

1980

c 370 Partnerships Act

Ontario

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CHAPTER 370

Partnerships Act

1.—(1) In this Act,

Interpre-
tation

- (a) “business” includes every trade, occupation and profession;
- (b) “court” includes every court and judge having jurisdiction in the case.

(2) A person is deemed to be “insolvent” within the meaning of this Act if he is adjudged a bankrupt under the *Bankruptcy Act* (Canada) or if he makes an assignment for the general benefit of his creditors, and “insolvency” has a meaning corresponding with “insolvent”. R.S.O. 1970, c. 339, s. 1. Idem
R.S.C. 1970,
c. B-3

NATURE OF PARTNERSHIP

2. Partnership is the relation that subsists between persons carrying on a business in common with a view to profit, but the relation between the members of a company or association that is incorporated by or under the authority of any special or general Act in force in Ontario or elsewhere, or registered as a corporation under any such Act, is not a partnership within the meaning of this Act. R.S.O. 1970, c. 339, s. 2. Partnership

3. In determining whether a partnership does or does not exist, regard shall be had to the following rules: Rules for
determining
existence of
partnership

1. Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

2. The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

3. The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share or payment, con-

tingent on or varying with the profits of a business, does not of itself make him a partner in the business, and in particular,

- (a) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
- (b) a contract for the remuneration of a servant or agent or a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
- (c) a person being the widow, widower or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner is not by reason only of such receipt a partner in the business or liable as such;
- (d) the advance of money by way of loan to a person engaged or about to engage in a business on a contract with that person that the lender is to receive a rate of interest varying with the profits, or is to receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing and signed by or on behalf of all parties thereto;
- (e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business, is not by reason only of such receipt a partner in the business or liable as such. R.S.O. 1970, c. 339, s. 3.

Insolvency

4. In the event of a person to whom money has been advanced by way of loan upon such a contract as is mentioned in section 3, or of a buyer of the goodwill in consideration of a share of the profits of the business, becoming insolvent or entering into an arrangement to pay his creditors less than 100 cents in the dollar or dying in insolvent circumstances, the lender of the loan is not entitled to recover anything in respect of his loan, and the seller of the goodwill is not entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer, for valuable consideration in money or money's worth, are satisfied. R.S.O. 1970, c. 339, s. 4.

5. Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a firm, and the name under which their business is carried on is called the firm name. R.S.O. 1970, c. 339, s. 5.

Meaning of "firm"

RELATION OF PARTNERS TO PERSONS DEALING WITH THEM

6. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners unless the partner so acting has in fact no authority to act for the firm in the particular matter and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner. R.S.O. 1970, c. 339, s. 6.

Power of partner to bind firm

7. An act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm by a person thereto authorized, whether a partner or not, is binding on the firm and all the partners, but this section does not affect any general rule of law relating to the execution of deeds or negotiable instruments. R.S.O. 1970, c. 339, s. 7.

Partners bound by acts on behalf of firm

8. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners, but this section does not affect any personal liability incurred by an individual partner. R.S.O. 1970, c. 339, s. 8.

Partner using credit of firm for private purposes

9. If it is agreed between the partners to restrict the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement. R.S.O. 1970, c. 339, s. 9.

Effect of notice that firm not bound by act of partner

10. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject to the prior payment of his separate debts. R.S.O. 1970, c. 339, s. 10.

Liability of partners

11. Where by any wrongful act or omission of a partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to a

Liability of firm for wrongs

person not being a partner of the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act. R.S.O. 1970, c. 339, s. 11.

Misapplication of money or property received for or in custody of the firm

12. In the following cases, namely,

- (a) where one partner, acting within the scope of his apparent authority, receives the money or property of a third person and misapplies it; and
- (b) where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,

the firm is liable to make good the loss. R.S.O. 1970, c. 339, s. 12.

Liability for wrongs joint and several

13. Every partner is liable jointly with his co-partners and also severally for everything for which the firm, while he is a partner therein, becomes liable under section 11 or 12. R.S.O. 1970, c. 339, s. 13.

Improper employment of trust property for partnership purposes

14. If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein, but,

- (a) this section does not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and
- (b) nothing in this section prevents trust money from being followed and recovered from the firm if still in its possession or under its control. R.S.O. 1970, c. 339, s. 14.

