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ANNOTATED ONTARIO BUSINESS CORPORATIONS ACT

Stephen N. Adams, K.C. Release No. 6, September 2025

This is the most complete and current resource available covering the broad range of issues essential to operating an incorporated Ontario company.

This release features the addition of the following procedural summaries under the *OBCA*: Proxies, and Remedies, Offences and Penalties. This release also features updates to Appendix IF. Issues in Focus including updates versions of § IF:13. When will the courts intervene with respect to the removal and appointment of corporate directors?, and § IF:25. What is the definition of "arrangement" as set out in the Ontario *Business Corporations Act*, and does it preclude the involvement of limited partnerships? This release also features updates to case law annotations under Related Legislation including the *Limited Partnerships Act*, and *Partnerships Act*.

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What's New in this Update:

- Issues in Focus When will the courts intervene with respect to the removal and appointment of corporate directors—Removing and appointing directors to a board is an extreme form of judicial intervention. Under s. 297 of Ontario's *Corporations Act*, the courts may become involved in overturning meetings and ordering that new ones be held, including how they are to be conducted, but they have shown reluctance to remove and appoint the directors themselves, deferring to the membership at the newly ordered meetings to sort out those issues.
- Related Legislation-Limited Partnerships Act Section 11-**Share of Profits -** The appellants' principal argument before the application judge, and renewed before the Court of Appeal, was their assertion that Binscarth Inc., as the general partner of the Partnership, was required, on an annual basis, to distribute all of the net income of the Partnership to the limited partners. They based this argument on their interpretation of section 11(1) of the LPA. The Court of Appeal explained that there was nothing in the plain wording of s. 11(1) of the Act, that supported the appellants' position, noting that saying that a limited partner is entitled to a "share" of the profits is not the same thing as saying that a limited partner is entitled to payment of that share. A limited partner is ultimately entitled to receive that share on a dissolution of the limited partnership, as set out in s. 24 of the Act, but, with that exception, there is no statutory obligation to make any such distribution. The Court of Appeal added that, if the appellants' interpretation of s. 11(1) was correct, then arguably s. 24 would be unnecessary: Anthony v. Binscarth Holdings GP Inc., 2025 CarswellOnt 1928, 2025 ONCA 130 (Ont. C.A.).
- Related Legislation Partnerships Act—Section 10(4)—Partner not proper party to action—The Court noted that the Claim provided a basis for the claim against the individual defendants. They were, each on their own behalf, signatories to the Agreement. The Court could not conclude on the motion that subsection 10(4) of the Partnerships Act required that the action be dismissed as against the non-Diamond LLP defendants. The individual defendants alleged that naming them and their professional corporations was prejudicial and that naming them personally harmed their professional reputations. The Court noted that it was hard to see how being named as defendants in a lawsuit could be said to be prejudicial to the individual defendants who signed the Agreement. By contrast, there was prejudice to the plaintiffs if the relief was granted, and the trial judge interpreted the Agreement to concluded that the individual defendants or their professional corporations had independent obligations to the plaintiffs that Diamond LLP did not share: Bergman v. Diamond & Diamond Lawyers LLP, 2025 CarswellOnt 5013, 2025 ONSC 2209 (Ont. S.C.J.).