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<p><b>LIMITED PARTNERSHIPS</b> <b>Lyle R. Hepburn</b>  <b>Release No. 8, September 2025</b></p>
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This text is a thorough guide to the law of limited partnerships in Canada. It contains relevant legislation and jurisprudence from each province and the territories. It also provides valuable forms and precedents as well as tax valuations. This publication offers an index for selected legal literature on limited partnerships, which includes citations to secondary legal literature from both the United States and the Canadian legal community. The materials indexed are useful both for theoretical studies and as an aid to the practice of law.

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## What's New in this Update:

This release features updates to the case law annotations under the *Partnerships Act* in Chapter 20 Ontario. This release also features updates to Appendix IF—Issues in Focus including the addition of the following updated memoranda: § IF:6—Can a court order the sale of a business under Ontario's *Partnerships Act* when one of the partners wants to leave the business?; § IF:11—What information is a limited partner entitled to regarding the operations of a limited partnership? § IF:13—What is the definition of “arrangement” as set out in the *Ontario Business Corporations Act*, and does it preclude the involvement of limited partnerships?; § IF:14—When will a court order the dissolution and winding up of a limited partnership, and, if the limited partnership agreement and offering memorandum are silent as to particular issues, how will a court decide those issues within the context of a dissolution?; § IF:18—In an action against a limited partnership, how can the partnership be served?; and § IF:21—Can a failure to comply with registration requirements impact the limited partnership itself?

## Highlights:

- **Ontario—Partnerships Act—Section 3—Rules for determining existence of relationship**—The Court of Appeal explained that the question of whether a partnership exists turns on the intentions of the parties as determined by the totality of the circumstances. Section 3(1) of the *Partnerships Act* provides important interpretative guidance for considering whether a partnership exists in circumstances involving joint tenancy, tenancy in common, joint property, common property, or part ownership. The Court of Appeal was not persuaded that the motion judge erred in his application of the law. The question of whether the record supported a conclusion that a partnership existed was a factual one. In assessing whether a partnership existed, the motion judge properly turned his mind to the totality of the circumstances. The Court of Appeal saw no palpable and overriding error in the motion judge's factual conclusions on the partnership issue and those conclusions were entitled to deference. The Court of Appeal concluded that the evidence was insufficient to lift the relationship beyond the presumption in s. 3(1) of the *Partnerships Act* that co-ownership does not, of itself, create a partnership. The Court of Appeal added that nothing showed that the parties ever turned their minds to the multiple responsibilities that would have existed among them if a partnership existed. The fact that they did not was a further indication that no partnership was contemplated. Those significant responsibilities would include a fiduciary relationship between the partners, creating duties of loyalty, utmost good faith, and avoidance of conflict and self-

interest; joint liability of partners for all debts and obligations of the partnership; the ability of one partner acting in the ordinary course of business to bind the partnership; and vicarious liability for the acts of other partners acting in the ordinary course of business. The appellants sought to assert one right of partnership—remedies upon dissolution—without regard for the many responsibilities which would have accompanied a partnership if one had existed. The Court of Appeal saw no legal error or palpable and overriding factual error in the motion judge’s conclusion that the appellants failed to establish that the Property was held as an asset of a partnership: *Nutrition Guidance Services Inc. v. Schwartz*, 2025 CarswellOnt 6116, 2025 ONCA 316 (Ont. C.A.).

- **Issues in Focus—When will a court order the dissolution and winding up of a limited partnership, and, if the limited partnership agreement and offering memorandum are silent as to particular issues, how will a court decide those issues within the context of a dissolution?**—A court may order the dissolution of a limited partnership (or a general partnership) pursuant to ss. 35(1)(a)–35(1)(f) of the *Ontario Partnerships Act*. In other provinces, there are equivalent statutes with sections indistinguishable from ss. 35(1)(a)–35(1)(f) of the *OPA*. Section 35(1)(f) of the *OPA* provides a “just and equitable” ground, which allows a court to take a broad view of the relationships between partners, and the business of the partnership. This can include whether there is any trust and confidence left between the partners, and whether the original purpose of the partnership is still achievable. When deciding issues related to the dissolution of a limited partnership, the limited partnership agreement and offering memorandum will typically govern if they provide clear and precise guidance on an issue. If they do not, the *OPA*, and *Ontario Limited Partnerships Act*, typically provide default terms for the operation and dissolution of limited partnerships, and those terms will govern. If neither the limited partnership agreement nor the relevant partnership legislation provide for the necessary terms to decide an issue, a court will need to look beyond the law pertaining to partnerships to determine the matter.