



The Partnership Act By Douglas A.S. Paterson, Q.C.

This Act applies to any business, being trades, occupations, and professions. There are different types of partnerships but the one we refer to for this column is for example that of two ladies carrying on business as partners in a flower shop.

“Partnership” is the relation between persons carrying on business in common and with the view of profit but does not include the relationship between shareholders of a company nor between members of an association. Sometimes it’s difficult to tell if a partnership has existed or exists, so the Act denotes certain rules to help out: how are people registered on a land title? How do people share profits? At common law, various other sign posts are often referred to, for example how the bank accounts are set up and the signage and how the people involved act during the course of business.

A partnership-style business is called a “firm” and will have a “firm name”. Such a partnership entity can be a partner in

another partnership entity as well!

Every partner is an agent of the firm and the other partners and can bind the firm if carrying on the business in “the usual way”, unless he/she had no authority to so bind the firm and the other person knew he/she had no authority or never knew or believed he/she to be a partner.

Partners are jointly and severally liable for all debts and obligations of the firm with the other partners. If a partner dies his/her assets are liable for partnership debts once the deceased’s own debts are paid from assets.

If a partner acts wrongfully or omits something in the ordinary course of business and causes harm, and had authority from co-partners to so act, the firm will be just as liable as the offending partner and each other partner is jointly and severally liable.

A new partner coming in is not liable to creditors who were there prior to the entry into the partnership. Also, retiring

partners do not escape liability to creditors existing before their retirement from the firm.

Subject to agreement otherwise, all partners shall profit and lose equally. Every partner is entitled to be an active manager in the business as well. All existing partners must agree to a new partner coming in, and any substantial change to the partnership requires 100% agreement. A partner cannot be expelled without 100% agreement of the others, unless agreed otherwise in writing beforehand.

Where no fixed term has been agreed on, any partner can end the partnership at any time on giving written notice to all other partners.

All partners are liable to account and give full information to the other partners at all times.

If a partner earns private profits through the use of partnership assets, without the consent of all other partners, that partner must pay the partners their equal shares of his private profit.

A partner has a duty not to compete with his/her firm in the same business. If he/she does, any profits must be shared with all other partners equally.

Unless agreed otherwise, death, bankruptcy, and insolvency dissolves the partnership.