Persons liable by "holding out"

15.—(1) Every person, who by words spoken or written or by conduct represents himself or who knowingly suffers himself to be represented as a partner in a particular firm, is liable as a partner to any person who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the persons so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

Continuing business after death of partner

(2) Where after a partner's death the partnership business is continued in the old firm name, the continued use of that name or of the deceased partner's name as part thereof does

not of itself make his executor's or administrator's estate or effects liable for any partnership debts contracted after his death. R.S.O. 1970, c. 339, s. 15.

16. An admission or representation made by a partner concerning the partnership affairs and in the ordinary course of its business is evidence against the firm. R.S.O. 1970, c. 339, s. 16. Admissions and representations of partners

17. Notice to a partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner. R.S.O. 1970, c. 339, s. 17. Notice to acting partner to be notice to the firm

18.—(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner. Liability commences with admission to firm

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement. Liability for debts, etc., incurred before retirement

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. R.S.O. 1970, c. 339, s. 18. Agreement discharging retiring partner

19. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transaction of which, the guaranty or obligation was given. R.S.O. 1970, c. 339, s. 19. Revocation of continuing guaranty by change in firm

RELATION OF PARTNERS TO ONE ANOTHER

20. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing. R.S.O. 1970, c. 339, s. 20. Variation by consent of terms of partnership

21.—(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, Partnership property

are called in this Act "partnership property", and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

Devolution
of land

(2) The legal estate or interest in land that belongs to a partnership devolves according to the nature and tenure thereof and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

Co-owners
of land

(3) Where co-owners of an estate or interest in land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of purchase. R.S.O. 1970, c. 339, s. 21.

Property
bought with
partnership
money

22. Unless the contrary intention appears, property bought with money belonging to the firm shall be deemed to have been bought on the account of the firm. R.S.O. 1970, c. 339, s. 22.

Conversion
of land
bought with
partnership
money into
personalty

23. Where land or any heritable interest therein becomes partnership property, unless the contrary intention appears, it is to be treated as between the partners, including the representatives of a deceased partner, and also as between the heirs of a deceased partner and his executors or administrators as personal or movable and not real or heritable estate. R.S.O. 1970, c. 339, s. 23.

Rules as to
interests
and duties
of partners

24. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:

1. All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.

2. The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him,

(a) in the ordinary and proper conduct of the business of the firm; or

(b) in or about anything necessarily done for the preservation of the business or property of the firm.

3. A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital that he has agreed to subscribe is entitled to interest at the rate of 5 per cent per annum from the date of the payment or advance.

4. A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.

5. Every partner may take part in the management of the partnership business.

6. No partner is entitled to remuneration for acting in the partnership business.

7. No person may be introduced as a partner without the consent of all existing partners.

8. Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.

9. The partnership books are to be kept at the place of business of the partnership, or the principal place, if there is more than one, and every partner may, when he thinks fit, have access to and inspect and copy any of them. R.S.O. 1970, c. 339, s. 24.

25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners. R.S.O. 1970, c. 339, s. 25. Expulsion of partner

26.—(1) Where no fixed term is agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners. Retirement from partnership at will

(2) Where the partnership was originally constituted by deed, a notice in writing, signed by the partner giving it, is sufficient for that purpose. R.S.O. 1970, c. 339, s. 26. Notice of retirement

27.—(1) Where a partnership entered into for a fixed term is continued after the term has expired and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will. Presumption of continuance after expiry of term

Arises from
continuance
of business

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs shall be presumed to be a continuance of the partnership. R.S.O. 1970, c. 339, s. 27.

Duty as to
rendering
accounts

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. R.S.O. 1970, c. 339, s. 28.

Accounta-
bility for
private
profits

29.—(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership or from any use by him of the partnership property, name or business connection.

Extends to
survivors
and repre-
sentatives of
deceased

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner and before its affairs have been completely wound up, either by a surviving partner or by the representatives of the deceased partner. R.S.O. 1970, c. 339, s. 29.

Duty of
partner not
to compete
with firm

30. If a partner, without the consent of the other partners, carries on a business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business. R.S.O. 1970, c. 339, s. 30.

Rights of
assignee of
share in
partnership

31.—(1) An assignment by a partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

On
dissolution

(2) In the case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution. R.S.O. 1970, c. 339, s. 31.

