governing body in writing to increase the minimum amount within a specified time; and

(c) the governing body does not increase the minimum amount.

(3) A regulation made under clause (1)(b) takes precedence over a rule, by-law or other requirement of a professional governing body respecting the minimum amount of liability insurance required for limited liability partnerships.

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

3 Section 2 of Chapter 335 of the Revised Statutes, 1989, the *Partnerships and Business Names Registration Act*, is amended by

(a) relettering clause (a) as (ab); and

(b) adding immediately before clause (ab) the following clauses:

(a) "extra-provincial LLP" has the same meaning as in the *Partnership Act*;

(aa) "Nova Scotia LLP" has the same meaning as in the *Partnership Act*;

**4** Subsection 2A(2) of Chapter 335, as enacted by Chapter 34 of the Acts of 1993, is amended by adding "or an extra-provincial LLP" immediately after "proprietorship" in the second and third lines.

**5** Section 5 of Chapter 335, as amended by Chapter 4 of the Acts of 1999, is further amended by adding "to a partnership, other than a Nova Scotia LLP or an extra-provincial LLP," immediately after "issued" in the first line.

**6** Section 6 of Chapter 335 is amended by striking out "such declaration" in the first line and substituting "the declaration required under Section 5".

**7** Section 7 of Chapter 335 is amended by adding "required under Section 5" immediately after "declaration" in the third line.

**8** Chapter 335 is further amended by adding immediately after Section 7 the following Sections:

7A (1) A declaration to register as a Nova Scotia LLP must be in a form acceptable to the Registrar and must include

(a) the name of the partnership;

(b) a description of the profession the partners practise;

(c) the name and civic address in the Province of the recognized agent required under Section 18;

(d) the address of the registered office of the partnership in the Province;

(e) a statement, from a person who is authorized by the governing body of the profession to provide it, certifying that

(i) the partnership and the partners meet all the applicable eligibility requirements for practice as a limited liability partnership that are imposed under the Act that regulates the profession, and

(ii) the partners have liability insurance in the form and amount that the governing body requires, as provided for in Section 51 of the *Partnership Act* or in regulations under that Act; and

(f) any other information required by the regulations under this Act.

(2) A declaration to register as an extra-provincial LLP must be in a form acceptable to the Registrar and must include

(a) the name of the partnership;

(b) a description of the profession the partners practise;

(c) the name and civic address in the Province of the recognized agent required under Section 18;

(d) the name of the governing jurisdiction of the partnership, as defined in Part II of the *Partnership Act*;

(e) the address of the registered office of the partnership in the Province;

(f) evidence satisfactory to the Registrar of the partnership's status as a limited liability partnership under the laws



of the governing jurisdiction;

(g) a statement, from a person who is authorized by the governing body of the profession to provide it, certifying that

(i) the partnership and the partners meet all the applicable eligibility requirements for practice as a limited liability partnership that are imposed under the Act that regulates the profession, and

(ii) the Nova Scotia partners have liability insurance in the same form and amount that the governing body requires of partners in a Nova Scotia LLP under Section 51 of the *Partnership Act* or in regulations under that Act; and

(h) any other information required by the regulations under this Act.

(3) Where the Registrar has received a declaration and is satisfied that the Nova Scotia LLP or extra-provincial LLP meets the requirements of this Act and the regulations, the Registrar shall issue a certificate of registration to the limited liability partnership.

(4) The revocation of the certificate of registration of a Nova Scotia LLP affects only its registration as a limited liability partnership and does not dissolve the partnership.

(5) A Nova Scotia LLP shall, within thirty days after any change in the information mentioned in clauses (1)(a) to (f), file with the Registrar a declaration in a form acceptable to the Registrar stating the change and the effective date of the change.

(6) An extra-provincial LLP shall, within thirty days after any change in the information mentioned in clauses (2) (a) to (h), file with the Registrar a declaration in a form acceptable to the Registrar stating the change and the effective date of the change.

(7) Where the name of a limited liability partnership is changed, the Registrar may issue another certificate of registration reflecting the change.

(8) The registration of a Nova Scotia LLP or an extra-provincial LLP is not adversely affected by a change in the partners.

7B (1) No partner or partnership shall continue to hold the partnership out as being a Nova Scotia LLP or an extra-provincial LLP after the cancellation or revocation of its certificate of registration.

(2) No person shall hold himself or herself out as carrying on business as a Nova Scotia LLP or an extra-provincial LLP, or as a partner in such a partnership, unless the partnership is registered in the Province as such.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of not more than five thousand dollars.

**9** Section 9 of Chapter 335 is amended by adding immediately after subsection (3) the following subsection:

(4) This Section does not apply to a limited liability partnership.

**10** Chapter 335 is further amended by adding immediately after Section 16 the following Section:

16A (1) Without limiting the generality of subsection 16(1), the Registrar may revoke the certificate of registration of a Nova Scotia LLP or an extra-provincial LLP if

(a) the partnership files with the Registrar a request in a form acceptable to the Registrar that the certificate of registration be revoked; or

(b) the Registrar receives a notice

(i) from a person who is authorized by the governing body of the applicable profession in the Province to provide the notice, stating that

(A) the partnership or one or more of the partners no longer meets all the applicable eligibility requirements for practice as a limited liability partnership that are imposed under the Act regulating the profession, or

(B) one or more of the partners no longer has liability insurance in the form and amount that the governing body requires, as provided for in Section 51 of the *Partnership Act* or in regulations under that Act, or

(ii) from the regulatory official or body in an extra-provincial LLP's governing jurisdiction, stating that

(A) the partnership no longer has the status of a limited liability partnership in that jurisdiction, or

(B) one or more of the partners no longer has liability insurance in the form and amount that the governing body requires, as referred to in subclause 7A(2)(g)(ii).

(2) Before revoking the certificate of registration of a Nova Scotia LLP or an extra-provincial LLP under subsection 16(1) or clause (1)(b), the Registrar shall

(a) give the limited liability partnership at least thirty days' notice of the intended revocation; and

(b) publish notice of the intended revocation in the manner set out in the regulations.

(3) The Registrar shall not revoke the certificate of registration if the Nova Scotia LLP or extra-provincial LLP remedies the default before the expiration of the period mentioned in the notice referred to in clause (2)(a).

(4) Revocation of the certificate of registration of a Nova Scotia LLP affects only its registration as a limited liability partnership and does not dissolve the partnership.

**11** Chapter 335 is further amended by adding immediately after Section 24 the following Section:

24A (1) The Governor in Council may make regulations

(a) respecting the imposition of terms on the registration of a Nova Scotia LLP or an extra-provincial LLP, including authorizing the Registrar to impose terms;

(b) prescribing information that is required to be provided to the Registrar under this Act;

(c) respecting the making of declarations under this Act;

(d) respecting the manner of publication of notices of intended revocation of the certificate of registration of a Nova Scotia LLP or an extra-provincial LLP;

(e) defining any word or expression used but not defined in this Act;

(f) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

**12** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.



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