DISSOLUTION OF PARTNERSHIP

32. Subject to any agreement between the partners, a partnership is dissolved, Dissolution by expiry of term or notice

- (a) if entered into for a fixed term, by the expiration of that term;
- (b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; or
- (c) if entered into for an undefined time, by a partner giving notice to the other or others of his intention to dissolve the partnership, in which case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice. R.S.O. 1970, c. 339, s. 32.

33.—(1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or insolvency of a partner. Dissolution by death or insolvency of partner

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt. R.S.O. 1970, c. 339, s. 33. Where partner's share charged for separate debt

34. A partnership is in every case dissolved by the happening of any event that makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership. R.S.O. 1970, c. 339, s. 34. By illegality of business

35. On application by a partner, the court may order a dissolution of the partnership, By the court

- (a) when a partner is found mentally incompetent by inquisition or is shown to the satisfaction of the court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner;
- (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;
- (c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the

court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;

- (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- (e) when the business of the partnership can only be carried on at a loss; or
- (f) when in any case circumstances have arisen that in the opinion of the court render it just and equitable that the partnership be dissolved. R.S.O. 1970, c. 339, s. 35.

Rights of persons dealing with firm against apparent members

36.—(1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

Notice

(2) An advertisement in *The Ontario Gazette* shall be notice as to persons who had not dealings with the firm before the dissolution or change so advertised.

Estate of dead or insolvent partner, how far liable

(3) The estate of a partner who dies, or who becomes insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, insolvency, or retirement. R.S.O. 1970, c. 339, s. 36.

Right to give notice of dissolution

37. On the dissolution of a partnership or retirement of a partner, any partner may publicly give notice of the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, that cannot be done without his or their concurrence. R.S.O. 1970, c. 339, s. 37.

Continuing authority of partners for purposes of winding up

38. After the dissolution of a partnership, the authority of each partner to bind the firm and the other rights and obligations of the partners continue notwithstanding the dissolution so far as is necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise; provided that the firm is in no case bound by the acts of a partner who

has become insolvent; but this proviso does not affect the liability of a person who has, after the insolvency, represented himself or knowingly suffered himself to be represented as a partner of the insolvent. R.S.O. 1970, c. 339, s. 38.

39. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or his representative may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm. R.S.O. 1970, c. 339, s. 39.

Rights of partners as to application of partnership property

40. Where one partner paid a premium to another on entering into a partnership for a fixed term and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless,

Apportionment of premium on premature dissolution

- (a) the dissolution is, in the judgment of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing no provision for a return of a part of the premium. R.S.O. 1970, c. 339, s. 40.

41. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

Rights where partnership dissolved for fraud or misrepresentations

- (a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him; and
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and

- (c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm. R.S.O. 1970, c. 339, s. 41.

Right of outgoing partner as to share in profits after dissolution

42.—(1) Where any member of a firm dies or otherwise ceases to be a partner and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of an agreement to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representatives, to such share of the profits made since the dissolution as the court finds to be attributable to the use of his share of the partnership assets, or to interest at the rate of 5 per cent per annum on the amount of his share of the partnership assets.

Proviso as to option of remaining partners to purchase share

(2) Where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits, but if any partner, assuming to act in exercise of the option, does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section. R.S.O. 1970, c. 339, s. 42.

Retiring or deceased partner's share to be a debt

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death. R.S.O. 1970, c. 339, s. 43.

Rules for distribution of assets on final settlement of accounts

44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

1. Losses, including losses and deficiencies of capital, are to be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.

2. The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, are to be applied in the following manner and order,

- (a) in paying the debts and liabilities of the firm to persons who are not partners therein;

- (b) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
- (c) in paying to each partner rateably what is due from the firm to him in respect of capital;
- (d) the ultimate residue, if any, is to be divided among the partners in the proportion in which profits are divisible. R.S.O. 1970, c. 339, s. 44.

45. The rules of equity and of common law applicable to partnership continue in force, except so far as they are inconsistent with the express provisions of this Act. R.S.O. 1970, c. 339, s. 45. Saving as to rules of equity and common law

46. This Act is to be read and construed as subject to the *Limited Partnerships Act* and the *Partnerships Registration Act*. R.S.O. 1970, c. 339, s. 46. Act to be subject to R.S.O. 1980, cc. 241, 371

